

*AUTORITA' GARANTE
DELLA CONCORRENZA E DEL MERCATO*

**FORM RELATING TO THE NOTIFICATION OF
AGREEMENTS**

PURSUANT TO LAW NO. 287 OF 10 OCTOBER 1990, AND PRESIDENTIAL DECREE NO. 461 OF 10
SEPTEMBER 1991 *

1 July 1996

(Published in the Supplement No. 1 to the Bulletin No. 19/1996)

Amended by:

- Authority's resolution No. 13200 of 12 May 2004 (Bulletin No. 20 of 31 May 2004);

(UNOFFICIAL TRANSLATION. ONLY THE ITALIAN TEXT IS AUTHENTIC)

* *Repealed. Replaced by the Presidential Decree No. 217 of 30 April 1998. [editor's note]*

INDEX

| | |
|--|----|
| <i>FOREWORD</i> | 5 |
| <i>INTRODUCTION</i> | 7 |
| FORM RELATING TO THE NOTIFICATION OF AGREEMENTS | 9 |
| <i>Chapter 1 - INFORMATION ON THE UNDERTAKINGS PARTIES TO THE AGREEMENT</i> | 9 |
| SECTION 1 - THE NOTIFYING PARTIES | 9 |
| SECTION 2 - UNDERTAKINGS PARTIES TO THE AGREEMENT | 9 |
| SECTION 3 - PARENT UNDERTAKINGS AND SUBSIDIARIES CONTROLLED BY THE PARTIES TO THE AGREEMENT | 9 |
| <i>Chapter 2 - DESCRIPTION OF THE AGREEMENT</i> | 10 |
| <i>Chapter 3 - INFORMATION ON THE RELEVANT MARKET FOR THE AGREEMENT</i> | 11 |
| SECTION 1 - DEFINITION OF THE RELEVANT MARKET | 11 |
| SECTION 2 - OTHER INFORMATION ON THE RELEVANT MARKETS | 11 |
| <i>Chapter 4 - INFORMATION ON THE OBJECT AND/OR EFFECT OF THE AGREEMENT AND ON THE POSITION OF THE PARTIES ON THE MARKET</i> | 12 |
| SECTION 1 - ASPECTS OF THE AGREEMENT WHICH APPEAR TO RESTRICT COMPETITION | 12 |
| SECTION 2 - THE COMPETITIVE POSITION OF EACH OF THE PARTIES TO THE AGREEMENT ON EACH MARKET RELEVANT TO THE AGREEMENT | 12 |
| SECTION 3 - DESCRIPTION OF POTENTIAL COMPETITION | 13 |
| <i>Chapter 5 - GROUNDS FOR CLAIMING THAT THE AGREEMENT DOES NOT RESTRICT COMPETITION</i> | 14 |
| <i>Chapter 6 - GROUNDS FOR REQUESTING EXEMPTION FROM THE PROHIBITION OF AN AGREEMENT RESTRICTING COMPETITION</i> | 15 |
| <i>Chapter 7 - SUPPORTING DOCUMENTATION</i> | 16 |

FOREWORD

Pursuant to Section 13 of Law No. 287 of 10 October 1990 (hereinafter “the Act”), agreements under Section 2 of the Act may be notified to the Autorità Garante della Concorrenza e del Mercato (the Authority).

Pursuant to Section 4(3) of the Act, applications for exemptions from the prohibition of agreements restricting competition may be submitted to the Authority.

Pursuant to Section 2(2) and Section 10(1) of the Presidential Decree No. 461 of 10 September 1991 (the Implementing Regulation), the voluntary notification of agreements and requests for exemption from the prohibition on agreements restricting competition "must contain the information and the annexes which make it possible to appraise the contents of the agreement. The Authority may require this to be done on a special form, which will be published in the bulletin in order to facilitate submission of these notices"⁽⁺⁾.

The Authority has therefore produced this set of forms for the voluntary notification of agreements and requests for exemption from the prohibition on restrictive agreements, indicating the information required and the procedures for notifying agreements between undertakings, and requests for exemption. Undertakings, or their representatives, may apply to the relevant Directorates responsible for investigating agreements to obtain further information and clarification on the procedures for submitting voluntary notification and requests for authorisation.

Notifications and applications must be signed by the legal representatives of the undertakings concerned or by persons vested with a special power of attorney after the following declaration, "I/We, the undersigned, accept full liability for the completeness and truthfulness of all the information supplied, and declare that the annexed documents are complete and are identical to the originals ".

Notifications and applications must be submitted by registered post with recorded delivery, in duplicate, or delivered by hand against a receipt issued by the Secretary General or his representative between 9:00am and 5:00pm on all working days from Monday to Thursday and between 9:00am and 4:30pm on Friday at the following address:

AUTORITÀ GARANTE DELLA CONCORRENZA E DEL MERCATO

PIAZZA G. VERDI 6/A

00198 ROMA

* * *

⁽⁺⁾*Replaced, respectively, by Articles 3(1 and 2) and 4(1 and 2) of the Presidential Decree No. 217 of 30 April 1998. [editor's note]*

INTRODUCTION

These forms have been designed to facilitate the voluntary notification of agreements between undertakings pursuant to Section 13(1) of Law No. 287 of 10 October 1990 and Section 2 of Presidential Decree No. 461 of 10 September 1991^(*), and requests for clearance to proceed with restrictive agreements pursuant to Section 4 of Law No. 287 of 10 October 1990 and Section 10 of the Presidential Decree No. 461 of 10 September 1991⁽⁺⁾.

Any undertaking wishing to submit an exemption application jointly with the voluntary notification of an agreement must specify whether the exemption application is being submitted sub-alternately to that notification. If so, the application will only be examined by the Authority if the examination is instituted pursuant to Section 14 of the Act as part of the examination which the Authority normally sets out to complete within 120 days.

Voluntary notification of agreements and requests for authorisation for exemption may be submitted by any one undertaking or by all the undertakings parties to agreements, or consortia or associations of undertakings in relation to resolutions adopted by them.

In the event of a joint notice, the undertakings should appoint a single representative for all the notifying or applicant parties. If notification is only submitted by some of the undertakings parties to the agreement, it is appropriate that they should inform the other undertakings by sending them a copy of the notification.

Notification of an agreement or an application for authorisation must contain all the information and be supplied complete with all the documents needed to assess the substance of the agreement or application, as indicated in the forms here published. If the information requested in the forms has already been submitted to the Authority with a previous notification, the notifying party may make reference to them, indicating any changes that may have occurred in the meantime.

If a notification is incomplete or untruthful, the Authority shall notify the undertakings concerned pursuant to Section 2(3) of the Implementing Regulation⁽⁻⁾, without prejudice to the possibility of examining the notification even after the 120-day deadline provided by Section 13 of the Act. Time-limits only begins to count from the date on which a complete and truthful notification is received.

Unless the undertakings offer adequate grounds for requiring confidentiality, as soon as the voluntary notification is received the Authority may publish a short notice of the agreement in the bulletin, referred to in Section 26 of the Act, to invite third parties to submit their comments. To prevent the disclosure of confidential information, undertakings may specify the parts of the notification they wish to have excluded from the notice, or they may provide a short summary of the agreement themselves, stating the names of the parties, the relevant markets and the substance of the agreement.

In the case of a request for clearance to proceed with restrictive agreements, the Authority may request the undertakings to supply further information and to furnish documents of relevance to that request pursuant to Section 10(2) of the Implementing Regulation^(#), during which time the 120-day deadline provided by Section 4(3) of the Act is suspended, notwithstanding that a fine may be imposed pursuant to Section 14(5) of the Act.

As soon as a request for authorisation for exemption is received, the Authority will publish a short notice of the agreement for which authorisation is requested in the bulletin instituted under Section 26 of the Act, pursuant to Article 10(3) of the Implementing Regulation^(§), inviting any third parties to submit their comments. To avoid the disclosure of any confidential information, the notifying parties may specify the parts of the

^(*)Replaced by Article 3 of the Presidential Decree No. 217 of 30 April 1998. [editor's note]

⁽⁺⁾Replaced by Article 4 of the Presidential Decree No. 217 of 30 April 1998. [editor's note]

⁽⁻⁾Replaced by Article 3(3) of the Presidential Decree No. 217 of 30 April 1998. [editor's note]

^(#)Replaced by Article 4(3) of the Presidential Decree No. 217 of 30 April 1998. [editor's note]

^(§)Replaced by Article 4(6) of the Presidential Decree No. 217 of 30 April 1998. [editor's note]

notification which they intend to exclude from the notice, or they may provide a short summary of the agreement indicating the parties to it, the relevant markets and the substance of the agreement.

Undertakings are required to notify the Authority immediately of any change in the essential terms of the voluntary notification or request for authorisation referred to above as soon as such modification is made known to the parties or to any one of them, pursuant to Articles 2(4) and 10(2) of the Implementing Regulation ^(*) ; the notification modifying the previous notice is deemed equivalent to the notification of a new agreement, for the purposes of calculating the 120-day deadline referred to in Sections 13 and 4(3) of the Act.

Any information notified by undertakings shall be treated as confidential pursuant to Sections 14(3) of the Act and Article 8 of the Implementing Regulation ⁽⁺⁾ , except for the publication of decisions taken by the Authority in the bulletin pursuant to Section 26 of the Act. The notifying parties may indicate the documents or parts of them which they deem to be confidential, specifying the reasons why the information contained therein should not be disclosed to the other parties to the proceedings or to third parties.

The Authority shall not apply the penalties provided by Section 15(1) of the Act if the undertakings voluntarily refrain from concluding an agreement notified pursuant to Sections 4 and 13 while awaiting the decision of the Authority.

* * *

^(*)*Replaced, respectively, by Articles 3(4) and 4(4) of the Presidential Decree No. 217 of 30 April 1998. [editor's note]*

⁽⁺⁾*Replaced by Article 12 of the Presidential Decree No. 217 of 30 April 1998. [editor's note]*

FORM RELATING TO THE NOTIFICATION OF AGREEMENTS

Chapter 1 - INFORMATION ON THE UNDERTAKINGS PARTIES TO THE AGREEMENT

SECTION 1 - THE NOTIFYING PARTIES

For each notifying undertaking, indicate: (a) the undertaking name, (b) the legal form, (c) the tax code, (d) the registered and administrative offices, (e) the contact person (specifying the position held in the undertaking, with telephone and fax numbers), (f) the role played in the agreement, (g) the undertaking's activities (main and secondary, specifying the level in the production chain), (h) the overall nation-wide turnover, (i) the turnover from sales of the products affected by the agreement, in Italy and in the EU and (l) any relevant contractual or de facto link for establishing the undertaking's economic independence or autonomy, particularly if any members of the management board are also managers of competing undertakings.

If the person submitting notification is a representative of the undertakings or their joint representative, please indicate: (a) surname, given name, address, telephone and fax number, (b) the contact person, if different, and (c) the source of the powers vested in that person, or the power of attorney.

SECTION 2 - UNDERTAKINGS PARTIES TO THE AGREEMENT

For each undertaking party to the agreement, indicate: (a) the undertaking name, (b) the legal form, (c) the tax code, (d) the registered and administrative offices, (e) the contact person (specifying the position held in the company, with telephone and fax numbers), (f) the role played in the agreement, (g) the undertaking's activities (main and secondary, specifying the level in the production chain), (h) the overall nation-wide turnover, (i) the turnover from sales of the products affected by the agreement, in Italy and in the EU and (l) any relevant contractual or de facto link for establishing the undertaking's economic independence or autonomy, particularly if any members of the management board are also managers of competing undertakings.

Please state whether these undertakings have been informed that this notification has been submitted, or whether the notifying parties intend to send a copy of the notification to them.

SECTION 3 - PARENT UNDERTAKINGS AND SUBSIDIARIES CONTROLLED BY THE PARTIES TO THE AGREEMENT

For each undertaking which controls or is controlled by a party to the agreement within the meaning of Section 7 of Law No. 287/90, describe the ways in which control is exercised and provide the information required under Section 2(a), (b), (g) and (h).

Whenever it is considered that no party exercises a decisive influence over any party to the agreement, please supply the list of the ten largest shareholders, or at all events name those that directly or indirectly own more than 10 per cent of the share capital, even if this is held by a trust company or a nominee.

* * *

Chapter 2 - DESCRIPTION OF THE AGREEMENT

Please submit a short description of the agreement forming the subject matter of the notification, indicating the undertakings parties to it, the products/services involved and the economic purposes which the participating undertakings intend to pursue. If this is stated in a written document, briefly describe the contents of that document and annex a copy of it; if it is not set out in a written document (or only partially), provide a detailed description of the substance of the agreement.

State whether the agreement has been or is intended to be notified to any other national or foreign competition enforcement authority, with a specific reference to any contacts made with the EC Commission.

* * *

Chapter 3 - INFORMATION ON THE RELEVANT MARKET FOR THE AGREEMENT

SECTION 1 - DEFINITION OF THE RELEVANT MARKET

The notifying party must supply a brief description of the relevant markets affected by the agreement. The relevant product and geographic markets determine the scope within which any restriction on competition deriving from the agreement must be appraised. They are, respectively, the smallest group of products and the smallest geographic area for which it is possible that, in view of existing substitution possibilities, a substantial restriction on competition may result in relation to the object or effect of the agreement.

The relevant product market. A relevant product market includes all the products and services which consumers see as interchangeable or substitutable by reason of their characteristics, prices and intended uses.

Factors relevant to the assessment of the relevant product market include elements explaining why certain products or services are included and others are excluded, vis -à-vis the definition given above and taking into account, *inter alia*, the characteristics of the products, prices, functions and intended use, and any other factors relevant to the definition of the product market.

The definition of the relevant product market focuses generally on demand-side substitutability. However, in order to assess the overall competitive conditions in a market, the Authority also considers the possibility of substitution on the supply side, namely, the possibility for other producers to easily reconvert their own capacity, to enable them to place products or services on the market in substitution of those offered by the parties to the agreement.

The relevant geographic market. A relevant geographic market is the area in which the parties to the agreement supply the relevant products and services, and which may be regarded as distinct from neighbouring geographic areas because of the absence of significant possibilities of geographic substitution .

Factors relevant to the assessment of the relevant geographic market include the nature and characteristics of the products and services concerned, transport costs, the existence of other entry barriers, consumer preferences, the existence of appreciable differences between neighbouring geographic areas, and the existence of significant price differences.

SECTION 2 - OTHER INFORMATION ON THE RELEVANT MARKETS

For each relevant market affected by the agreement, please supply: (a) an estimate of the total value and volume of the Italian market and (b) of the relevant geographic market for the agreement; (c) an estimate of the sales volume of the products affected by the agreement, in Italy and on the relevant market and where available (d) an estimate of the value and if possible the volume of imports and exports of the products affected by the agreement (taken separately in terms of geographic origin) and the percentage of these imports and exports concerning from foreign affiliated undertakings of the undertakings parties to the agreement.

For each relevant market describe: (a) the nature and trend of the demand, indicating in particular its elasticity in terms of price; (b) the type and approximate number of purchasers, and (c) the organisation for the production and sale of the products, indicating the main distribution channels and service networks.

When the agreement affects several production and/or service markets: (a) provide an analysis of the technological, production and distribution links between those markets and (b) state whether the entry of a new undertaking into one of the markets requires the simultaneous entry into another market.

* * *

Chapter 4 - INFORMATION ON THE OBJECT AND/OR EFFECT OF THE AGREEMENT AND ON THE POSITION OF THE PARTIES ON THE MARKET

SECTION 1 - ASPECTS OF THE AGREEMENT WHICH APPEAR TO RESTRICT COMPETITION

Describe the aspects of the agreement which might restrict the freedom of the parties to take independent commercial decisions, with particular regard to:

- buying or selling prices, discounts or other trading conditions;
- the quantities of products to be manufactured or distributed or services to be offered;
- market access or outlets;
- investment, technical development or technological progress;
- the choice of markets or sources of supply;
- the application of different terms for the supply of equivalent products and services; - the offer of different products or services separately or together.

State whether, and for how long, the notified agreement has been implemented by the undertakings parties to it, and if it has achieved its purposes.

SECTION 2 - THE COMPETITIVE POSITION OF EACH OF THE PARTIES TO THE AGREEMENT ON EACH MARKET RELEVANT TO THE AGREEMENT

Please supply (a) an estimate of the market share (in value and volume) of each of the undertakings parties to the agreement and their parent and subsidiary undertakings on the relevant market, for each of the last three years; (b) an estimate of the market share of the main competitors (both Italian and foreign) operating on the same markets, indicating the five largest ones (providing, where available, useful information for contacting them); (c) a list of the five main customers of each undertaking party to the agreement (providing, where available, useful information for contacting them).

Supply an estimate of capacity utilisation of the undertakings parties to the agreement and, where available, that of the competitors.

Furthermore, if the agreement affects several relevant product or service markets, (a) provide an estimate of the total market share of the undertakings parties to the agreement, and that of their parent and subsidiary undertakings, on each of the affected markets for each of the last three years; (b) state which agreements of a similar nature already exist between each of the undertakings parties to the agreement and other undertakings; (c) indicate any other undertakings operating on markets affected by the agreement and/or any other agreements between undertakings affecting the same markets and specifying, where available, the market shares of these undertakings on each market.

State whether the undertakings parties to the agreement, and their parent and subsidiary undertakings, are active in markets neighbouring the relevant market or markets upstream and/or downstream from those included in the relevant market for the agreement.

For each undertaking indicated in Chapter 1 supply: (a) a list of all the other undertakings operating on the markets affected by the agreement on which they hold, individually or jointly with other undertakings, 10 per cent or more of the share capital (5 per cent in the case of listed companies) or of the shares with voting rights, specifying the percentage held; (b) a list of the members of their boards of management who are also members of the boards of management of competing undertakings on the markets affected by the agreement, naming those undertakings, the term of office and the functions of each.

Supply, where available, information on the presence of co-operative agreements similar to those forming the subject matter of the notification, both on the relevant market and on neighbouring markets, in geographic terms or in terms of the type of product, indicating whether any one of the undertakings parties to the agreement is a party to any such agreements.

SECTION 3 - DESCRIPTION OF POTENTIAL COMPETITION

Estimate the likelihood that any new competing undertakings have to enter the markets affected by the agreement, particularly following a substantial increase in prices of more than 10 per cent, indicating: (a) whether there exist significant economic entry barriers, with particular reference to the ratio between the minimum optimum scale of production and the size of the market, the exclusive availability of raw materials, the importance of research and development and promotional activities, the possession of industrial and trade property rights, and lastly the vertical integration of the undertakings operating on the market or the existence of long-term contractual agreements between undertakings operating at different levels of the production chain; (b) whether there exist significant institutional entry barriers, with specific reference to the requirement of government authorisations or any other kind of legal or regulatory controls; (c) whether, in the past three years, any new competing undertakings have entered the market, specifying which undertakings have entered and where available the market share they have acquired; (d) whether it is likely that undertakings operating on the same product market but in distinct geographic markets are able to enter the relevant market.

* * *

Chapter 5 - GROUNDS FOR CLAIMING THAT THE AGREEMENT DOES NOT RESTRICT COMPETITION

Indicate the reasons why, according to the notifying parties, the object or effect of the agreement is not to prevent, restrict or distort competition on the market or on a substantial part of it.

* * *

Chapter 6 - GROUNDS FOR REQUESTING EXEMPTION FROM THE PROHIBITION OF AN AGREEMENT RESTRICTING COMPETITION

Indicate why and to what extent the agreement, while restricting competition, may nevertheless qualify for exemption from its prohibition, indicating in particular in which way the agreement: (a) contributes to improving the conditions of supply on the market; (b) brings substantial benefits to consumers.

Indicate whether these effects make the undertakings sufficiently competitive internationally and whether the effects are obtained by: a) increasing production, b) improving the quality of production, c) improving the quality of distribution, and d) technical or technological progress.

State the reasons why restrictions on competition are strictly necessary to attain the purposes referred to in the first paragraph above, and why these effects could not be achieved without this agreement.

Explain how, following authorisation, a certain level of competitiveness is retained in each substantial part of the market.

* * *

Chapter 7 - SUPPORTING DOCUMENTATION

The notification must be accompanied by the following documents:

- a) a copy of the final or latest version of all the documents relevant to the agreement;
- b) a copy of the balance sheets and profit and loss accounts of the past three financial years and, where available, of the annual reports, of all the parties to the notified agreement, together with the consolidated balance sheet of the group to which the parties to the agreement belong;
- c) a copy of any reports or analysis drafted for the purpose of the agreement, together with any documents, surveys or studies with respect to competitive conditions, competitors (actual and potential) and conditions on the affected markets relevant for the purpose of assessing the case;
- d) a copy of any documentation used with reference to the information indicated in Chapter 3 section 4, and Chapter 4 section 2.

The annexed documents may be submitted as originals or copies. If copies, the parties must declare them to be complete and identical to the originals.

* * *