
STATUTORY INSTRUMENTS

2022 No. 1272

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

Conditions, obligation and consequences of breach

Block exemption subject to conditions and obligation

4. The block exemption has effect in relation to a specialisation agreement subject to the conditions specified in articles 5 and 7 and the obligation specified in article 8.

Market share thresholds and effect of breach

5.—(1) The combined market share of the parties to the specialisation agreement must not exceed 20% of any relevant market.

(2) Subject to paragraph (3), breach of the condition imposed by paragraph (1) has the effect of cancelling the block exemption in respect of the specialisation agreement concerned.

(3) Where the combined market share of the parties to the specialisation agreement does not exceed the 20% threshold referred to in paragraph (1) at the time the agreement is entered into, but subsequently rises above that level, the breach has the effect of cancelling the block exemption in respect of the agreement but only with effect from the end of the period of two consecutive calendar years following the year in which the 20% market share threshold was first exceeded.

Rules for applying thresholds

6.—(1) For the purposes of applying the market share thresholds provided for in article 5 the following rules apply—

- (a) the market share of a party is to be calculated on the basis of market sales value data, or, where market sales value data are not available, estimates based on other reliable market information, such as market sales volumes;
- (b) the market share of a party is to be calculated on the basis of data or information relating to the calendar year preceding that in which the calculation is being made, or, where that calendar year is not representative of the party's position in the relevant market, calculated as an average of the party's market shares for the three calendar years preceding that in which the calculation is being made.

(2) The market share held by the undertakings referred to in paragraph (e) of the definition of “connected undertakings” in article 2(1) is to be apportioned equally to each undertaking having the rights or the powers listed in paragraph (a) of that definition.

Hardcore restrictions and effect of breach

7.—(1) The specialisation agreement must not directly or indirectly, in isolation or in combination with other factors under the control of any of the parties, have as its object—

- (a) the fixing of prices when selling any of the specialisation products to third parties, except for the fixing of prices charged to immediate customers in the context of joint distribution,
 - (b) the limitation of output or sales, subject to the exceptions set out in paragraph (2), or
 - (c) the allocation of markets or customers.
- (2) A specialisation agreement does not breach the condition in paragraph (1)(b) by—
- (a) in the case of a unilateral specialisation agreement or a reciprocal specialisation agreement, including provisions agreeing the amount of products that a party or parties—
 - (i) are to cease or refrain from producing, or
 - (ii) are to produce for the other party or parties to the specialisation agreement,
 - (b) in the case of a joint production agreement, including provisions which relate to setting capacity and production volumes for any of the specialisation products, or
 - (c) in the context of joint distribution, setting sales targets for any of the specialisation products.
- (3) Breach of the condition imposed by paragraph (1) has the effect of cancelling the block exemption in respect of the specialisation agreement concerned.

Obligation to provide information and effect of breach

8.—(1) A person must supply to the CMA(1) such information in connection with any agreement claiming the benefit of the block exemption to which it is a party as the CMA may by notice in writing request—

- (a) within a period of ten working days(2) commencing with the relevant day, or
- (b) within such longer period of working days commencing with the relevant day as the CMA may, having regard to the particular circumstances of the case, agree with the person in writing.

(2) Where the CMA considers that a person has, without reasonable excuse, failed to comply with the obligation imposed by paragraph (1), the CMA may, subject first to giving notice in writing of its proposal and considering any representations made to it, by notice in writing cancel the block exemption in respect of any specialisation agreement to which the request for information under paragraph (1) relates.

(3) In this article, “relevant day” means—

- (a) where notice to provide information under paragraph (1) is given under article 10(a), the day on which the person receives the notice in writing,
- (b) where notice to provide information under paragraph (1) is given by publication under article 10(b), the day on which the notice is published, or
- (c) if the day mentioned in sub-paragraph (a) or (b) (as the case may be) is not a working day, the next day that is a working day.

(1) “the CMA” is defined in section 59(1) of the Act.

(2) “working day” is defined in section 59(1) of the Act, the definition having been inserted by S.I. 2004/1261.