Approved by the Decision of the Plenum of the Competition Council nr.14 of August 30, 2013

REGULATION
on assessment of horizontal anticompetitive agreements

This Regulation is elaborated based on the Art.6 Para (3), Art.46 Para (6) c) of Law on Competition No183 of 11.07.2012 (hereanafter *Law*) and transposes provisions of the Regulation (EU) No1217/2010 of Commission of 14 December 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements ,published in Official Journal L 335/36 of 18.12.2010;and transposes partially Communication from Commission - Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements 2011/C 11/01, published in OJ NoC11/1 of 14.01.2011 and Communication from Commission– Guidelines on the application of Article 81(3) of the Treaty 2004/C 101/108, published in OJ No101/97 of 27.04.2004.

I. GENERAL PROVISIONS

1. This Regulation establishes the general framework for the evaluation of anti-competitive horizontal agreements, their individual exemption under Article 6 Para (1) of the Law and direct exempt categories of research and development agreements and specialization agreements under Article 6 Para (3) of the Law.

2. This Regulation aims the goal of ensuring the effective protection of competition.

II. MAIN DEFINITIONS

3In the meaning of this Regulation use the following definitions.

research and development agreement - an agreement entered into between two or more parties which relate to the conditions under which those parties pursue:

1) joint research and development of contract products or contract technologies and joint exploitation of the results of that research and development;

2) joint exploitation of the results of research and development of contract products or contract technologies jointly carried out pursuant to a prior agreement between the same parties;

3) joint research and development of contract products or contract technologies excluding joint exploitation of the results;

4) paid-for research and development of contract products or contract technologies and joint exploitation of the results of that research and development;

5) joint exploitation of the results of paid-for research and development of contract products or contract technologies pursuant to a prior agreement between the same parties; or
6) paid-for research and development of contract products or contract technologies excluding joint exploitation of the results;
joint production agreement - agreement whereby two or more parties agree to produce certain products jointly;

specialization agreement - unilateral specialization agreement, mutual specialization agreement or joint production agreement.
mutual specialization agreement - agreement between two or more parties operating in the same product market , whereby two or more parties on a mutual basis to fully or partly cease production of certain products that are different, or refrain from producing those products and to purchase them from the other parties, who agree to produce and supply those products;
unilateral specialization agreement - agreement between two parties to cooperate in the same product market , under which one party agrees to cease , in whole or in part, the production of certain products or to refrain from producing those products and to purchase them from the same party , who agrees to produce and supply those products;
paid-for research and development - research and development that is carried out by one party and financed by a financing party;
remunerated research and development - research and development by some and supported by some funding;
remunerated research and development activities - research and development by some and supported by some funding ;
'research and development' - the acquisition of know- how relating to products, technologies or processes and the carrying out of theoretical analysis, systematic study or experimentation, including experimental production, technical testing of products or processes, the establishment of the necessary facilities and the obtaining of intellectual property rights for the results;
joint research and development or joint exploitation of results - activities where the work involved is:
1) carried out by a joint team;
2) jointly entrusted to a third party;
3) allocated between the parties by way of specialization in the context of research and development or results exploitation;
distribution – marketing of goods, provision of services and / or works;
joint distribution - making products distribution by the parties with a help of a common entity or third party or third distributor designation on an exclusive or non exclusive on condition that the enterprise is not a competitor;
exploitation of the results - the production or distribution of the contract products or the application of the contract technologies or the assignment or licensing of intellectual property rights or the communication of know- how required for such manufacture or application;

know-how - a secret, substantial and identified package of non-patented practical information, resulting from experience and testing by the supplier: in this context, 'secret' - that the know-how is not generally known or easily accessible; 'substantial' - that the know-how is significant and useful to the buyer for the use, sale or resale of the contract goods or services; 'identified' - that the know-how is described in a sufficiently comprehensive manner so as to make it possible to verify that it fulfills the criteria of secrecy and substantiality;

exclusive supply obligation - the obligation to provide a competitor product specialization provided that it is party to the agreement;

financing party - a party financing paid-for research and development while not carrying out any of the research and development activities itself;

relevant product market (***in context of research and development agreements***) - the relevant market for the products capable of being improved, substituted or replaced by the contract products;

relevant technology market - the relevant market for the technologies or processes capable of being improved, substituted or replaced by the contract technologies.

production –manufacturing of goods, training services and / or works;

contract product - a product arising out of the joint research and development or manufactured or provided applying the contract technologies;

product specialization - the product resulting from specialization agreement, including both intermediate products and final products with exception distribution and rental services;

downstream product - the product of the production of which one or more of the parties uses it as a production factor and specialized product that is sold by these parties in the market;

preparation service - activities prior to services provision to customers;

specialization in the context of research and development' - that each of the parties is involved in the research and development activities covered by the research and development agreement and they divide the research and development work between them in any way that they consider most appropriate; this does not include paid-for research and development;

specialization in the context of exploitation' - that the parties allocate between them individual tasks such as production or distribution, or impose restrictions upon each other regarding the exploitation of the results such as restrictions in relation to certain territories, customers or fields of use; this includes a scenario where only one party produces and distributes the contract products on the basis of an exclusive license granted by the other parties;

contractual technology - technology or process resulting from the joint;

4. For the purposes of this Regulation, the terms undertaking and party shall include their respective connected undertakings. Connected undertakings means:

1) undertakings in which a party to the agreement, directly or indirectly has the power to exercise more than half the voting rights, has the power to apsub point more than half the members of the supervisory board, board of management or

bodies legally representing the undertaking or has the right to manage the undertaking's affairs.
2) undertakings which directly or indirectly have, over a party to the research and development agreement, the rights or powers listed in sub point 1);
3) undertakings in which an undertaking referred to in sub point 2) has, directly or indirectly, the rights or powers listed in sub point 1);
4) undertakings in which a party to the research and development agreement together with one or more of the undertakings referred to in sub sub points 1), 2) or 3), or in which two or more of the latter undertakings, jointly have the rights or powers listed in sub point 1);
5) undertakings in which the rights or the powers listed in sub point 1) are jointly held by parties to the research and development agreement or their respective connected undertakings referred to in sub points 1) to 4) or one or more of the parties to the research and development agreement or one or more of their connected undertakings referred to in sub points 1) to 4) and one or more third parties.
5. Undefined notions have the meaning given in point 3 of the Law

III. ASSESSMENT OF THE HORIZONTAL AGREEMENTS

Section 1

General analytic framework

6. The provisions of Article 5 Para (1) of the Law prohibits anti-competitive cooperation between undertakings achieved either by agreement or by decision of an association or concerted practices.
7. The Competition Council must prove that the agreement meets the horizontal rule banning of article 5 of Law.
Horizontal agreements will be evaluated in two stages:
1) the first step is to determine whether a horizontal agreement between undertakings is an anti-competitive object , especially if the agreement in question is or is not a cartel rough or horizontal agreement that has actual or potential restrictive effects on competition;

2) the second stage , where it turned out that the horizontal agreement restricts competition within the meaning of Article 5 Para (1) of the Law and in the same place, it is a tough cartel , are the benefits of this agreement competition and assess whether they compensate for the restrictive effects on competition. If the benefits of competition agreement compensates its restrictive effects on competition, the agreement may be exempted from the prohibition laid down in Article 5 Para (1) of the Law according to article 6 of Law.

8. Exemption from the prohibition laid down in Article 5 Para (1) of the Law may be individual under Article 6 Para. (1) of the Law or horizontal agreement due to enrollment in certain categories of horizontal agreements under Article 6 Para (3) of the Law.

9. The task of proof regarding compliance with the conditions for exemption cumulative or, where applicable, the membership agreement lies horizontal agreements exempted undertakings or associations of undertakings claiming the benefit of the provisions of article 6 of the law.

Section 2
The competition restriction by the objective or effect of the agreement

10. Restrictions by object have the ability to restrict competition within the meaning of Article 5 Para (1) of the Law. Establishment of anti-competitive object of the agreement is sufficient for finding of anti-competitive agreement, being necessary to examine the actual or potential effects of the agreement on competition respectively.
11. To determine whether an agreement has an anticompetitive object will take into account the content of the agreement , its objectives and, where appropriate , the context in which the agreement is applied or will be applied and the conduct of the parties in the market. Concrete ways of implementing the agreement may indicate a restriction by object and where it is not expressly provided for in the agreement.
12. The types of agreements classified as restrictive by object under Article 7 of the Law include price fixing, market sharing or customers , limiting output or sales , participation rigged bids in auctions or other forms of competitive tendering .
13. Coordinated price fixing by competitors is particularly an agreement of :
1) sales prices;
2) the common formula of price calculation;
3) the minimum selling prices , including the case when enterprises have possibility to charge customers above the minimum level at which they agreed;
4) prohibiting rebates
5) agreeing on maximum rebates .
14. Restricting production or sales is allocation of production or sales between cartel participants or agreement on reducing distribution.
15. Market segmentation means allocation of certain territories of sale or distribution channels. Parties can agree not only on the terms of sale areas other participants , but also to refrain from increasing sales in their respective territories.
16. Customer allocation agreement takes place , especially in the agreement of mutual respect of traditional customers, not to expand sales to customers of other competitors , allocation of new customers in a certain way , to take steps to keep other competitors away their markets to protect its markets dominated cartel .
17. Horizontal agreements may restrict competition , in particular by : limiting the possibility of the parties to compete with one another or to third parties as independent undertakings or parts to other agreements; request the parties to provide assets so that their ability to make decisions independently be reduced considerably; affecting the financial interests of the parties , disclosure of strategic information, achieving a significant degree of sharing of common costs.
18. If a horizontal agreement does not restrict competition by object Competition Council will consider whether it has actual or potential restrictive effects on

competition. The analysis will be in terms of legal and economic context in which competition would occur in the absence of the agreement.
19. Restrictive effects are observed if it is identified negative impact of the agreement on at least one of the parameters of competition on the market, such as price, production, product quality, product variety or innovation. In assessing the restrictive effects of the agreement is taking into account the nature and content of the agreement, the market power of the parties to the agreement and other market characteristics.
20. The nature and content of the agreement relates to the goals and cooperation, competition relations between the parties and the extent to which they work together.
21. Market power is the ability to maintain a significant period of time profitably above competitive prices and production in the quantities of products, quality and variety or innovation below competitive levels.
22. Market power is a phenomenon level . The level of market power required for infringement under Article 5 Para (1) of the Law in the case of agreements restricting competition effect is lower than the market power required for a finding of a dominant position under Article 10 of the Law.
23. In order to analyze market power in the relevant market shall be determined in accordance with the provisions of Chapter V of the Law, and then calculate the share of the relevant markets. Depending on the size of the market share of the parties will also consider other factors stability of the market share, the market concentration, entry barriers, the likelihood of new entry, the countervailing power of buyers or suppliers.
24. In case of a concerted practice is not necessarily, that the participants will come to an express or implied agreement on the terms of their joint actions or lack of action.
25. Concerted practice is to avoid businesses to apply competition rules by colluding to an anti-competitive manner, formal staying in agreement, but the exchange of information in advance of the attitude each intends to adopt so that everyone can regulate commercial conduct knowing that its competitors will have similar behavior.
26. Strategic information sharing leads to artificial increase market transparency, which facilitates the coordination of the competitive behavior of undertakings and cause problems.
27. Prevention, restriction or distortion of competition through strategic information exchange occurs mainly by mutual agreement on the terms of coordination , monitoring of possible deviations from the coordination and conduct other businesses seeking to enter the market, creating a competitive disadvantage to non participants in strategic information exchange system to exclude others from a market which is upstream or downstream.
28. If an enterprise discloses only its competitor’s strategic information on upcoming trade policy, this reduces strategic uncertainty for all competitors involved in the operation and future market increases the risk of limiting competition.

29. If a contestant receives strategic data from another competitor, it will be assumed that the competitor receiving such information and data accepted and adapted accordingly market behavior unless they reply with a clear statement that he does not receive such data.
30. If an undertaking makes a unilateral announcement is public, this behavior does not represent a concerted practice within the meaning of Article 5 Para (1) of the Law.
31. If the public announcement was followed by other public announcements made by competitors, so that the responses of competitors to public announcements made by other competitors be considered a strategy to reach a mutual agreement on the terms of coordination, this behavior is concerted practice within the meaning of Article 5 Para (1) of the Law.
32. Any exchange of information between competitors aimed at restricting competition on the market is a restriction of competition by object . In assessing whether an exchange of information constitutes a restriction of competition by object, is considered the context in which the exchange of information takes place.
Exchange of information on price fixing, market sharing and customer, limiting output or sales , participation in tenders or other offers competitive tendering to implement a tough cartel are considered tough cartels agreements.
34. Probable effects of an information exchange depends on both the characteristics of the relevant markets, as well as the characteristics of the information exchanged.

Section 3
Exemption of horizontal anticompetitive agreements under Art.6 Para (1) of Law

35.. Demonstrating whether an agreement restricts competition within the meaning of Article 5 Para (1) of the Law, undertakings parties to the agreement may invoke that the exemption appears provided for in Article 6 Para (1) of the Law.
36. The factual motivation and evidence provided by the undertakings, must give the possibility to the Competition Council to decide on the degree of probability that the agreement has or not pro-competitive effects.
37. Increasing efficiency analysis is to identify complementary skills and assets that help each party to the agreement, as well as assessing whether the resulting efficiencies are possible cumulative fulfillment of the conditions laid down in Article 6 Para (1) of the Law.
38. Evaluation of the benefits arising from horizontal agreements is based on the relevant market to which the agreement relates. In case two markets are related, the increases and efficiency will be taken into account, on condition that the group of consumers affected by the restriction and benefiting from the efficiency increase are largely the same.
39. The exemption provided for in Article 6 Para (1) of the Law is applied as long as the four conditions are met and shall cease to apply otherwise. If it is determined that one of the four cumulative conditions is not met, the Competition Council will examine compliance with the other three conditions.

40. For the purposes of this Regulation, the order exposure assessment framework of the second condition is reversed by the third, thus addressed the issue of indispensability before the transmission to consumers.

41. In assessing the contribution of agreement in order to improve the production or distribution of goods or promoting technical or economic progress , will be called hereinafter the efficiency categories efficiency, it will be taken into account the objective benefits.

42. To determine the objective benefits of goals produced by the agreement and the economic importance of each of the claimed efficiencies it should be checked the following : the nature of the alleged efficiency, the direct link between agreement and efficiency, likelihood and magnitude of alleged efficiency, as and when claimed efficiency would be achieved.

43. In assessing of the efficiency categories will be distinguished cost effectiveness and efficiency achieved in qualitative nature that creates value in the form of new or improved products , greater product variety .

44. When it is invoked efficiency achieved in costs, undertakings will present the calculation or estimate the efficiency, it will be described in detail the calculation and the methods by which that effectiveness has been or will be obtained. The information submitted by undertakings must be checked to determine with certainty that the efficiencies have been or will be obtained.

45. If efficiency takes the form of new or improved products or other types of qualitative nature, enterprises will describe and explain in detail the nature and cause of formation economic benefit.

46. If an agreement has not yet been fully implemented, the parties must justify any prediction regarding the time at which efficiency will have a significant positive impact on the market.

47. In assessing indispensability will be determined whether the restrictive agreement and restricting competition under the agreement are required in order to achieve efficiency.

48. To carry out the assessment of indispensability will be taken into account market conditions and commercial realities faced by the parties to the agreement, in particular the market structure, the economic risks related to the agreement and the incentives facing the parties.

49. In assessing the condition that the restrictive agreement is necessary to achieve efficiency will determine the minimum level of efficiency in that market.

50. In case it is found that the agreement is necessary to achieve efficiency, it will be demonstrated the indispensability of each constraints to competition arising from the agreement. Parties to the agreement undertake to justify the claim, on the nature of the restriction and its intensity.

51. Consumers should not necessarily receive a portion of each efficiency category identified under the first condition. If a restrictive agreement may lead to higher prices, consumers must be fully compensated by higher quality or other benefits.

52. In assessing consumers' insurance a fair share of the resulting benefit, will be taken into account: overall impact on consumer products in the relevant

market, the transmission efficiency to consumers through current or future gain, period preceding the submission of the negative impact on consumers on the relevant market after this period.

53. In the case of defense enterprises will provide the Competition Council estimates and other information, taking into account the circumstances of each case

54. In assessing, the possibility of eliminating competition will be taken into account the degree of competition prior to the agreement and the impact of the restrictive agreement on competition. This condition requires analysis of various sources of competition in the market, the level of competitive constraints, imposed by the parties to the agreement and the agreement's impact on the competitive constraints, particularly examining the influence of various parameters of the agreement on competition.

IV. Research and development agreements

Section 4

The evaluation of the research and development agreements based on Art.5 Para (1) of the Law

55. Cooperation in research and development field can restrict competition by: restriction of innovation, reduce competition between the parties outside the scope of the Agreement, creating the likelihood of anticompetitive coordination in these markets, generating foreclosure problems in the context of cooperation involving at least one participant with a significant degree of market power in the key technology and exclusive exploitation of results.

56. In case the objective of the agreement is not research and development, but a tool for creating a tough cartel, this agreement shall be regarded as anti-competitive and will fall under the provisions of Article 7 of the Law.

57. Evaluation of the impact of research and development agreement begins with the identification of products, technologies or specific research and development efforts that will represent the main competitive constraint on the parties.

58. In case of research and development agreement leads to improvement of existing products that will compete in the existing market products or technologies, the possible effects will target market for existing products .

59. If research and development agreement may result in a completely new product, which creates its own market of new products, markets are only relevant if they are somehow related to the innovation generated by the agreement.

60. In case research and development refers to important component of the finished product, for the effects assessment is relevant not only the market of that component, but as well the existing market of finished product.

61. Final product market is only relevant if the component under investigation and / or development is a key element of economic and technical point of view, of this final product and if parties of the research and development agreement are competitors .

62. If intellectual property rights are marketed separately from the products to which it relates will be defined and the technology market. Technology market includes intellectual property rights granted by the license and technology

substitution. Technologies market defines principles used to define the product market.

63. In determining the technology market, it is focused on potential competition. If businesses do not currently licensed technologies would enter the technology market, they may restrict the parties' ability to increase prices for their technologies.

64. Research and development agreements may have restrictive effects on competition only when cooperating parties have market power in existing markets and / or competition in innovation is reduced.

65. In assessing the effects of research and development agreements will be distinguished between pure research and development agreements and cooperation agreements providing for complex cooperation, which involves various stages of exploitation of the results, such as licensing, production and marketing.

66. A cooperation agreement concluded between non-competing undertakings may have the effect of closing the market in order to meet the provisions of Article 5 Para (1) of the Law, if it relates to exclusive exploitation of results and if one of the parties to the agreement holds significant share of the technology market, without which it can exploit the results. Competitive relationship between the parties must be considered in the context of existing market conditions and / or innovation. If the parties fail to conduct independent research and development activities required, then there is no restrictive effect on competition. Parties , which through cooperation can afford to conduct a research and development can be defined as potential competitors where it is established that each of the parties separately has the means necessary as assets , know -how and other resources for carrying out the research and development.

Section 5

Exemption of the research and development agreements under Art.6 Para (3) of the Law

67. Under Article 6 Para (3) of the Law and in accordance with this Regulation, Article 5 Para (1) of the Law does not apply to research and development agreements signed into between two or more parties. This exemption shall apply to the extent that such agreements contain restrictions of competition falling under Article 5 Para (1) of the Law.

68. Exemption provided for in point 67 is applied on the exemption conditions set out in points.70 -75 if the agreement contains a hardcore restriction under point 76 and excluded restrictions set out in point.77 .

69. Exemption provided for in point.67 is applied to research and development agreements containing provisions on intellectual property rights assignment or assignment of licenses for such rights to one or more parts or entity designated by the parties to conduct joint research and development or exploitation jointly , provided that those provisions do not constitute the primary object of restrictive agreements , but are directly related to their implementation and necessary for this purpose .

70. Research and development agreement should stipulate that all parties should benefit from unrestricted access to the final results of the joint research and development or activities paid for research and development, including intellectual property rights and know -how result, in order to further research and exploitation as soon as they are available.

71. Research institutes, universities or undertakings which supply research and development as a commercial service without them participating in the exploitation of the results are able to reach an agreement to limit the use of the results referred to additional research.

72. Research and development agreement may provide that the parties compensate each other for access to the results of further research and development provided that compensation is not elevated to the level that would prevent access to the results.

73. Notwithstanding points 70 -72, where research and development agreement provides only for joint research and development or research and development activities paid , the agreement must stipulate that each party should have access to pre-existing know -how the other parties, if it is indispensable for the exploitation of results. Research and development agreement may provide that the parties compensate each other for access to the know- how of their pre-existing condition that compensation should not be raised to a level that would prevent access to the results.

74. Joint exploitation must relate only to the results protected by intellectual property rights or constitute know-how that contribute to technical or economic progress, and are indispensable for the manufacture of the product contracts or contractual use of technology.

75. Parties responsible for the production of contract products are required to meet the demands of other parts of the contractual delivery except research and development agreement provides for joint distribution made by a common entity or jointly entrusted to a third party or unless the parties agreed that the contract products to be distributed only from their factory.

76. Exemption provided for in point 67 is not applied to research and development agreements which directly or indirectly, alone or in combination with other factors under the control of the parties, have as their object any of the items:

1) restricting the parties to carry out independently or in cooperation with third parties for research and development activities or in an area that has no connection with the subject of research and development agreement , be paid after joint activities and research and development endorsed by or otherwise related to it ;

2) the limitation of output or sales , except:

a) the setting of production targets when joint exploitation of the results includes the joint contract products;

b) establishing targets sale when joint exploitation of the results includes the joint distribution of the contract products or assignment of licenses in common contractual technology ;

c) practices, which constitutes specialization in the context of exploitation ;

d) restriction of parties not produce, sell, assign or license products, technologies or processes or technologies that compete with products contractual period for which the parties agreed to jointly exploit the results ;
3) setting the price of the contract product or contractual assignment of licenses for third party technologies, except pricing charged to customer or to establish license fees charged to direct licensees where the joint exploitation of the results includes the joint distribution assignment of the contract products or contract technologies common licenses ;
4) the restriction of the territory into which or the customers to whom the parties may passively sell the contract products or contract technologies can assign except the obligation to give the license results exclusively to another party ;
5) The obligation to limit these sales or not to make active sales of products or contract technologies territories or to customers who were not assigned exclusively to one of the parties by way of specialization in the context of exploitation;
6) The obligation to refuse to meet demand from customers in their territories or otherwise distributed to customers between the parties by way of specialization in the context of operating results that would sell the contract products in other territories within the internal market;
7) The obligation to restrict the possibility for users or resellers to obtain the contract products from other distributors in the domestic market.
77. Exemption provided for in point.67 is not applied to obligations contained in agreements for research and development :
1) the obligation not to challenge
a) after completion of the research and development, validity of intellectual property rights held by domestic parties and operated for research and development, or
b) after the completion of research and development agreement, valid intellectual property rights held by domestic parties and protecting the results of research and development, without prejudice to the possibility to terminate the agreement for research and development if one of the parties challenging the validity of such intellectual property rights
2) the obligation not to grant to third parties licenses of manufacturing the contract products or contract technologies unless the operation by at least one of the parties of the results of joint research and development or research and development paid activities is provided in agreement and whether the operation takes place domestically to third parties.
78. Research and development agreements between two or more parties which refers to conditions under which the parties undertake:
1) joint research and development of products or contract technologies and joint exploitation of the results of that research and development;
2) the joint exploitation of the results of research and development of products or contract technologies jointly carried out pursuant to a prior agreement concluded between the same parties;
3) joint research and development of products or contract technologies excluding joint exploitation of the results,

covered by a block exemption only where the parties' combined market share at the date of the agreement does not exceed 25 % of the relevant product markets and / or technology.

79. Research and development agreements between two or more parties which refers to conditions under which the parties undertake:

1) paid-for research and development of products or contract technologies and joint exploitation of the results;

2) the joint exploitation of the results of paid-for research and development of products or contract technologies pursuant to a prior agreement between the same parties ;

3) paid-for research and development products or contract technologies excluding joint exploitation of the results , covered by a block exemption only if the combined market share of the financing party and all parties that the financing of research and development contracts on the same contract products or contract technologies , the date of the agreement does not exceed 25 % of the relevant product markets and technology.

80.. If the parties are not competitors, exemption under pct.67 will apply throughout the research and development. If the joint exploitation of the results of the exemption shall apply for a period of seven years from the date of the first marketing of the product or contract technologies within the internal market .

81. At the end of the period referred to point 80, the exemption continues to apply as long as the parties' share of combined market does not exceed 25 % of the relevant product markets and technology concerned.

82. Market share is calculated in accordance with Article 31 of the Law on the basis of the preceding calendar year.

83. The market share held by the undertakings referred to in sub point 5) of point 4 shall be apportioned equally to each undertaking having the rights or powers listed in sub point 1) of that point.

84. If research and development agreement only aims to improve existing products, this market includes products directly targeted by research and development. Market shares can thus be calculated based on sales of existing products .

85. If research and development aims to replace an existing product with a new product then the new product if it will be good it will become one substitute for existing products. In assessing the competitive position of the parties in this case it is possible to be calculated market shares based on the value of sales of existing products

86. Research and development agreements aimed at making a product that will create a completely new application is considered agreements between undertakings, which are not competing. In this case, the market shares will be calculated based on sales in terms point.82 after the expiry of seven years from the date the product is first placed on the market.

87. If technology is performed to calculate market shares based on the share of each technology in total revenues from licensing fees, which represents a market share of a technology that competing technologies are protected by license or on

sales of products incorporating the technology protected license downstream product markets

88. If the parties' combined market share is initially not more than 25% , and then passes this threshold does not exceed 30 % exemption will be applied for a period of two consecutive calendar years after the year in which the threshold of 25 % was first exceeded .

89. If the parties' combined market share is initially not more than 25%, but over time exceeds 30 %, the exemption will be applied for a period of one calendar year following the year in which the 30 % was first exceeded.

90. The benefit stipulated in points 88-89 can be combined to exceed a period of two years.

91. The Competition Council will withdraw the exemption under Article 6 Para (6) of the Law, under this regulation, if it is found performing one of the following conditions:

1) research and development agreement restricts third parties to carry out research and development in this area , given that research and development in other areas are limited;

2) research and development agreement limits the access of third parties on market of contract products;

3) without justifiable reasons parties jointly exploit the results of research and development;

4) the contract products are not subject to competition in the common market or in a part thereof;

5) the existence of the research and development innovation and restrict competition would eliminate effective competition in research and development in a given market .

In accordance with Article 6 Para (6) of the Law, withdrawal of exemption is not retroactive .

V. SPECIALISED AGREEMENTS

Section 6

The assessment of specialized agreements under Art.5 Para (1) of the Law

92. Specialization agreements may lead to direct limitation of competition between the parties , in particular by:

1) determination of the parties for a joint production agreement to directly align production levels , product quality , the price at which the joint venture sells its products or other important parameters in terms of competition ;

2) the coordination of the competitive behavior of the parties as providers, leading to higher prices or lower production, innovation , diversity and quality of products, provided that the parties have market power and markets have characteristics conducive to such coordination ;

3) anticompetitive foreclosure of third party access on a related market .

93. Specialized agreements containing any of the following: price fixing, output limitation or market allocation or group of customers and restrict competition by object falling under article 5 of the law , except when :
1) the parties agree on the output directly concerned by the agreement of production (production volume and capacity of a joint enterprise or agreed quantity of products to be outsourced) , provided that the other parameters of competition is not eliminated , or
2) a production agreement which provides for the joint distribution of the jointly manufactured products include the establishment of common sales price for these products only , provided that this restriction is necessary for the joint manufacture .
94. The Competition Council will assess whether, in the cases referred to point 93 , the agreement is likely to have restrictive effects meaning of Article 5 Para (1) of the Law.
95. Probable effects of specialization agreements on competition depends on market characteristics that agreement is concluded, and the nature of the cooperation , the level of market coverage and product under cooperation
96. To assess the competitive side of the agreement to be defined the relevant product markets and geographic markets affected by the cooperation. A specialization agreement, in addition to the product market to which the agreement may affect the competitive behavior of the parties in markets upstream or downstream .
97. If a firm has market power on a specific market and cooperate with a company that could enter the market and given approval leads to increased market power of existing enterprise shall be deemed that this agreement creates any competition.
98. Reduction of potential competition creates problems, especially if at the time the current competition from existing enterprise market is already low.
99. Specialization agreements that include marketing functions such as distribution and marketing joint are considered to pose a high risk to competition to joint production agreements.

Section 7
Exemption of the speciliased agreements under Art.6 Para(3) of the Law
100. Under article 6 of the law and in accordance with this Regulation, Article 5 Para (1) of the Law does not apply to specialization agreements . This exemption shall apply to the extent that such agreements contain restrictions of competition falling under Article 5 Para. (1) of the Law.
101. Exemption provided for in point 100 is applied to specialization agreements containing provisions on intellectual property rights assignment or assignment of licenses for such rights to one or more parties provided that such provisions do not constitute the primary object of the agreement but are directly related to implementation of agreements and requisite expertise .
102. Exemption provided for inpoint.100 is applied to specialization agreements and when:

1) The parties accept an exclusive purchase or exclusive supply obligation;
2) The parties jointly distribute product specialization and are obliged to refrain from selling the product independently of specialization.

103. Exemption provided for in point 100 is not applied to specialization agreements which directly or indirectly independently or in combination with other factors under the control of the parties have as their object any of the following:

1) the price for selling the product to third parties except to establish the price charged to immediate customers on joint distribution;

2) limiting production and / or sales volume, except:

a) provisions agreed amount of products in the context of unilateral or reciprocal specialization agreements , and establish capacity and production volume in the context of a joint production agreement

b) establishing requirements for sales in the context of joint distribution;

3) sharing the market or customers.

104. Specialization agreements between competitors are covered by a block exemption only when the parties' combined market share does not exceed 20 % of the relevant market.

105. Market share is calculated according to Article 31 of the Law in the preceding calendar year data.

106. The market share held by the undertakings referred to in sub point (5) of point 4 shall be apportioned equally to each undertaking having the rights or powers listed in point (1) of that section.

107. If the market share referred to point 104 initially not more than 20% but subsequently rises above this level without exceeding 25 %, the exemption provided for in pct.100 continue to apply for a period of two consecutive calendar years , subsequent year in which first exceeded the 20% threshold .

108. If the market share referred to pct.104 initially less than 20 % but subsequently rises above 25 %, the exemption provided for in pct.100 continue to apply for one calendar year following the year in which exceeded for the first time threshold of 25 % .

109. The benefit to points107 -108 may not be combined to exceed a period of two years.

110. The Competition Council may withdraw the benefit of exemption under Article 6 Para. (6) of the Law, under this regulation if it is found that was not fulfilled one of the four cumulative conditions laid down by Article 6 Para. (1) of the Law. In accordance with Article 6 Para. (6) of the Law, withdrawal of exemption is not retroactive .