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COMMISSION REGULATION (EU) .../...

of 10.5.2022

on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices

(Text with EEA relevance)

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COMMISSION REGULATION (EU) .../...

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on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation No 19/65/EEC of the Council of 2 March 1965 on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices¹, and in particular Article 1 thereof,

Having published a draft of this Regulation²,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

- (1) Regulation No 19/65/EEC empowers the Commission to apply Article 101(3) of the Treaty by regulation to certain categories of vertical agreements and corresponding concerted practices falling within Article 101(1) of the Treaty.
- (2) Commission Regulation (EU) No 330/2010³ defines a category of vertical agreements that the Commission regarded as normally satisfying the conditions laid down in Article 101(3) of the Treaty. Experience with the application of Regulation (EU) No 330/2010, which expires on 31 May 2022, has been positive overall, as shown by the evaluation of that Regulation. Taking into account that experience as well as new market developments, such as the growth of e-commerce, and new or more prevalent types of vertical agreements, it is appropriate to adopt a new block exemption regulation.
- (3) The category of agreements which can be regarded as normally satisfying the conditions laid down in Article 101(3) of the Treaty includes vertical agreements for the purchase or sale of goods or services where those agreements are concluded between non-competing undertakings, between certain competitors or by certain associations of retailers of goods. It also includes vertical agreements containing ancillary provisions on the assignment or use of intellectual property rights. The term ‘vertical agreements’ should be understood to include the corresponding concerted practices.

¹ OJ 36, 6.3.1965.

² OJ C 359, 7.9.2021, p. 1.

³ Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (OJ L 102, 23.4.2010, p. 1).

- (4) For the application of Article 101(3) of the Treaty by regulation, it is not necessary to define those vertical agreements which are capable of falling within Article 101(1) of the Treaty. In the individual assessment of agreements under Article 101(1) of the Treaty, account has to be taken of several factors, in particular the market structure on the supply and purchase side.
- (5) The benefit of the block exemption established by this Regulation should be limited to vertical agreements for which it can be assumed with sufficient certainty that they satisfy the conditions of Article 101(3) of the Treaty.
- (6) Certain types of vertical agreements can improve economic efficiency within a chain of production or distribution by facilitating better coordination between the participating undertakings. In particular, they can lead to a reduction in the transaction and distribution costs of the parties and to an optimisation of their sales and investment levels.
- (7) The likelihood that such efficiency-enhancing effects will outweigh any anti-competitive effects due to restrictions contained in vertical agreements depends on the degree of market power of the parties to the agreement and, in particular, on the extent to which those undertakings face competition from other suppliers of goods or services regarded by their customers as interchangeable or substitutable for one another, by reason of the products' characteristics, their prices and their intended use.
- (8) It can be presumed that, where the market share held by each of the undertakings party to the agreement on the relevant market does not exceed 30%, vertical agreements which do not contain certain types of severe restrictions of competition generally lead to an improvement in production or distribution and allow consumers a fair share of the resulting benefits.
- (9) Above the market share threshold of 30 %, there can be no presumption that vertical agreements falling within the scope of Article 101(1) of the Treaty will usually give rise to objective advantages of such a character and size as to compensate for the disadvantages that they create for competition. At the same time, there is no presumption that those vertical agreements are either caught by Article 101(1) of the Treaty or that they fail to satisfy the conditions of Article 101(3) of the Treaty.
- (10) The online platform economy plays an increasingly important role in the distribution of goods and services. Undertakings active in the online platform economy make it possible to do business in new ways, some of which are not easy to categorise using concepts associated with vertical agreements in the traditional economy. In particular, online intermediation services allow undertakings to offer goods or services to other undertakings or to final consumers, with a view to facilitating the initiation of direct transactions between undertakings or between undertakings and final consumers. Agreements relating to the provision of online intermediation services are vertical agreements and should therefore be able to benefit from the block exemption established by this Regulation, subject to the conditions set out in this Regulation.
- (11) The definition of online intermediation services used in Regulation (EU) 2019/1150 of the European Parliament and of the Council⁴ should be adapted for the purpose of the present Regulation. In particular, to reflect the scope of Article 101 of the Treaty,

⁴ Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (OJ L 186, 11.7.2019, p. 57).

the definition used in the present Regulation should refer to undertakings. It should also include online intermediation services that facilitate the initiation of direct transactions between undertakings, as well as those that facilitate the initiation of direct transactions between undertakings and final consumers.

- (12) Dual distribution refers to the scenario where a supplier sells goods or services not only at the upstream level but also at the downstream level, thereby competing with its independent distributors. In that scenario, in the absence of hardcore restrictions, and provided that the buyer does not compete with the supplier at the upstream level, the potential negative impact of the vertical agreement on the competitive relationship between the supplier and buyer at the downstream level is less important than the potential positive impact of the vertical agreement on competition in general at the upstream or downstream level. This Regulation should therefore exempt vertical agreements entered into in such scenarios of dual distribution.
- (13) The exchange of information between a supplier and buyer can contribute to the pro-competitive effects of vertical agreements, in particular the optimisation of production and distribution processes. However, in dual distribution, the exchange of certain types of information may raise horizontal concerns. Therefore, this Regulation should only exempt information exchange between a supplier and a buyer in a dual distribution scenario where the information exchange is both directly related to the implementation of the vertical agreement and necessary to improve the production or distribution of the contract goods or services.
- (14) The rationale for exempting vertical agreements in scenarios of dual distribution does not apply to vertical agreements relating to the provision of online intermediation services where the provider of the online intermediation services is also a competing undertaking on the relevant market for the sale of the intermediated goods or services. Providers of online intermediation services that have such a hybrid function may have the ability and the incentive to influence the outcome of competition on the relevant market for the sale of the intermediated goods or services. This Regulation should therefore not exempt such vertical agreements.
- (15) This Regulation should not exempt vertical agreements containing restrictions which are likely to restrict competition and harm consumers or which are not indispensable to the attainment of the efficiency-enhancing effects. In particular, the benefit of the block exemption established by this Regulation should not apply to vertical agreements containing certain types of severe restrictions of competition, such as minimum and fixed resale prices and certain types of territorial protection, including the prevention of the effective use of the internet to sell or certain restrictions of online advertising. Accordingly, restrictions of online sales and online advertising should benefit from the block exemption established by this Regulation, provided that they do not, directly or indirectly, in isolation or in combination with other factors controlled by the parties, have the object of preventing the effective use of the internet by the buyer or its customers to sell the contract goods or services to particular territories or customers, or of preventing the use of an entire online advertising channel, such as price comparison services or search engine advertising. For instance, online sales restrictions should not benefit from the block exemption established by this Regulation where their objective is to significantly diminish the aggregate volume of online sales of the contract goods or services in the relevant market or the possibility for consumers to buy the contract goods or services online. The categorisation of a restriction as hardcore within the meaning of Article 4, point (e) may take into account the content and context of the restriction, but should

not depend on market-specific circumstances or the individual characteristics of the parties.

- (16) This Regulation should not exempt restrictions for which it cannot be assumed with sufficient certainty that they satisfy the conditions of Article 101(3) of the Treaty. In particular, to ensure access to and to prevent collusion on the relevant market, certain conditions should be attached to the block exemption. To this end, the exemption of non-compete obligations should be limited to obligations which do not exceed a duration of five years. Obligations causing the members of a selective distribution system not to sell the brands of particular competing suppliers should likewise be excluded from the benefit of this Regulation. The benefit of this Regulation should not apply to retail parity obligations causing buyers of online intermediation services not to offer, sell or resell goods or services to end users under more favourable conditions via competing online intermediation services.
- (17) The market share limitation, the non-exemption of certain vertical agreements and the conditions provided for in this Regulation generally ensure that the agreements to which the block exemption applies do not enable the participating undertakings to eliminate competition in respect of a substantial part of the goods or services in question.
- (18) The Commission may withdraw the benefit of this Regulation, pursuant to Article 29(1) of Council Regulation (EC) No 1/2003⁵, where it finds in a particular case that an agreement to which the block exemption established by this Regulation applies nevertheless has effects which are incompatible with Article 101(3) of the Treaty. The competition authority of a Member State may withdraw the benefit of this Regulation where the conditions of Article 29(2) of Regulation (EC) No 1/2003 are fulfilled.
- (19) Where the Commission or the competition authority of a Member State withdraws the benefit of this Regulation, it has the burden of proving that the vertical agreement in question falls within the scope of Article 101(1) of the Treaty, and that the agreement fails to fulfil at least one of the four conditions of Article 101(3) of the Treaty.
- (20) In determining whether the benefit of this Regulation should be withdrawn pursuant to Article 29 of Regulation (EC) No 1/2003, the anti-competitive effects that may derive from the existence of parallel networks of vertical agreements that have similar effects, which significantly restrict access to a relevant market or competition therein, are of particular importance. Such cumulative effects may in particular arise in the case of exclusive distribution, exclusive supply, selective distribution, parity obligations or non-compete obligations.
- (21) In order to strengthen the supervision of parallel networks of vertical agreements which have similar anti-competitive effects and which cover more than 50% of a given market, the Commission may by regulation declare this Regulation inapplicable to vertical agreements containing specific restraints relating to the market concerned, thereby restoring the full application of Article 101 of the Treaty to such agreements,

⁵ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

1. For the purposes of this Regulation, the following definitions shall apply:
 - (a) ‘vertical agreement’ means an agreement or concerted practice between two or more undertakings, each of which operates, for the purposes of the agreement or the concerted practice, at a different level of the production or distribution chain, and relating to the conditions under which the parties may purchase, sell or resell certain goods or services;
 - (b) ‘vertical restraint’ means a restriction of competition in a vertical agreement falling within the scope of Article 101(1) of the Treaty;
 - (c) ‘competing undertaking’ means an actual or potential competitor; ‘actual competitor’ means an undertaking that is active on the same relevant market; ‘potential competitor’ means an undertaking that, in the absence of the vertical agreement, would, on realistic grounds and not just as a mere theoretical possibility, be likely, within a short period of time, to make the necessary additional investments or incur other necessary costs to enter the relevant market;
 - (d) ‘supplier’ includes an undertaking that provides online intermediation services;
 - (e) ‘online intermediation services’ means information society services within the meaning of Article 1(1), point (b), of Directive (EU) 2015/1535 of the European Parliament and of the Council⁶ which allow undertakings to offer goods or services:
 - (i) to other undertakings, with a view to facilitating the initiating of direct transactions between those undertakings, or
 - (ii) to final consumers, with a view to facilitating the initiating of direct transactions between those undertakings and final consumers,irrespective of whether and where the transactions are ultimately concluded;
 - (f) ‘non-compete obligation’ means any direct or indirect obligation causing the buyer not to manufacture, purchase, sell or resell goods or services which compete with the contract goods or services, or any direct or indirect obligation on the buyer to purchase from the supplier or from another undertaking designated by the supplier more than 80% of the buyer’s total purchases of the contract goods or services and their substitutes on the relevant market, calculated on the basis of the value or, where such is standard industry practice, the volume of its purchases in the preceding calendar year;
 - (g) ‘selective distribution system’ means a distribution system where the supplier undertakes to sell the contract goods or services, either directly or indirectly, only to distributors selected on the basis of specified criteria and where these distributors undertake not to sell such goods or services to unauthorised distributors within the territory reserved by the supplier to operate that system;

⁶ Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services ([OJ L 241, 17.9.2015, p. 1](#)).

- (h) 'exclusive distribution system' means a distribution system where the supplier allocates a territory or group of customers exclusively to itself or to a maximum of five buyers and restricts all its other buyers from actively selling into the exclusive territory or to the exclusive customer group;
- (i) 'intellectual property rights' includes industrial property rights, know-how, copyright and neighbouring rights;
- (j) 'know-how' means a package of non-patented practical information, resulting from experience and testing by the supplier, which is secret, substantial and identified; 'secret' means that the know-how is not generally known or easily accessible; 'substantial' means that the know-how is significant and useful to the buyer for the use, sale or resale of the contract goods or services; 'identified' means that the know-how is described in a sufficiently comprehensive manner so as to make it possible to verify that it fulfils the criteria of secrecy and substantiality;
- (k) 'buyer' includes an undertaking which, under an agreement falling within Article 101(1) of the Treaty, sells goods or services on behalf of another undertaking;
- (l) 'active sales' means actively targeting customers by visits, letters, emails, calls or other means of direct communication or through targeted advertising and promotion, offline or online, for instance by means of print or digital media, including online media, price comparison services or advertising on search engines targeting customers in particular territories or customer groups, operating a website with a top-level domain corresponding to particular territories, or offering on a website languages that are commonly used in particular territories, where such languages are different from the ones commonly used in the territory in which the buyer is established;
- (m) 'passive sales' means sales made in response to unsolicited requests from individual customers, including delivery of goods or services to the customer, without the sale having been initiated by actively targeting the particular customer, customer group or territory, and including sales resulting from participating in public procurement or responding to private invitations to tender.

2. For the purposes of this Regulation, the terms 'undertaking', 'supplier' and 'buyer' shall include their respective connected undertakings.

'Connected undertakings' means:

- (a) undertakings in which a party to the agreement, directly or indirectly:
 - (i) has the power to exercise more than half the voting rights, or
 - (ii) has the power to appoint more than half the members of the supervisory board, board of management or bodies legally representing the undertaking, or
 - (iii) has the right to manage the undertaking's affairs; or
- (a) undertakings which directly or indirectly have, over a party to the agreement, the rights or powers listed in point (a); or
- (b) undertakings in which an undertaking referred to in point (b) has, directly or indirectly, the rights or powers listed in point (a); or

- (c) undertakings in which a party to the agreement together with one or more of the undertakings referred to in points (a), (b) or (c), or in which two or more of the latter undertakings, jointly have the rights or powers listed in point (a); or
- (d) undertakings in which the rights or the powers listed in point (a) are jointly held by:
 - (i) parties to the agreement or their respective connected undertakings referred to in points (a) to (d), or
 - (ii) one or more of the parties to the agreement or one or more of their connected undertakings referred to in points (a) to (d) and one or more third parties.

Article 2

Exemption

1. Pursuant to Article 101(3) of the Treaty and subject to the provisions of this Regulation, it is hereby declared that Article 101(1) of the Treaty shall not apply to vertical agreements. This exemption shall apply to the extent that such agreements contain vertical restraints.
2. The exemption provided for in paragraph 1 shall apply to vertical agreements entered into between an association of undertakings and an individual member, or between such an association and an individual supplier, only if all the members of the association are retailers of goods and if no individual member of the association, together with its connected undertakings, has a total annual turnover exceeding EUR 50 million. Vertical agreements entered into by such associations shall be covered by this Regulation without prejudice to the application of Article 101 of the Treaty to horizontal agreements concluded between the members of the association or decisions adopted by the association.
3. The exemption provided for in paragraph 1 shall apply to vertical agreements containing provisions which relate to the assignment to the buyer or use by the buyer of intellectual property rights, provided that those provisions do not constitute the primary object of such agreements and are directly related to the use, sale or resale of goods or services by the buyer or its customers. The exemption applies on the condition that, in relation to the contract goods or services, those provisions do not contain restrictions of competition having the same object as vertical restraints which are not exempted under this Regulation.
4. The exemption provided for in paragraph 1 shall not apply to vertical agreements entered into between competing undertakings. However, that exemption shall apply where competing undertakings enter into a non-reciprocal vertical agreement and one of the following applies:
 - (a) the supplier is active at an upstream level as a manufacturer, importer, or wholesaler and at a downstream level as an importer, wholesaler, or retailer of goods, while the buyer is an importer, wholesaler, or retailer at the downstream level and not a competing undertaking at the upstream level where it buys the contract goods; or
 - (b) the supplier is a provider of services at several levels of trade, while the buyer provides its services at the retail level and is not a competing undertaking at the level of trade where it purchases the contract services.

5. The exceptions set out in paragraph 4, points (a) and (b) shall not apply to the exchange of information between the supplier and the buyer that is either not directly related to the implementation of the vertical agreement or is not necessary to improve the production or distribution of the contract goods or services, or which fulfils neither of those two conditions.
6. The exceptions set out in paragraph 4, points (a) and (b) shall not apply to vertical agreements relating to the provision of online intermediation services where the provider of the online intermediation services is a competing undertaking on the relevant market for the sale of the intermediated goods or services.
7. This Regulation shall not apply to vertical agreements the subject matter of which falls within the scope of any other block exemption regulation, unless otherwise provided for in such a regulation.

Article 3

Market share threshold

1. The exemption provided for in Article 2 shall apply on condition that the market share held by the supplier does not exceed 30% of the relevant market on which it sells the contract goods or services and the market share held by the buyer does not exceed 30% of the relevant market on which it purchases the contract goods or services.
2. For the purposes of paragraph 1, where in a multi-party agreement an undertaking buys the contract goods or services from one undertaking that is a party to the agreement and sells the contract goods or services to another undertaking that is also a party to the agreement, the market share of the first undertaking must respect the market share threshold provided for in that paragraph both as a buyer and a supplier in order for the exemption provided for in Article 2 to apply.

Article 4

Restrictions that remove the benefit of the block exemption - hardcore restrictions

The exemption provided for in Article 2 shall not apply to vertical agreements which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object:

- (a) the restriction of the buyer's ability to determine its sale price, without prejudice to the possibility of the supplier to impose a maximum sale price or recommend a sale price, provided that they do not amount to a fixed or minimum sale price as a result of pressure from, or incentives offered by, any of the parties;
- (b) where the supplier operates an exclusive distribution system, the restriction of the territory into which, or of the customers to whom, the exclusive distributor may actively or passively sell the contract goods or services, except:
 - (i) the restriction of active sales by the exclusive distributor and its direct customers, into a territory or to a customer group reserved to the supplier or allocated by the supplier exclusively to a maximum of five other exclusive distributors;

- (ii) the restriction of active or passive sales by the exclusive distributor and its customers to unauthorised distributors located in a territory where the supplier operates a selective distribution system for the contract goods or services;
 - (iii) the restriction of the exclusive distributor's place of establishment;
 - (iv) the restriction of active or passive sales to end users by an exclusive distributor operating at the wholesale level of trade;
 - (v) the restriction of the exclusive distributor's ability to actively or passively sell components, supplied for the purposes of incorporation, to customers who would use them to manufacture the same type of goods as those produced by the supplier;
- (c) where the supplier operates a selective distribution system,
- (i) the restriction of the territory into which, or of the customers to whom, the members of the selective distribution system may actively or passively sell the contract goods or services, except:
 - (1) the restriction of active sales by the members of the selective distribution system and their direct customers, into a territory or to a customer group reserved to the supplier or allocated by the supplier exclusively to a maximum of five exclusive distributors;
 - (2) the restriction of active or passive sales by the members of the selective distribution system and their customers to unauthorised distributors located within the territory where the selective distribution system is operated;
 - (3) the restriction of the place of establishment of the members of the selective distribution system;
 - (4) the restriction of active or passive sales to end users by members of the selective distribution system operating at the wholesale level of trade;
 - (5) the restriction of the ability to actively or passively sell components, supplied for the purposes of incorporation, to customers who would use them to manufacture the same type of goods as those produced by the supplier;
 - (ii) the restriction of cross-supplies between the members of the selective distribution system operating at the same or different levels of trade;
 - (iii) the restriction of active or passive sales to end users by members of the selective distribution system operating at the retail level of trade, without prejudice to points (c)(i)(1) and (3);
- (d) where the supplier operates neither an exclusive distribution system nor a selective distribution system, the restriction of the territory into which, or of the customers to whom, the buyer may actively or passively sell the contract goods or services, except:
- (i) the restriction of active sales by the buyer and its direct customers into a territory or to a customer group reserved to the supplier or allocated by the supplier exclusively to a maximum of five exclusive distributors;

- (ii) the restriction of active or passive sales by the buyer and its customers to unauthorised distributors located in a territory where the supplier operates a selective distribution system for the contract goods or services;
 - (iii) the restriction of the buyer's place of establishment;
 - (iv) the restriction of active or passive sales to end users by a buyer operating at the wholesale level of trade;
 - (v) the restriction of the buyer's ability to actively or passively sell components, supplied for the purposes of incorporation, to customers who would use them to manufacture the same type of goods as those produced by the supplier;
- (e) the prevention of the effective use of the internet by the buyer or its customers to sell the contract goods or services, as it restricts the territory into which or the customers to whom the contract goods or services may be sold within the meaning of points (b), (c) or (d), without prejudice to the possibility of imposing on the buyer:
- (i) other restrictions of online sales; or
 - (ii) restrictions of online advertising that do not have the object of preventing the use of an entire online advertising channel;
- (f) the restriction, agreed between a supplier of components and a buyer who incorporates those components, of the supplier's ability to sell the components as spare parts to end users or to repairers, wholesalers or other service providers not entrusted by the buyer with the repair or servicing of its goods.

Article 5

Excluded restrictions

1. The exemption provided for in Article 2 shall not apply to the following obligations contained in vertical agreements:
 - (a) any direct or indirect non-compete obligation, the duration of which is indefinite or exceeds 5 years;
 - (b) any direct or indirect obligation causing the buyer, after termination of the agreement, not to manufacture, purchase, sell or resell goods or services;
 - (c) any direct or indirect obligation causing the members of a selective distribution system not to sell the brands of particular competing suppliers;
 - (d) any direct or indirect obligation causing a buyer of online intermediation services not to offer, sell or resell goods or services to end users under more favourable conditions via competing online intermediation services;
2. By way of derogation from paragraph 1, point (a), the time limitation of five years shall not apply where the contract goods or services are sold by the buyer from premises and land owned by the supplier or leased by the supplier from third parties not connected with the buyer, provided that the duration of the non-compete obligation does not exceed the period of occupancy of the premises and land by the buyer.
3. By way of derogation from paragraph 1, point (b), the exemption provided for in Article 2 shall apply to any direct or indirect obligation causing the buyer, after

termination of the agreement, not to manufacture, purchase, sell or resell goods or services where all of the following conditions are fulfilled:

- (a) the obligation relates to goods or services which compete with the contract goods or services;
- (b) the obligation is limited to the premises and land from which the buyer has operated during the contract period;
- (c) the obligation is indispensable to protect know-how transferred by the supplier to the buyer;
- (d) the duration of the obligation is limited to a period of one year after termination of the agreement.

Paragraph 1, point (b) shall be without prejudice to the possibility of imposing a restriction which is unlimited in time on the use and disclosure of know-how which has not entered the public domain.

Article 6

Withdrawal in individual cases

1. The Commission may withdraw the benefit of this Regulation, pursuant to Article 29(1) of Regulation (EC) No 1/2003, where it finds in any particular case that a vertical agreement to which the exemption provided for in Article 2 of this Regulation applies nevertheless has effects which are incompatible with Article 101(3) of the Treaty. Such effects may occur, for example, where the relevant market for the supply of online intermediation services is highly concentrated and competition between the providers of such services is restricted by the cumulative effect of parallel networks of similar agreements that restrict buyers of the online intermediation services from offering, selling or reselling goods or services to end users under more favourable conditions on their direct sales channels.
2. The competition authority of a Member State may withdraw the benefit of this Regulation where the conditions of Article 29(2) of Regulation (EC) No 1/2003 are fulfilled.

Article 7

Non-application of this Regulation

Pursuant to Article 1a of Regulation No 19/65/EEC, the Commission may by regulation declare that, where parallel networks of similar vertical restraints cover more than 50% of a relevant market, this Regulation shall not apply to vertical agreements containing specific restraints relating to that market.

Article 8

Application of the market share threshold

For the purposes of applying the market share thresholds provided for in Article 3 the following rules shall apply:

- (a) the market share of the supplier shall be calculated on the basis of market sales value data and the market share of the buyer shall be calculated on the basis of market purchase value data. If market sales value or market purchase value data are not

available, estimates based on other reliable market information, including market sales and purchase volumes, may be used to establish the market share of the undertaking concerned;

- (b) the market shares shall be calculated on the basis of data relating to the preceding calendar year;
- (c) the market share of the supplier shall include any goods or services supplied to vertically integrated distributors for the purposes of sale;
- (d) if a market share is initially not more than 30 %, but subsequently rises above that level, the exemption provided for in Article 2 shall continue to apply for a period of two consecutive calendar years following the year in which the 30 % threshold was first exceeded;
- (e) the market share held by the undertakings referred to in Article 1(2), second subparagraph, point (e) shall be apportioned equally to each undertaking having the rights or the powers listed in point (a) of that subparagraph.

Article 9

Application of the turnover threshold

1. For the purpose of calculating total annual turnover within the meaning of Article 2(2), the turnover achieved during the previous financial year by the relevant party to the vertical agreement and the turnover achieved by its connected undertakings in respect of all goods and services, excluding all taxes and other duties, shall be added together. For this purpose, no account shall be taken of dealings between the party to the vertical agreement and its connected undertakings or between its connected undertakings.
2. The exemption provided for in Article 2 shall remain applicable where, for any period of two consecutive financial years, the total annual turnover threshold is exceeded by no more than 10%.

Article 10

Transitional period

The prohibition laid down in Article 101(1) of the Treaty shall not apply during the period from 1 June 2022 to 31 May 2023 in respect of agreements already in force on 31 May 2022 which do not satisfy the conditions for exemption provided for in this Regulation but which, on 31 May 2022, satisfied the conditions for exemption provided for in Regulation (EU) No 330/2010.

Article 11

Period of validity

This Regulation shall enter into force on 1 June 2022.

It shall expire on 31 May 2034.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 10.5.2022

For the Commission
The President
Ursula VON DER LEYEN