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STATUTORY INSTRUMENTS

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**2022 No. 1272**

**The Competition Act 1998 (Specialisation Agreements Block Exemption) Order 2022**

**Interpretation**

2.—(1) In this Order—

“block exemption” means the exemption from the Chapter I prohibition<sup>(1)</sup> arising by virtue of this Order for the category of agreements<sup>(2)</sup> specified in this Order;

“competing undertaking”, in relation to a specialisation agreement, means—

- (a) an undertaking that is active on the same relevant market as a party to the agreement, or
- (b) an undertaking that, in the absence of the specialisation agreement, would, on realistic grounds and not just as a mere theoretical possibility, be likely to undertake, within not more than three years, the necessary additional investments or other necessary costs to enter a relevant market;

“connected undertakings”, in relation to a party to a specialisation agreement, means—

- (a) undertakings in relation to which the party to the specialisation agreement, directly or indirectly—
  - (i) has the power to exercise more than half the voting rights,
  - (ii) has the power to appoint more than half the members of the board of directors, or if there is no such board, the equivalent body or bodies responsible for the management of the undertaking, or
  - (iii) has the right to manage the undertaking’s affairs;
- (b) undertakings which directly or indirectly have, in relation to the party to the specialisation agreement, the rights or powers listed in paragraph (a);
- (c) undertakings in relation to which an undertaking referred to in paragraph (b) has, directly or indirectly, the rights or powers listed in paragraph (a);
- (d) undertakings in relation to which the party to the specialisation agreement together with one or more of the undertakings referred to in paragraphs (a), (b) or (c), or in relation to which two or more of the undertakings referred to in paragraphs (b) or (c), jointly have the rights or powers listed in paragraph (a);
- (e) undertakings in relation to which the rights or the powers listed in paragraph (a) are jointly held by—
  - (i) two or more of the parties to the specialisation agreement or their respective connected undertakings referred to in paragraphs (a) to (d), or

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(1) The Chapter I prohibition is defined in section 2(8) of the Act.

(2) Under section 59 of the Act (interpretation) references in Part 1 of that Act to “agreement” are to be read with section 2(5) and (6) of the Act which provide that, unless the context otherwise requires, a provision of Part 1 of the Act which is expressed to apply to, or in relation to, an agreement, is to be read as applying equally to, or in relation to, a decision by an association of undertakings or a concerted practice (but with any necessary modifications).

- (ii) one or more of the parties to the specialisation agreement or one or more of their connected undertakings referred to in paragraphs (a) to (d) and one or more third parties;

“distribution”, other than in the definition of “product”, means the provision of specialisation products;

“downstream product” means a product for which a specialisation product is used as an input by one or more parties to a specialisation agreement and which is subsequently sold by the party or parties concerned on the market;

“joint”, in relation to distribution, means (other than in the expression “joint team, organisation or undertaking”) activities where the work involved is—

- (a) carried out by the parties to a specialisation agreement through a joint team, organisation or undertaking, or
- (b) undertaken by a third party distributor jointly appointed by the parties to a specialisation agreement on an exclusive or non-exclusive basis, provided that the third party distributor is not a competing undertaking,

and references to distributing a specialisation product “jointly” are to be construed accordingly;

“joint production agreement” means a specialisation agreement of a kind referred to in article 3(2)(c);

“preparation of services” means activities carried out prior to and with a view to the provision of services to customers;

“product” means a good or a service, and includes both intermediate goods or services and final goods or services, but does not include distribution or rental services;

“production” means the manufacture of goods or the preparation of services, including by way of subcontracting, and “produce” and related expressions are to be construed accordingly;

“reciprocal specialisation agreement” means a specialisation agreement of a kind referred to in article 3(2)(b);

“relevant market”, in relation to a specialisation agreement, means—

- (a) a product and geographic market to which one or more of the specialisation products belongs, and
- (b) where any of the specialisation products is an intermediate product which one or more of the parties use wholly or partly as an input for their own production of a downstream product, a product and geographic market to which the downstream product belongs;

“specialisation agreement” has the meaning given in article 3(2);

“specialisation product” means a product which is produced under a specialisation agreement;

“unilateral specialisation agreement” means a specialisation agreement of a kind referred to in article 3(2)(a).

(2) In this Order—

- (a) any reference to a “party” to an agreement is a reference to an undertaking which is a party to the agreement and, in relation to a particular specialisation agreement, a reference to “the parties” is a reference to the undertakings which are party to the agreement concerned, and
- (b) any reference to “the specialisation products” is, in relation to a particular specialisation agreement, a reference to the specialisation products produced under the specialisation agreement concerned.

(3) For the purposes of this Order, the terms “undertaking” and “party”, include their respective connected undertakings.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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