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FORM FOR VOLUNTARY NOTIFICATION OF RESTRICTIVE AGREEMENTS AND FOR REQUESTS FOR EXEMPTION FROM THE PROHIBITION ON RESTRICTIVE AGREEMENTS

PREAMBLE

Pursuant to Article 13 of Law 287 of 10 October 1990 (the “Competition Act”), restrictive agreements between undertakings within the meaning of Article 2 of the Competition Act may be notified to the Italian Competition Authority (the “Authority”).

Under Article 4(3) of the Competition Act, undertakings may request the Authority to grant an exemption from the prohibition on restrictive agreements.

Articles 2(2) and 10(1) of Presidential Decree 461 of 10 September 1991 (the “Procedural Regulation”) provide that voluntary notifications of restrictive agreements and exemption requests *“must include the information and supporting documents necessary for the assessment of the agreement [request]. To facilitate the submission of such notifications [or requests], the Authority may draw up a standard form to be published in its Bulletin”*. *[These provisions were later replaced by Article 3(1) and (2) and Article 4(1) and (2) of Presidential Decree 217 of 30 April 1998[Ed.].]*

The Authority has therefore prepared this form to help undertakings submit voluntary notifications and exemption requests. It sets out what information must be provided and the notification procedure. Owners of undertakings, or their representatives, may contact the relevant Directorates if they need guidance or clarification on the obligations linked to the submission of such notifications and requests.

The notifications and requests must be signed by the legal representatives of the undertakings, or by persons holding a special power of attorney, beneath the following statement: *“The undersigned accept responsibility for ensuring that the information provided is complete and accurate, and that the supporting documents are complete and a true copy of the originals”*.

Submissions must be filed in duplicate and sent by registered mail with return receipt or delivered by hand, against a receipt issued by the Secretary General or a delegate. Deliveries can be made Monday to Thursday between 9:00 a.m. and 5:00 p.m., and Fridays between 9:00 a.m. and 4:30 p.m. at:

Autorità Garante della Concorrenza e del Mercato
Piazza G. Verdi 6/A
00198 Rome

INTRODUCTION

This form has been prepared to make it easier for undertakings to notify restrictive agreements voluntarily, pursuant to Article 13 of Law 287 of 10 October 1990 and Article 2 of Presidential Decree 461 of 10 September 1991 [*later replaced by Article 3 of Presidential Decree 217 of 30 April 1998 [Ed.]*]. It also covers exemption requests from the prohibition on restrictive agreements, under Article 4 of Law 287 of 10 October 1990 and Article 10 of Presidential Decree 461 of 10 September 1991 [*later replaced by Article 4 of Presidential Decree 217 of 30 April 1998 [Ed.]*].

If an undertaking wishes to submit an exemption request at the same time as notifying a restrictive agreement, it must indicate whether the request is made in the alternative to the notification. In that event, the Authority shall examine the exemption request only if it opens an investigation under Article 14 of the Competition Act, and the request shall be considered as part of that investigation, which the Authority normally seeks to conclude within 120 days.

The voluntary notification and request for exemption may be filed by each undertaking individually or jointly by all undertakings party to the restrictive agreement. They may also be submitted by consortia and associations of undertakings, on the basis of resolutions they have adopted.

In the case of a joint notification, undertakings should appoint a joint representative for all notifying or requesting parties. Where only some of the undertakings to the agreement submit a notification, they are advised to inform the other parties by sending them a copy.

The notification or exemption request must include the information and supporting documents required to assess the agreement or the request, as set out in this form. Where the information specified in this form has already been provided to the Authority in an earlier notification, the notifying undertaking may refer to that material, indicating any subsequent changes.

Where a voluntary notification is incomplete or inaccurate, the Authority shall inform the undertakings concerned, pursuant to Article 2(3) of the Procedural Regulation [*later replaced by Article 3(3) of Presidential Decree 217 of 30 April 1998 [Ed.]*]. This shall not affect the Authority's power to open proceedings even after the expiry of the 120-day period provided for in Article 13 of the Competition Act. That period runs only from the date on which a complete and accurate notification is received.

As soon as a voluntary notification is received, the Authority may – unless the undertakings request confidentiality on duly justified grounds – publish in the Bulletin referred to in Article 26 of the Competition Act a short announcement concerning the notified agreement, inviting interested third parties to submit observations within thirty days of publication. To avoid the disclosure of confidential information, undertakings may indicate which parts of the notification they wish to exclude from the announcement, or prepare a short summary of the restrictive agreement indicating the parties, the affected markets and the key terms.

In the case of an exemption request, the Authority may require undertakings to provide additional information and produce documents relevant to the request, pursuant to Article 10(2) of the Procedural Regulation [*later replaced by Article 4(3) of Presidential Decree 217 of 30 April 1998 [Ed.]*]. In this case, the 120-day period laid down in Article 4(3) of the Competition Act shall be suspended, without prejudice to the Authority's power to impose the administrative fines provided for in Article 14(5) of the Competition Act.

As soon as a request for exemption is received, the Authority shall publish in the Bulletin referred to in Article 26 of the Competition Act, in compliance with Article 10(3) of the Procedural Regulation [*later replaced by Article 4(6) of Presidential Decree 217 of 30 April 1998 [Ed.]*], a short announcement concerning the agreement for which exemption is sought, inviting interested third parties to submit observations. To avoid the disclosure of confidential information, undertakings may indicate which parts of the notification they wish to exclude from the announcement, or prepare a short summary of the restrictive agreement indicating the parties, the affected markets and the key terms.

The Authority must be notified immediately of any change to the essential elements of a voluntary notification or a request for exemption as above by whichever party first becomes aware of such change, pursuant to Articles 2(4) and 10(2) of the Procedural Regulation [*later replaced, respectively, by Articles 3(4) and 4(4) of Presidential Decree 217 of 30 April 1998 [Ed.]*]. A notification of changes shall be treated as a new notification, and the 120-day term

provided for in Articles 13 and 4(3) of the Competition Act shall run from the date on which such notification of changes is received.

The information provided by undertakings is protected by official secrecy, pursuant to Article 14(3) of the Competition Act and Article 8 of the Procedural Regulation [*later replaced by Article 12 of Presidential Decree 217 of 30 April 1998 [Ed.]*], without prejudice to the publication of the Authority's decisions in the Bulletin referred to in Article 26 of the Competition Act. Parties submitting a notification may indicate the documents, or parts thereof, which they consider confidential, and specify the reasons why such information should not be disclosed to the other parties to the proceedings or to third parties.

The Authority shall not impose the fines referred to in Article 15(1) of the Competition Act where undertakings voluntarily refrain from implementing a restrictive agreement notified under Articles 4 and 13, pending the Authority's decision.

CHAPTER 1 – INFORMATION ON THE PARTIES TO THE RESTRICTIVE AGREEMENT

Section 1 – Notifying parties

For each notifying party, provide: (a) business or company name; (b) legal form; (c) tax code; (d) registered office and administrative headquarters; (e) contact person (specifying their position within the undertaking, telephone and fax numbers); (f) role in the restrictive agreement; (g) business activity (both the primary and secondary business activities, indicating the stage of the production process); (h) total turnover achieved at national level; (i) turnover generated by the products affected by the restrictive agreement, at national and EU level; and (l) any contractual or *de facto* links relevant to assessing the undertaking's autonomy and economic independence, in particular the presence of representatives of other competing undertakings within its management bodies.

Where the notification is filed by a representative of the undertakings, including a joint representative, provide: (a) surname, first name, address, telephone and fax numbers; (b) contact person, if different from (a); (c) source of the representative authority or power of attorney.

Section 2 – Undertakings party to the restrictive agreement

For each undertaking participating in the restrictive agreement, specify: (a) business or company name; (b) legal form; (c) tax code; (d) registered office and administrative headquarters; (e) contact person (specifying their position within the undertaking, telephone and fax numbers); (f) role in the restrictive agreement; (g) business activity (both the primary and secondary business activities, indicating the stage of the production process); (h) total turnover achieved at national level; (i) turnover generated by the products affected by the restrictive agreement, at national and EU level; and (l) any contractual or *de facto* links relevant to assessing the undertaking's autonomy and economic independence, in particular the presence of representatives of other competing undertakings within its management bodies.

Indicate whether those undertakings have been informed of this notification, or whether the notifying parties intend to send them a copy of it.

Section 3 – Parent and subsidiary companies of the parties to the restrictive agreement

For each undertaking that controls, or is controlled by, an undertaking participating in the agreement, within the meaning of Article 7 of Law 287/1990, describe the manner in which control is exercised and provide the information set out in Section 2(a), (b), (g) and (h).

If no entity is deemed to exercise a decisive influence over an undertaking participating in the restrictive agreement, provide a list of the ten majority shareholders or in any case indicate those who own, whether directly or indirectly, including through a trust company or an intermediary, a share exceeding 10% of the undertaking's share capital.

CHAPTER 2 – DESCRIPTION OF THE RESTRICTIVE AGREEMENT

Provide a short description of the restrictive agreement, indicating the undertakings involved, the products/services concerned and the economic objectives the undertakings intend to pursue. If the agreement is in writing, provide a short summary of the document and attach a copy. If the agreement is not in writing (or only partly so), describe the arrangement in detail.

State whether the restrictive agreement has been or will be notified to other national or foreign authorities, and in particular whether there has been any contact with the European Commission.

CHAPTER 3 – INFORMATION ON THE RELEVANT MARKET AFFECTED BY THE RESTRICTIVE AGREEMENT

Section 1 – Definition of the relevant market

The notifying party must provide a brief description of the relevant markets affected by the restrictive agreement. The relevant product and geographic markets define the scope within which any restriction of competition arising from the agreement must be assessed. They represent, respectively, the smallest group of products and the smallest geographic area where, in light of the existing availability of substitutes, a significant restriction of competition by object or effect could occur as a result of the agreement.

Relevant product market. A relevant product market includes all products and services that consumers regard as interchangeable or substitutable, based on their characteristics, prices and intended use. Key factors in defining a relevant product market include all elements that explain why certain products or services are included while others are excluded, in line with the above definition and having regard to, for example, product characteristics, prices, intended use and other factors relevant to the definition of product market. The definition of the relevant product market is generally based on demand-side substitutability. However, to determine market competition conditions, the Authority may also evaluate supply-side substitutability, i.e. the ability of other manufacturers to easily switch their production capacity so as to market products or services that substitute those offered by the parties to the restrictive agreement.

Relevant geographic market. A relevant geographic market comprises the area in which the parties to the restrictive agreement supply the relevant products and services, which can be distinguished from neighbouring geographic areas due to the absence of significant geographic substitutability opportunities. Key factors in defining a relevant geographic market include the nature and characteristics of the products and services in question, transportation costs, the existence of other barriers to entry, consumer preferences, appreciable differences in the undertakings' market shares between neighbouring geographic areas, and substantial price differences.

Section 2 – Other information on the relevant markets

For each relevant market affected by the restrictive agreement, provide: (a) an estimate of the total value and volume of the Italian market; (b) an estimate of the relevant geographic market for the agreement; (c) an estimate of total sales volume of the products covered by the agreement in the entire national market and in 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 (broken down by geographic origin), and the percentage of such

imports and exports originating from foreign affiliates of the undertakings party to the restrictive agreement.

For each relevant market, also describe: (a) the nature and dynamics of demand, including in particular its price elasticity; (b) the type and approximate number of buyers; (c) the organisation of production and sale of the products, including the main distribution and after-sales service channels.

If the restrictive agreement concerns more than one relevant product and/or service market, also provide: (a) an analysis of any technological, production or distribution links between those markets; (b) an indication of whether entry by a new undertaking into one market would require its simultaneous entry into another.

CHAPTER 4 – INFORMATION ON THE OBJECT AND/OR EFFECT OF THE RESTRICTIVE AGREEMENT AND ON THE POSITION OF THE PARTIES IN THE MARKETS

Section 1 – Parts of the agreement that may restrict competition

Describe the parts of the restrictive agreement that may limit the undertakings' ability to act independently in their commercial decisions, with particular reference to the following:

- purchase or selling prices, discounts or other contractual terms;
- quantities of goods to be produced or distributed and/or services to be supplied;
- outlets or access to the market;
- investment, technical development or technological progress;
- choice of markets or sources of supply;
- applying dissimilar conditions to the supply of equivalent goods and services;
- offering two or more goods or services separately or jointly.

State whether, and for what period, the notified agreement has been implemented by the parties, and whether it has achieved its stated objectives.

Section 2 – Competitive position of each undertaking party to the restrictive agreement in the relevant markets

Provide: (a) an estimate of the market share (by value and by volume) held in the relevant market by the parties to the restrictive agreement, and by their parent and subsidiary companies, over the last three years; (b) an estimate of the market share of the main competitors (both

domestic and foreign) active in the same markets, identifying the five largest competitors (and, where available, providing contact details); (c) a list of the five largest customers of each party to the agreement (with contact details, where available).

Also provide an estimate of the production capacity utilisation rate of the parties to the agreement and, if available, of other competitors.

Where the agreement concerns more than one relevant product or service market, also provide: (a) an estimate of the combined market shares held by the undertakings party to the agreement, and by their parent and subsidiary companies, in the other markets over the last three years; (b) details of any agreements of a similar nature between each of the parties to the restrictive agreement and other undertakings; (c) information on the presence of other undertakings active in the relevant markets affected by the agreement and/or on other restrictive agreements between undertakings affecting those same markets, specifying, where available, the market shares held by the undertakings in each market.

Indicate whether the parties to the restrictive agreement, and their parent and subsidiary companies, are active in neighbouring markets or in markets which are upstream and/or downstream from each relevant market affected by the notified agreement.

For each undertaking listed in Chapter 1, provide: (a) a list of all other undertakings active in the relevant markets affected by the restrictive agreement in which they hold, individually or jointly with others, a share of at least 10% of the share capital or voting rights (5% in the case of publicly listed companies), specifying the percentage held; (b) a list of the members of their management bodies who also sit on the management bodies of competing undertakings in the relevant markets affected by the restrictive agreement. In each case, indicate the undertakings involved, the length of the appointment and the functions performed by each member.

Provide, where available, information on the existence of cooperation agreements similar to the notified agreement, both in the relevant market and in neighbouring markets (whether defined geographically or by product type). Also state whether any of the undertakings party to the agreement take part in such arrangements.

Section 3 – Description of potential competition

Provide an assessment of the likelihood of new competitors entering the relevant markets affected by the restrictive agreement, especially in the event of a significant price increase (above 10%). In particular, indicate: (a) whether there are significant economic barriers to entry,

with particular reference to the ratio between the minimum efficient scale and the size of the relevant market, exclusive access to raw materials, the importance of research and development or promotional activities, ownership of industrial and commercial property rights, vertical integration of undertakings already present in the market, or the existence of long-term contractual relationships between undertakings active at different stages of the supply chain; (b) whether there are significant institutional barriers to entry, such as the need for administrative authorisations or other forms of regulatory control; (c) whether new competitors have entered the market in the last three years, specifying which undertakings these are and, where available, the market share they have acquired; (d) whether it is likely that undertakings active in the same product market but operating in different geographic markets will enter the relevant market.

CHAPTER 5 – REASONS WHY THE AGREEMENT IS NOT CONSIDERED RESTRICTIVE

State the reasons why, according to the notifying parties, the agreement does not have as its object or effect the significant restriction or distortion of competition in the market, or in a substantial part thereof.

CHAPTER 6 – REASONS FOR REQUESTING AN EXEMPTION FROM THE PROHIBITION ON AGREEMENTS RESTRICTING COMPETITION

State why, and to what extent, the agreement – even if regarded as restrictive of competition – should still qualify for an exemption from the prohibition. In particular, explain how the agreement: (a) contributes to improving market supply conditions; (b) results in substantial benefits for consumers.

Indicate whether these effects also ensure that the parties remain competitive at international level, and whether they are achieved through: (a) increased production; (b) improved quality of production; (c) improved quality of distribution; (d) technical or technological progress.

Explain why the restrictions on competition are strictly necessary to achieve the objectives described above, and why the same benefits could not be obtained without the agreement.

Explain how, following the exemption, a sufficient level of competition would still be preserved in each substantial part of the market.

CHAPTER 7 – REQUIRED DOCUMENTATION

The notification must be accompanied by the following documents:

- a) copies of the final or most recent version of all documents directly relating to the restrictive agreement;
- b) copies of the last three financial statements (profit and loss account and balance sheet) and, where available, the annual reports of all undertakings participating in the agreement, together with the consolidated accounts of the group to which those undertakings belong;
- c) copies of any reports or analyses prepared for the purposes of the agreement, as well as documents, studies and surveys on competitive conditions, competitors (actual and potential), and the conditions of the affected markets, insofar as they are current and relevant to the assessment of the case;
- d) copies of the documents used in connection with the information referred to in Chapter 3, Section 2, and Chapter 4, Section 2.

Supporting documents may be filed either as originals or as copies. Where copies are submitted, the parties must confirm that they are complete and a true copy of the originals.