Scientific Report

Competition Issues in the Distribution Sector in Armenia

Project number: 103430-011
Institution: State Commission for the Protection of Economic Competition of the Republic of Armenia

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1. Overview

The basic objective of this Project funded by International Development Research Centre (IDRC) grant is to study certain competition issues arising in the product distribution sector. It was announced that the Project would be based on investigation of a certain case and the sphere analysis, and would comprise the results of further situation monitoring, analyses and assessments.

In general, this Project is aimed to contribute to the stock of knowledge about the challenges and opportunities facing competition authorities in developing countries. It will focus on anticompetitive practices in the distribution sector.

The Project will include and study, as special directions of research, some potential manifestations of anticompetitive behavior or problems existing in the distribution sector, in particular:

- exclusive supply: manufacturer or wholesaler not allowed to supply competing retailers
- refusal to stock: retailers block manufacturer or wholesaler access to their stores
- Minimum advertising requirements: retailers refuse to stock a product unless a minimum amount has been spent advertising it
- quantity forcing: retailers forced to sell a minimum amount of a manufacturer or wholesaler’s product
- exclusive dealing: retailer not allowed to carry the products of competing manufacturers or wholesalers
- market power: wholesalers exerting monopsony power in purchasing goods, and/or exhibiting oligopoly power when selling them
- abuse of dominance: difficulty of defining or penalizing abuse of dominance, because of the existence of unknown number of actors in the informal sector

From the perspective of the research “environment”, it is notable that developing countries and those having faulty distribution systems are also characterized by imperfect legal regulation of the sphere, non-traditional business practices, as well as certain lobbying possibilities of major market participants in the process of adoption and enforcement of that legislation.

The study of public documents issued by the RA State Commission for Protection of Economic Competition (hereinafter referred to as “the Commission”) indicates that since the second year of its activity the Commission has repeatedly encountered problems in its proceedings connected with principles of products sale in domestic market, economic entities having dominant position in product markets, as well distribution system applied by their groups. These problems directly relate to implementation of the Commission’s mandate and authorities, and emerge during enforcement of the Law.

Majority of cases concerning the abuse of dominant position and anticompetitive behavior, presented to the Commission Staff during implementation of the European Union
Project “Support and Capacity Building to the State Commission for the Protection of Economic Competition of RA” in 2006, also demonstrate that abuses are particularly typical of the product distribution system.

With this respect, the fact of grant award by International Development Research Centre was highly relevant. The receipt of the grant and implementation of the Project became possible due to the Working Group’s consistent efforts directed at the grant receipt.

1.1. Project Objectives

Project implementation objectives were predetermined and approved in accordance with the procedure established by International Development Research Centre (IDRC). They directly derive from presented conditions and requirements.

Within the context of similar projects, one of the basic Project aims is the increase of stock of knowledge of administrative authorities and consumers¹ and capacity building, presentation to beneficiaries of the international experience in the sphere regulation, and promotion of cooperation with international structures, as well as organization of measures directed at competition advocacy aimed at improvement of business environment.

Project specific objectives have been materialized through studies, assessments and proposals reflected in the present “Final Report”. The Project is implemented by efforts of the Working group and experts. This group of experts has designed terms of reference aimed at achievement of the below described objects:

1. Obtain information on normative acts adopted and applied by the European Communities or on other internationally accepted normative acts and norms of customary law, which regulate the distribution sector in general and correlation of “permissible” exclusive distribution sector and competition issues in particular, and in case of existence of such regulatory mechanisms obtain sufficient knowledge thereon and present them according to relevance;

2. In accordance with accepted methodology carry out selection and inquiry among the shops in order to assess the extent to which quantity binding (minimum sale quantity), representing one of manifestations of dominant position abuse in internationally accepted distribution system (Reports of USAID expert Davidson and EU expert Juan Ramon Iturriagagoitia), is spread in the Armenian distribution sector, and make relevant proposals on the basis of their results.

3. In terms of increase of the stock of knowledge and improvement of understanding, observe certain internationally well-known and practicable directions typical of distribution systems.² From the above perspective, the object is to conduct monitoring of domestic distribution systems from the aspect of existence or absence of stated circumstances.³

¹ Proceeding from the Project logic, persons representing the shops and trade outlets shall be considered as consumers.
² Rejection of selling opportunity – when retail traders reject producers’ or wholesalers’ access to their shops.
³ Imposition of minimum advertizing requirement – when retailers refuse to accept for sale those product which are not sufficiently advertized and are unknown to the consumer.
⁴ Study results are presented in Chapetr 4.
4. Assess existing problems relevant to distribution systems in oligopoly markets and those with dominant economic entities, circumstances favoring the origination of such problems, degree of legislative regulation, etc. In particular, investigate the process of product price increase in the consequence of organization of distribution system on the way of product delivery from producing economic entities to the end consumer, etc.
2. EXCLUSIVE DISTRIBUTION SYSTEM – DEFINITIONS, LEGISLATION, CUSTOMARY LAW

2.1. Description of Terms Applied in the Sphere of Distribution System and “Exclusive Distribution System”

As is well known, the basic purpose of the RA Law “On Protection of Economic Competition” (hereinafter referred to as “the Law”) is to protect and encourage economic competition, ensure necessary environment for fair competition, promote entrepreneurial development and protection of consumer rights in the Republic of Armenia. Protection of end consumers’ rights should hold significant place during implementation of competition policy and enforcement of the Law, and should attract sufficient attention of the bodies that are called to protect consumer rights, including the State Commission for the Protection of Economic Competition of the Republic of Armenia (hereinafter referred to as “the Commission”). Infringements of consumer interests can occur also in product distribution systems, therefore the issue of improving the knowledge on those systems becomes increasingly important.

Within this context, below are presented explanations of a number of sphere-related terms that are applicable both in international and Armenian business practices. No specific sources for concepts description are specified, since numerous sources (primarily EU publications) and other literature, as listed in Appendix 1, have been considered for description of concepts.

Distribution - The process of product storage and delivery to consumers through wholesale and retail traders. Simple distribution of products involves the selection of distribution channels and timely entry of products into designated markets (consumers) without qualitative losses. Uniform distribution system includes stock creation, warehousing, freight handling, transportation, and timely and quality execution of orders.

Distributor – An independent trade intermediary, or a link in intermediaries’ chain, which delivers (supplies) material values or services offered by manufacturers to consumers.

Distribution channels – Network of enterprises delivering products from manufacturer to consumer. In functional terms, a typical distribution channel comprises three basic actions: product manufacturing, wholesale and retail sale. In practice, these actions can be carried out by separate specialized enterprises in each certain segment of the distribution channel, or through a vertically structured enterprise.

Exclusive distribution, dealing – A conduct when the supplier (manufacturer) binds distributors or wholesalers in writing to sell only its products. Exclusive dealings are encouraged in different ways, such as preferential discounts, lending, etc. It helps the supplier to expand sales volumes and preserve its market share. However, it leads to restriction of competition when applied by an enterprise having dominant position.

Exclusive License, Exclusive Distributor – A document under which one enterprise grants exclusive right to another to use within a certain area and time period its production
mode, distribution channels, to manufacture its product or sell its production (more applicable in post-soviet countries).

**Agent (Dealer)** – This term is usually applied with respect to local commercial organizations. However, it is worth mentioning that the concepts of “agent (dealer)”, “agent (dealer) network” often lack legal character in legislation (they are not specified in or regulated by applicable legislation), rather they are used as business slang. In practice, these terms imply commercial organizations that are engaged in purchase of products for resale in local markets. The agent may be either a physical person or an organization.

**Principal** – A principal person on whose behalf the agent (dealer) acts.

**Franchise, Franchising** – A franchise on manufacturing or selling its good (product, service) during a certain time period, granted by the Franchiser company (Franchiser) to an individual or company (Franchisee) under a commitment. The Franchise is exclusive when granted to one Franchisee, and is non-exclusive when granted to several Franchisees. The Franchisee shall pay to the Franchiser a part of its proceeds against the Franchise. The Franchiser, in its turn, shall provide new goods or new mode of sale, training, technical assistance or special equipment to the Franchisee, ensure the product advertising, promotion and orders.

Applicable legislation of Armenia also contains references to these issues, and some terms are even legalized. Issues concerning the definition of those terms, their harmonization with internationally accepted criteria and applicability are discussed in Section 2.3 below.

### 2.2. EU and Other Internationally Accepted Normative Acts Regulating Goods Turnover (Distribution) Sector

Pursuant to the respective provision of the Terms of Reference, a considerably detailed study has been carried out with an aim to obtain information on EU and other internationally accepted normative acts applied by competition or other regulatory bodies of the European Communities and European Union member states, which regulate the distribution system in general, as well as the correlation of “permissible” exclusive distribution system and competition related problems.

All manuals and professional literature of the European Union Directorate General for Competition (EU Directorate General for Competition) were studied. Inquiries on the issue under consideration were made to experts of EU Directorate General for Competition and Armenian-European Economic Policy and Legal Advice Centre (AEPLAC).

Summary of results revealed that normative acts regulating this sphere are not numerous, and it is primarily regulated by the norms of so-called customary law. One of the tasks set by provisions of Terms of Reference was to clarify EU “collective” legislation provisions. EU member states’ “in-country” normative acts have not been thoroughly reviewed: certain European countries having such legislation have been identified and listed.

Nevertheless, below is presented brief information regarding those acts:
• **Unidroit Convention on Agency in the International Sale of Goods** was adopted on February 17, 1983 by Diplomatic Conference of Geneva. The Convention applies in cases when the Principal and the third party have their places of business in different countries and the third person has authority on behalf of the Principal to conclude a contract of sale of goods with a third party. The Convention also applies to such agency agreements which authorize the agent only to present the customers to the Principal. The Convention applies irrespective of whether the agent acts in his own name or in that of the Principal. It is concerned with relations between the Principal or the agent on the one hand, and the third party on the other. UNIDRIOT Convention (UNIDRIOT Principles) provides adequate solutions for most of general issues of the contract law (e.g. conclusion of contracts, scope of their activity, execution, non-performance, losses, etc.).

• **Council Directive on the coordination of the laws of the Member State relating to self-employed commercial agents; № 86/653/EEC**

  This Directive relates to regulation of relations between the Principal and the Agent. It concerns both self-employed agents (who have authority to conclude contracts on behalf of the Principal) and those who are authorized to conduct relevant negotiations.

• **Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices.**

  This Regulation defines the procedure of presenting block exemptions in respect of vertical agreements in the territory of EU countries. The provision under which a Distributor is prohibited to sell competitive goods (or buy goods exclusively from one supplier) deserves special attention. Pursuant to Regulation No. 2790, effective term of such prohibition may not exceed 5 years, which means that upon expiry of that term the given provision will become invalid. On the other hand, taking into consideration the high importance of this provision for distributorship agreements (since no supplier will agree to the sale of competing goods by the distributor), standard distributorship agreements for European Union countries imply (are concluded for) 5-years’ effective period, which, indeed, does not prevent from renewing the agreement after expiry of the stated term.

• **UNCTAD Minimum Standards For Shipping Agents (1988):**

• **Laws (Commercial Codes) of Sweden, Finland, Denmark, France, Austria, Great Britain, Germany, Belgium on Commercial Agents.**

  For detailed description of aforementioned documents and acts please refer to the List of References (Appendix 1).

  Taking into consideration the practicability of a number of materials, they are presented in the form of Appendices. Appendices 2 and 3 contain samples of relevant standard agreements (in Russian and English) that can be applied in the Armenian business practice as well.
2.3. Legislation of the Republic of Armenia Relevant to the Distribution System

As already stated in Section 1.2 of this Report, applicable legislation of Armenia also contains references to the issue under consideration.

Thus, for example, RA Law “On Trade and Services” defines the following concepts:

**Dealer** – a seller engaged in retail trade of products who is included in an organization’s sales network and acts as its agent.

**Distributor** – a seller representing manufacturing organizations in the market, who conducts selling activities based on wholesale purchases under supply agreements concluded with manufacturing organizations.

**RA Civil Code** also touches upon the issue under consideration but only in respect of intellectual property products, including exclusive rights thereto.

RA Law “On Trade and Services”, along with providing definitions of aforementioned concepts, also attempts to regulate certain relations, in particular:

“...Article 22. Activities of Distributor and Dealer will be permitted in the territory of the Republic of Armenia only upon existence of a relevant agreement.

**Article 23.** Distributor and Dealer are obliged to ensure the fulfillment of requirements set for the seller and contractor as defined by this Law......”.

An essential component in organization of this part of the Project work was the initiation and conducting of discussions on RA legislation related issues with respective specialists of other interested state administration bodies and organizations. On the initiative of the Project Working Group, meetings were held with relevant specialists of the RA Ministry of Trade and Economic Development, RA State Tax Service, RA State Customs Committee and RA Central Bank. As per statements made during the meetings by representatives of stated bodies, as well as according to received official written opinions⁴, the RA legislation pertaining to respective spheres of exclusive distribution in the Republic, registration of distributors, tax obligations in distribution systems formed under conditions of existence of importers and dominant economic entities, as well as application of customs formalities and procedures, do not contain special, differentiated and coordinated provisions, consequently no special administrative control is exercised.

As to the sphere-related concepts and provisions defined by the RA legislation, it should be mentioned that, when considered in their combination, such concepts and provisions, in our opinion, do not in the best way specify respective phenomena and issues, and do not regulate created relations.

Taking into account that during recent years particularly intense activity and drastic growth of so-called “exclusive distribution pretenders” has been observed in the Armenian distribution system, the issue acquires rather practical importance.

⁴ A letter was received also from the RA Ministry of Finance and Economy.
Within the context of the foregoing, in the course of studies multiple issues and problems arise that are not regulated by the RA legislation. On the other hand, in the result of this research it is not possible to confidently state that such regulation is really necessary and/or appropriate.

RA legislation that regulates relations in copyright and trademark registration spheres can play certain role in the regulation framework of the issue; however this also can not be qualified as comprehensive regulation, since it’s not regulated any relationship or some of the specific issues raised in distribution sector.

Addressed issues which, in our opinion, require solutions, are numerous, the most important of which are as follows:

- Is the state registration of exclusive distribution system participants necessary in general?

- Will the concentration level of markets increase if the state starts to protect exclusive importers’ rights and grant them legislative advantages over other competitor entities?

- Do the relations between the exclusive distributor and the importer of the same product through other schemes need to be regulated, or not?; Can the person importing the same product from another place be considered as an honest importer, or not? 5. This is not a rhetorical question for companies engaged in medicines import and has very practical importance. 6

- Does unfair competition take place when the exclusive distributor invests moneys for product advertising and implementation of measures contributing to the product sale, and another importer also sells the given product under the exclusive distributor’s “umbrella”, etc.

Listed issues, as well as other sphere-related issues not referred to above arose in the process of performing concrete tasks specified by the Project, and have not yet found any solution within the scope of this research. These issues need separate, detailed and targeted studies. In general, the basic assessment here should relate the following issue: Which is the preferable legislative regulatory model for distribution system of the Republic of Armenia?

Nevertheless, in view of particular importance of matters under consideration for the medicine market, limited electronic inquiries and discussions among medicine distributors were undertaken.

Inquiry results are presented below.

5 It is assumed that in a given country the “parent” supplier does not supply the given product of any other company.

6 As a rule, companies registered through the established state registration system and exclusively engaged in imported medicine supplies consider that the same medicine imported from another place and through a different scheme is illegal. Other importers of the same medicine are certainly of opposite opinion. Each year RA Economic Court considers some claims on similar issues.
One of the inquiry respondents is the distributor of a manufacturer’s dealer. Supplier country of one distributor is the Russian Federation; as to the other country, it is desirable to not indicate. Responses to the question “What is the organizational-legal ground of your cooperation with the supplier?” are as follows: one of the distributors cooperates with the foreign supplier based on standard agreement, and the other – based on direct collaboration agreement. One distributor sells the product at prices and on conditions established by the supplier, and the other cooperates with the supplier based on invoices. Changing legislative acts of the Republic of Armenia are considered as risk by one distributor, and non-acceptance of small orders due to expenses related to product marking in Armenian and the need of timely freight transportation is considered as risk by another distributor.

One of distributors thinks that exclusive distribution systems provides advantage of direct advertising in the given market, while the other believes that it enables to make minimum expenses on advertising or other measures fostering the product sale.

Both distributors are familiar with the RA legislation provisions pertaining to legal regulation of exclusive distribution system. Legal regulation of exclusive distributions system is considered satisfactory by one of the distributors, whereas the other considers it to be unsatisfactory due to lack of safeguards against forged goods. In their opinion, distributors in the Republic are not protected by the RA legislation, since they have more obligations then protection under the law. One of the distributors has one competitor in the given market and estimates its competitive opportunities as low.

In the distributors’ opinion, there are impediments to the development of their business, which include the demand and legislative omissions, as well as lack of protection from voluntary treatments.

Both distributors find it difficult to answer the question “In your judgment, is fair and sound competition present in the given market?”, since they believe that companies have their internal regulatory procedures.

2.4. Norms of Customary Law Relevant to the Goods Turnover (Distribution)

Another important objective set by the Project conditions was “to obtain sufficient knowledge on distribution sector and to present according to relevance”, therefore “norms of international customary law” have also been studied.

A. Legal Grounds

Distributorship or Distributor Contract/Agreement is deemed to be the legal ground for one of the widespread forms of organizing goods and services supply in international trade. In most general terms, Distributorship Agreement constitutes an international commercial agreement, under which the Distributor is granted representation right (sometimes sole or exclusive) with respect to a certain product in a certain territory and/or time period.

B. Principal Conditions of Distributorship Agreement

From legal and technical perspective, international distributorship agreement represents a rather complicated document that needs detailed elaboration. When signing the agreement the Parties have full discretion, and should use it for establishment of balanced legal ground which shall be fair, mutually acceptable and consistent with specific requirements of their activities.
C. Commercial-customary Norms of Distributorship Agreement; Models (Types) of Distributorship Agreements

Two types of Distributorship Agreements are applied in international commercial practice, and a particular agreement should expressly and definitely specify the type to which it belongs.

First type – “Hard” - Distributor undertakes to place annual orders with the manufacturer.

Second type “Soft” - Distributor undertakes to place orders with the manufacturer according to their receipt from foreign customers.

Notwithstanding that in both cases the Distributor undertakes to place orders on its own behalf (and not as a foreign customer’s agent) and bear personal responsibility for the price, the purport of its obligations varies. In the second case the Distributor bears responsibility only in the event of not being able to transfer customers’ orders received by him to the manufacturer, whereas in the first case the Distributor has an obligation to order products at the established cost, irrespective of their receipt. Sometimes non-performance of a certain budget (volume) by the Distributor entails (provides for) dissolution of the Agreement.

Below are presented two versions of Distributorship Agreement articles, i.e. “soft”, when Distributor’s obligations in terms of sales volumes are expressed in declaratory form, and “hard”, under which fixed sales volume is established, the non-execution whereof will entail the dissolution of the Agreement.

The Distributor undertakes to use all efforts towards expanding the given product sales market volumes in the given territory, and is liable to constantly offer, advertise the Product, participate in the Product demonstrations, and otherwise promote the Product sales in the given territory.

During NN time period sales volume shall reach the predetermined amount. If at the expiry of NN time period the established sales volume has not been achieved, the supplier reserves the right to promptly dissolve the Agreement without additional notice.

D. Sub-distributorship and Sub-agency Agreements; Formation of Sub-distributor and Sub-agency networks

The conclusion of distributorship agreement with a foreign manufacturer (as well as local manufacturer and foreign distributor) is just the first step toward achievement of efficient product and service sales in the local market (contractual territory). The second step is the establishment by the Distributor of efficient relationship with end consumer, which serves to the common interest of both Parties, the Distributor and the Manufacturer. Such relationship with end consumer can be organized in different ways.

- A simplest way can be the seek of potential customers by the Distributor, product advertising, establishment of initial contacts with customers with the purpose of product demonstration, conclusion of supply (purchase and sale) agreements,
organization of post-sale service etc. This method is more justified in case of one-time precious products sale (so-called “one-point business”).

- In case of non-one-time products sale (industrial goods, semi-finished products, foodstuff etc.), a more perspective method would be the involvement or establishment of local commercial organizations in the contractual territory and formation of so-called dealer (agent) network on the basis thereof. This form of distribution would certainly contribute to the wholesale trade of the product and would significantly increase the product turnover.

Grounds of legal relationship between the Principal and Agent are not limited to supply agreements; here Sub-distributorship and Sub-agency agreements, as well brokerage and franchising (commercial concession) agreements (or their combinations) may be applied.

All commercial representatives (dealers, agents) within the dealer network have different levels of contact with the Principal. Weakest contacts are observed in agreements with sub-distributors and brokers.

The most attractive circumstance in applying Sub-distributorship agreements is that the sub-distributor, acting as the distributor’s commercial representative, is entitled to render certain commercial services to the latter, which will ultimately lead to “optimization” of taxes.

Samples of above stated agreements and contracts are presented in Appendices 4 and 5.

E. Franchising

“Franchising” is a concept broadly accepted and recognized by almost entire international community. In general, Franchising represents a vertical model. At the basis of the franchising structure lays an agreement under which one of the parties, the franchising company (the Franchiser), grants to an individual or a company (the Franchisee), against direct or indirect compensation, the right to use the intellectual property (trademarks, technologies, etc.) owned by it.

While different countries have their specifics of regulating franchising relations, there are certain general features typical of all foreign systems where those relations are in one way or another accepted or applied.

- Franchiser shall have intellectual property right and means of its individualization, such as patent, know-how, trademark, trade symbol;
- Existence of own system (internal standards) of conducting (building) business by the Franchiser;
- Franchiser’s support to the Franchisee (e.g. technical assistance, training, etc.);
- Disclosure by the Franchiser of certain information to the Franchisee prior to the signing of the Agreement;
• Control of the Franchisee’s activity by the Franchiser;

• Franchisee’s obligation to conduct the business in compliance with the Franchiser’s requirements;

• Franchisee’s obligation to make investments mostly at the expense of own funds;

• Payment by the Franchisee of direct or indirect compensation to the Franchiser;

• Long-term nature of relations,

• Franchiser’s obligation to supply products to the Franchisee and/or the Franchiser’s right to determine the Franchisee’s suppliers;

• Legal independence of the parties (in most cases).

This system has indeed proved to have many advantages; however underestimation of the risks inherent in franchising model may be rather dangerous in terms of future damages and reputation decline both for the Franchiser and the Franchisee.

• Competent development of franchising model by the Franchiser;

• Honest and reliable mutual relations between the parties;

• Franchisee’s ability to conduct the business.

Practicability of these conditions is determined by the Franchiser’s purposes, particularly the purpose of expansion of activities and management of the system interests and growth. Accomplishment of identified aims will ensure the viability of the whole system, as well as the achievement and maintenance of stable competitive advantages.

F. Mixed Agency- Distributor Agreements

Agency and Distributorship Agreements have certain similarities in terms of agent’s (distributor’s) status. However, both agreements distinctly vary by the functions and the volume of rights and obligations of both the supplier (principal) and the agent (distributor).

From the perspective of rights and liabilities of the agent/distributor, as well as anticipated profit from commercial representation, both Agreements, along with obvious advantages, have substantial restrictions. For convenience of selection, main advantages and disadvantages are presented in the form of table.

<table>
<thead>
<tr>
<th>Main advantages (+) and disadvantages (-) of Distributorship Agreement</th>
<th>Main advantages (+) and disadvantages (-) of Agency Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>(+) Usually the Distributor, being the product owner, is free to resell the</td>
<td>(+) During agency relations, the Agent is not required to have significant free</td>
</tr>
<tr>
<td></td>
<td>obligations of products to third parties</td>
</tr>
</tbody>
</table>
product. Consequently, its profit is not limited by the size of commission, which is an obvious advantage.

- (-) On the other hand, the Distributor should possess free monetary funds for new purchases; sometimes the minimum sales restriction is imposed on the (i.e. it may not acquire products below certain quantity or cost) etc.

- (+) The Distributor has more discretion in its actions, since it acts as the free seller of the Principal’s product.

- (-) At the same time, the Distributor bears responsibility before consumers in contractual territory for the product quality, whereas responsibility of the Principal (supplier, manufacturer) before consumers is limited to the product safety and concealed defects.

- (-) Usually the Distributor carries out the servicing (warranty service and repair) of realized products at its own expense. Sometimes those expenses are taken into account during future purchases, or are covered by the supplier. But in any case, the Distributor is always responsible for the product quality before the end user.

- (-) But in that case the Agent’s profit is limited just to commissions.

- (+) The Agent has no responsibility before the end user.

- (-) In this case the Agent’s functions and discretion in business are essentially restricted.

- (+) On the other hand. The Agent usually renders services to the Principal against payment, including for warranty service of sold products, marketing, information, advertising and other services. All those services provide additional income for the Agent.

The list of above described advantages and disadvantages of the two agreement types is not exhaustive. More details can be found in listed References.

Mixed Agency-Distributor Agreement attempts to circumvent restrictions imposed by separate agreements and to provide to the commercial representative (i.e. agent/distributor) more flexible conditions for conducting business.

The fact that commercial representative is entitled to act on the ground of the product independent purchase and sale, i.e. as a distributor who may simultaneously act in the agent’s status (for example, in case of absence of free monetary funds it can just transfer the orders to the Principal and receive commissions) makes this form of agreement very attractive for marketing companies.
Particular attractiveness of this type of agreement is due to the circumstance that like common Agency or Distributorship Agreements, the Mixed Agency-Distributor Agreement also can be concluded on the basis of exclusiveness. Thus, acting in the local market in two capacities, the agent (distributor) can be confident that it will not be surpassed by the competitors or the Principal, nor his rights will be restricted or suppressed.
3. Study of Behavior of Economic Entities Having Market Power in Product Distribution System

3.1. Background

Paragraphs 2 and 3 of the Terms of Reference provided for the study of behavior of “Coca-Cola” Company in product distribution system, an economic entity having actual market power in “Carbonated, Sweetened Drinks” product market, through investigation of the “Coca-Cola” case. As it is known, the mentioned case, besides involving behavior binding by “Coca-Cola” distribution system participants upon the shops, which has no relevance to the core subject of the contract, is also characterized by quantity binding, representing from the perspective of international (European) competition legislation a form of dominant position abuse manifested in product distribution system, when retailers are compelled to sell not less than a fixed quantity of products. So far, no similar claim was qualified in Armenia as abuse of dominant position.7

The Project Implementation Working Group has chosen the inquiry among sales outlets (hereinafter “shops”) of “Coca-Cola” product type as the preferred way of executing the requirements of paragraphs 2 and 3 of the Terms of Reference. At the same time, the Working Group has decided not to content itself by inquiry of “Carbonated, Sweetened Drinks” product market and has expanded the scope of survey to include such other product types which are of obvious interest in the Republic of Armenia from the perspective of the distribution system study. Those product types are beer, chicken eggs and ice-cream.

3.2. Methodology

Project Implementation Working Group has designed the structure of inquiry and identified the sequence of tasks implementation in the following principal directions:

- Consultancy on research mechanisms, procedures and implementing groups;
- training and testing,
- selection,
- conducting of survey,
- submission of technical report.

7 Description of the “case” is presented in the “Questionnaire”. Appendix ---
3.2.1. Survey testing and participants training was carried out by the Project Manager, one Commissioner (inquiries in Regions), the Head of Staff and the expert.

3.2.2. Selection of Survey Participants

Numerous and diverse stores and shops functioning in the Republic of Armenia were classified into three groups as follows:

a) largest stores and those created in recent years (publicly known as “Supermarkets”), functioning in Yerevan and the next two biggest cities of the Republic, Gyumri and Vanadzor, were conventionally accepted as A class shops;

b) relatively big and medium size shops traditionally functioning in respective districts of the mentioned cities, which have their permanent clients since the soviet times and are key participants of the distribution system, were selected as B class shops. It has been considered essential for those shops to have sufficient volume of goods turnover, various divisions and more than three sellers;

c) small shops and kiosks created in city districts and certain yards (practically formed in post-soviet years and gradually increasing their weight in the distribution system) were recognized as C class shops. Such shops usually trade through one seller.

3.2.3. The Process of Inquiry

Inquiries among distribution system shops were conducted by students of the Project co-partner Slavonic University of the Republic of Armenia and Yerevan Engineering University, under coordination of experts. Two employees of the Competition Commission Staff also participated in the inquiry process.

3.2.4. Inquiry Technique

The survey was conducted by way of delivering questionnaires to responsible shop employees and collection of completed questionnaires after expiration of a certain agreed time period. However, there were cases when inquiry participants needed clarifications. In certain instances, questionnaires were completed through joint efforts of responsible shop employees and persons conducting the inquiry.

3.2.5. Geographical distribution

The survey covered Yerevan city and three Regions of the Republic – Shirak Region (Gyumri city), Lori Region (Vanadzor city) and that part of Kotaik Region which is adjacent to Yerevan. In view of the circumstance that Yerevan city varies from other Regions by the level of its economic and, consequently, distribution system development, in order to ensure the comprehensiveness of the survey results, two Regions of the Republic represented by their major cities (which are also the second and third biggest cities after the capital), were also included in the survey.

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8 In this research the survey of that part of Kotayk Marz which is adjacent to Yerevan is not presented separately, but together with Yerevan city survey results.
Inquires covered 99 shops\(^9\), the geographical distribution of which is shown in Table 1.

**Table 1**

<table>
<thead>
<tr>
<th>Location</th>
<th>A class shops</th>
<th>B class shops</th>
<th>C class shops</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yerevan</td>
<td>6</td>
<td>23</td>
<td>33</td>
<td>62</td>
</tr>
<tr>
<td>Gyumri</td>
<td>1</td>
<td>10</td>
<td>8</td>
<td>19</td>
</tr>
<tr>
<td>Vanadzor</td>
<td>2</td>
<td>7</td>
<td>9</td>
<td>18</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>9</strong></td>
<td><strong>40</strong></td>
<td><strong>50</strong></td>
<td><strong>99</strong></td>
</tr>
</tbody>
</table>

The Working Group has not set as its object to cover as many shops as possible, since in the opinion of the Working Group, upon accurate selection the quantity does not represent an essential factor from the perspective of survey results.

It should be mentioned that due to the following basic circumstances the survey results might have certain degree of error exceeding that of possible errors contained in the results of surveys by organizations conducting special and professional inquiries:

a) this inquiry was conducted primarily by efforts of middle-year university students who lacked profound professional skills in terms of performance of the given work;

b) students having conducted the inquiries and the staff employees reported in their individual statements and verbal presentations that during inquiries the atmosphere was

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\(^9\) Appendix 7 contains summary tables of questionnaires completed by representatives of 99 shops.
tense, at times getting to demonstration of reluctance, which could naturally obscure the responses in terms of their sincerity and authenticity;

c) the Working Group stated that it hasn’t enough confidence in that representatives of shops included in the inquiry, particularly of B and C class shops, had sufficient insight in basic issues being the subject of inquiry or were fully informed of the subject matter in question, consequently the responses could be poor to some extent, irrespective of efforts of persons conducting the inquiry to render them methodical assistance during inquiries.

Nevertheless, the inquiry and survey have been conducted according to initially agreed and determined procedure, and mostly conform to the requirements set for those processes.

The Working Group has adhered to the extent possible to the principle of impartial analysis and submission adopted by it.

Below are presented the inquiry results which constitute the key findings of the survey.

3.3. Survey Results

As already stated, the basic objective of conducting inquiry and survey is to initiate new research and monitoring in above-mentioned markets, and should the latter result in emergence of well-grounded information, repeatedly proving the competition restricting behavior (binding of conditions having no relevance with the contract, quantity restriction and other similar behavioral manifestations) of entities dominating in those markets or group of major companies, to make appropriate proposals.

Among inquiry respondents from Yerevan:

a) all representatives of 6 A class shops answered “No” to the question on whether in all four product markets the contracts offered by suppliers contain clauses involving compulsion;

b) out of 23 B class shop representatives 3 answered “Yes” with respect to “Ice-cream” product market, and 4 answered “Yes” with respect to “Refreshing Beverages” product market;

c) out of 33 C class shop representatives only one answered “Yes” with respect to “Refreshing Beverages” product market.

Thus, none of responsible persons of 62 shops in Yerevan sees any compulsion involving clauses in contracts offered to them in “Beer” and “Egg” product market, and only a very small number of shops consider that such provisions exist in contracts offered in “Ice-cream” and “Refreshing Beverages” product markets.
Table 2. Number of inquiry participants in Yerevan

A similar situation connected with the 5th question of Questionnaire was recorded in Gyumri, where among the inquiry respondents:

a) the representative of the single A class shop answered “No” to the question on whether in all four product markets the contracts offered by suppliers contain clauses involving compulsion;

b) representatives of 9 B class shops out of 10 also answered “No” to the above question. The representative of one of the shops indicated that such a provision was offered to him in “Refreshing Beverages” product market;

c) only one representative of 8 C class shops has answered “Yes” about “Refreshing Beverages” product market.

Thus, overwhelming majority (90% and more) of A, B and C class shop representatives in Gyumri has reported that contracts offered to them do not contain compulsory provisions.

A similar situation related to the 5th question of Questionnaire was recorded also in Vanadzor, where none of the representatives of two A class, seven B class and nine C class shops participating in the inquiry gave affirmative answer to the question.

References by shop representatives to compulsion involving provisions contained in contracts offered to them have such a small weigh that there is no point in analyzing them according to shop classes. Therefore, the below indicators are presented in generalized form.

Thus, it is typical that representatives of shops in Yerevan having mentioned about compulsion provisions, referred to the condition “Expose goods and refrigerators in most visible places” as to compulsion provision, which, in our opinion, holds one of the last places in the hierarchy of possible compulsions.
As per representatives of the inquiry participant shops in Gyumri, suppliers’ offers containing compulsion have different trend: “Not to receive products from another supplier or sell its products”.

As to Vanadzor, it should be noted that Questionnaire items referring to the nature of compulsion were not completed since representatives of all 18 shops under all classes unanimously reported about absence of any compulsion involving conditions in contracts offered by their suppliers.

Question 7 of the Questionnaire concerning possible restriction of minimum sales quantity constitutes one of the most important questions from the perspective of research purpose. This object is specified also in paragraph 3 of Terms of Reference. It is notable that summary of responses to the given question points out a situation that corresponds to the foregoing context.

Thus, the question “Does the contract signed with you contain any provision establishing obligatory minimum sales quantity?” was answered “No” for all four product markets by representatives of inquiry participant shops in Yerevan, as follows:

a) out of 6 A class shop representatives– 6;

b) out of 23 B class shop representatives– 23;

c) out of 33 C class shop representatives -31.

In Gyumri, the 7th question was answered “No” for all four product markets as follows:

a) the representative of the single A class shop;

b) 9 out of 10 B class shop representatives;

c) 7 out of 8 C class shop representatives.

In Vanadzor, the 7th question was answered “Yes” for “Egg” product market by one shop representative. All the remaining shops answered “No” for all product markets under survey, and very rarely “I find it difficult to answer”.

As a matter of fact, according to the opinion of 95% of the inquiry participant shops, dominant economic entities and major suppliers in all four surveyed product markets in Yerevan, Gyumri and Vanadzor do not offer to the shops (regardless of their class) such contracts that contain provisions establishing minimum amount of sales.

Simultaneously, representatives of some inquiry participant shops in Yerevan and Gyumri have negatively estimated the possible provision on minimum sales quantity restriction, considering it as “a requirement restricting their rights”. In Yerevan such opinion was expressed by 7 representatives of 23 C class shops, in Gyumri – 6 representatives of 10 B class shops and 7 representatives of 8 C class shops.

An essential question in terms of achievement of the research and inquiry objective was the 11th question: “Do any relations not regulated under the contract arise during cooperation with the supplier? If yes, please specify.”, which was aimed at clarifying whether there were
any “extra-contractual”, behavior binding manifestations on the part of market suppliers. This question was weighty also due to the fact that “Coca-Cola” case, which had served as the basis for this research, was exactly of similar character. Beyond the offered contract, the supplier had compelled the shops not to collaborate with competing “Pepsi-Cola” Company, threatening that otherwise the allocated refrigerators would be taken back. The information underlying the case was obtained only from Yerevan (other Regions were not investigated), and data received from Regions within the scope of this research could serve as a basis for new statements.

After completion of the case, inquiry results outline the following picture:

Aforementioned 11th question of Questionnaire was answered “No” for all four product markets by representatives of inquiry participant shops in Yerevan, as follows:

a) out of 6 A class shop representatives– 6;
b) out of 23 B class shop representatives– 22;
d) out of 33 C class shop representatives -28.

One B class shop representative in Yerevan stated that in “Refreshing Beverages” product market he was orally compelled not to place other companies’ refrigerators. Representatives of 2 C class shops in “Beer” product market, 2 shops in “Refreshing Beverages” product market and one shop of “Ice-cream” product market stated that they were orally compelled not to work with other suppliers.

Two B class shop representative in Gyumri stated that in “Beer” product market they were orally compelled not to place other companies’ refrigerators, and representatives of 2 C class shops “were orally compelled not to work with other suppliers”.

In Vanadzor, the 11th question was answered “No” by:

a) 2 A class shop representatives all four markets;
b) out of 7 B class shop representatives – 7 for “Beer” and “Egg” product markets, and 6 for “Ice-cream” and “Refreshing Beverages” product markets;
c) out of 9 C class shop representatives – 8 for “Beer” and “Egg” product markets, and 6 for “Ice-cream” and “Refreshing Beverages” product markets.

Thus, overwhelming majority of the shop representatives participating in the inquiry has reported that no cases and actions of “extra-contractual” behavioral abuses by suppliers in product markets under study have been observed.

An interesting explanation was provided to persons conducting the inquiry in Regions, especially in Vanadzor, stating that such cases were numerous in the past, but “after respective decision of the State Commission for Protection of Economic Competition the situation is mostly regulated, and currently the suppliers do not display such a behavior”.
After summarization of the inquiry results a number of circumstances arose and conclusions were drawn, which should be of more interest to the country’s economic and tax policy making institutions, rather than to SCPEC.

In particular, to the 13th question of the Questionnaire, “Are there any impediments to the development (expansion) of your business?”, approximately a half of inquiry participant shops of all classes in Yerevan, and overwhelming majority in Gyumri and especially in Vanadzor, have given affirmative answers, stating about existence of impediments which, according to repeated responses, can be classified as follows:

- e) tax field and tax legislation, heavy tax burden;
- f) scarcity of financial resources, short terms and high interest rates of loans;
- g) low purchasing power of the population (small consumption);
- h) contract violations by suppliers;
- i) interference and impediment by the state;
- j) inability to withstand competition by other shops, etc.

Certain diversity and dispersion of opinions has been recorded with regard to responses to questions from 12 through 15 of the Questionnaire.

Thus, regarding the 12th question, “Are you satisfied with the quality of cooperation with suppliers?”, 6 representatives from all A class shops in Yerevan answered “Yes” for all four product markets, and one answered “No” for “Ice-cream” product market.

22 B class shops are satisfied with the quality of cooperation with suppliers in 4 product markets, and 3 shops are not, out of which one is dissatisfied with cooperation in “Beer” product market, and 2 in “Egg” product market.

19 representatives out of all C class shops participating in the inquiry answered “Yes” to the same question for all product markets, and 12 answered “No”, of which 4 – for “Egg” product market, 2 – for “Ice-cream” product market, 1 – for “Refreshing Beverages” product market, and 2 found it difficult to answer the given question.

The picture in Gyumri and Vanadzor cities is as follows:

In Gyumri, the cooperation with suppliers satisfies:

a) all A class shops – in all four product markets;
b) 9 out of B class shops – in all four product markets; 1 is not satisfied with cooperation in “Beer” product market;
c) all 8 C class shops having participated in the inquiry.

In Vanadzor, the cooperation with suppliers satisfies:

a) 2 A class shops having participated in the inquiry;
b) 7 B class shops – in 4 product markets;
c) 6 C class shops, and 1 has found it difficult to answer the question.
Responses in Yerevan to the 15th question of the Questionnaire, “In your judgment, is fair and sound competition present in the given market?” are distributed in the following way:

a) by estimate of 2 A class shops out of 6, there is fair and sound competition in the market, 3 shops think that such competition is absent, and one finds it difficult to answer the question;

b) out of all B class shops having participated in the inquiry, 16 have answered “Yes” to the same question, 2 have answered “No”, and 2 have found it difficult to answer the question.

c) 19 of C class shops believe that fair and sound competition is present in the market, 3 shops think that such competition is absent, and 8 shops find it difficult to answer the question.

In Gyumri, the same question was answered “Yes” by:

8 of B class shops, and 5 of C class shops.

The question was answered “No” by:

All A class shops, 2 of B class shops, and 3 of C class shops.

Overwhelming majority of shops having participated in the inquiry in Vanadzor believes that there is fair and sound competition on the market.

### 3.4. Conclusions

Survey results indicate that Project Implementation Working Group does not dispose of sufficient reasonable grounds to state that collaboration between suppliers and shops on “Refreshing Beverages” and three other surveyed product markets involve binding provisions or behavior envisaged by agreements, deemed as infringements from the perspective of competition law, or so-called “extra-contractual” binding behavior. Therefore, based on submitted research results, the Project does not recommend the Commission to conduct proceedings on aforementioned grounds.

Simultaneously the Project will inform relevant authorities of circumstances having arisen in the course of research.

Presented situation is assessed by the Project as certain progress in the distribution system of the Republic of Armenia as compared to the year 2005. To the number of circumstances having fostered that progress, in the opinion of the Working Group, can be attributed the following:

a) aforementioned decision of the RA State Commission for Protection of Economic Competition and its subsequent elucidation and discussions, transparent style of activity;

b) the Resolution of the European Commission Directorate General for Competition, under which many fundamental provisions restricting the possible
anticompetitive behavior were adopted in respect of “Coca-Cola” Company; (http://ec.europa.eu/dgs/competition/index_en.htm).

c) gradual dissemination of basic competition issues among business community, etc.
4. The “Pressure” of Shops on Suppliers

4.1. Background

As already mentioned, the Project “Terms of Reference” prioritizes the increase of knowledge and improvement of understanding of internationally recognized and practiced directions of the distribution sector, which are still not applied in various, particularly developing countries due to faultiness of their distribution systems. With this respect, we can identify certain actions undertaken by retail traders in Armenia, in particular: “rejection of selling opportunity” – when retail traders deny the access of manufacturers or wholesale traders to their shops, and “imposition of minimum advertising requirement” - when retail traders refuse to accept for sale such goods which are not sufficiently advertised and are unknown to consumers.

After consultations the Working Group deemed appropriate to implement the above objective through organization of inquiries. Electronic inquiries were conducted by use of precompiled questionnaires, which, along with aforementioned questions, included other questions of interest as well.

Inquiries of economic entities were conducted by students of the Project co-partner Slavonic University, through email and according to initially agreed and established procedure.

Materials obtained from 1997-2007 “Spyur Information Center”, immediate contacts with economic entities, and “www.google.am” website were used as sources of verification and compilation of inquiry data.


The range of persons to be covered by the inquiry was established in the number of 136, whose activities involved 31 product markets mentioned above.

According to conducted inquiry, 30 companies out of 136 participant entities did not have email, which was evidently an impediment to conducting comprehensive and full inquiry via email. For that reason, the inquiry was carried out also through other means of communication (fax, calls, personal visits).

During direct contacts it was revealed that 35 economic entities preferred personal visits by persons conducting the inquiry, with delivery of hard copies of the official document.

In the course of conducted inquiry it was revealed that 25 companies had not received questionnaires in the consequence of low quality internet service provided in the Republic.
Thirteen companies, after 6 and more telephone contacts and more detailed presentation of the issue, did not refuse to collaborate, but no responses were received from them.

13 companies out of 136 participant entities refused to respond.

From economic entities operating in above stated product markets only 6 companies from “Wine”, “Dairy Products”, “Cheese”, “Meat Products”, “Canned Goods” and “Jam” product markets answered the questionnaires. Answers of questionnaires by economic entities functioning in those markets are attached hereto as Appendix 9.

4.2. Inquiry Results

Proceeding from the inquiry objective, answers to the questions concerning the rejection of sale and the circumstance of being sufficiently advertised, were clarified as priority issues.

Thus, in response to the question “Have the shops refused to sell the product offered by your organization”, three companies out of six participating entities indicated that there were cases in “Jam”, “Wine” and “Canned Goods” product markets when consumer companies rejected their offer to put up their product for sale.

Consumer companies motivated the rejection of sale by insufficiency (according to the requirement of the inquired person– not less than 18m²) or absence of trading halls and showcases, expensive cost of offered product.

All six companies participating in the inquiry gave negative answer to the question concerning the rejection of products sale due to their insufficient advertising.

Using the favorable occasion, the Working Group has included other distribution system related question in Questionnaire, the answers to which are presented below.

To the 4th question of the Questionnaire, “Are there any quantity restrictions for supplied products?”, six economic entities have answered “No” for all six product markets.

To the question “Is the size of shop space taken into consideration when supplying products to the shops?”, six economic entities in “Jam”, “Dairy Products” and “Canned Goods” product markets have answered “Yes”, and 3 economic entities in “Meat Products”, “Wine” and “Cheese” product markets have answered “No”.

Four companies participating in the inquiry have stated about their unwillingness to cooperate with certain consumer companies because of their poor image, absence of business confidence, solvency, scrupulousness, and compromised reputation.

Responses to the question “What distribution system is used for the company products?” are as follows: one economic entity carries out the distribution in “Meat Products” market through its own shop network, by unified accounting, separated accounting, intermediary organization-shop - on the basis of contracts, as well as from its own warehouse. Two economic entities carry out distribution in “Jam” and “Canned Goods” product markets through their own shop network, by unified accounting, intermediary organization-forwarding agent - on the basis of contracts, intermediary organization-shop - on the basis contracts, as well as from their own warehouse. One economic entity conducts distribution in the “Wine” product market from its own warehouse. One economic entity conducts distribution in the “Cheese” product market both on the basis of contracts - in case of intermediary organization-shop, and from its own warehouse.

One economic entity distributes its product to the consumer company in “Meat Products” market on the basis of
contracts, six economic entities in all six product markets – on the basis of invoices.


One economic entity in “Cheese” product market has indicated that it carries out product supplies based on verbal agreements, and five economic entities in the remaining five product markets – on daily basis.

None of the six economic entities has product supply restrictions, and they take back unsold products upon expiration of their shelf-life.

Consumer companies are provided with refrigerators, exposition, storage or other means by four economic entities in “Meat Products”, “Jam”, “Dairy Products” and “Canned Goods” product markets; three of those companies demand not to place other goods next to their products, and one economic entity demands not to place other products in its device.

Five economic entities in “Meat Products”, “Jam”, “Wine”, “Canned Goods” and “Cheese” product markets have indicated that certain discounts are applied by them.

Five economic entities in “Meat Products”, “Jam”, “Dairy Products”, “Canned Goods” and “Cheese” product markets are familiar with their competitors’ distribution systems, the two of which in “Cheese” and “Dairy Products” product markets coordinate their distribution policies with each other.

To the question “Are there any consumer companies not willing to cooperate?”, five economic entities in Meat Products”, “Jam”, “Wine”, “Canned Goods” and “Cheese” product markets have answered “Yes”.

### 4.3. Conclusions

Thus, notwithstanding the fact that the number of respondents was much less than anticipated, several significant conclusions were drawn on the basis of inquiry results.

- It was revealed that no conditions are being imposed by manufacturing (or importing) companies, however under circumstances of absence of product quantity restrictions, take-back of expired products and application of discounts, there are cases when shops refuse to sell their products, motivating by absence of product exposition possibilities and sufficient space, expensive cost of products, or by other factors.

- The fact of products’ insufficient advertising is not essential for sellers, and the sale of products offered by manufactures (importers) has not been refused by the shops on that ground.

- Sometimes manufacturing (or importing) companies themselves do not wish to cooperate with certain shops due to inadequate quality of business conducted by them.

- Companies are mostly familiar with their competitors’ distribution system, and in certain instances even coordinate their distribution policies.

- In general, retail trade system in Yerevan has launched a process when a number of well-established “Elite” shop networks dictate certain conditions to product suppliers and perform “price forming” role for the rest of retail consumption system.
We consider appropriate to advert to the situation arisen in the course of inquiry, i.e. the atmosphere in which the inquiry was conducted.

From “technical” aspect, inquiry results may be considered to have practical importance for the Commission Staff, since with the development of electronic communication channels the Commission, when conducting its proceedings, will be able to receive necessary information from economic entities via electronic means.

However, inquiry results are not encouraging in terms of the climate created during the inquiry, unwillingness, indelicate behavior, and simply the business culture of economic entities.

Economic entities participating in the inquiry basically displayed indifference, suspicion and distrust. One of the reasons for non-serious attitude to the inquiry is the fact of receipt of numerous diverse questionnaires on companies’ email. Many companies have no trust in persons conducting inquiries, since in a number of cases the results expected by the latter did not justify themselves. The reason is that many similar inquiries are being organized, and in the companies’ view, such inquiries as well as conclusion drawn on the basis of their outcomes do not have significant impact on actual improvement of business environment, therefore they treat such inquires as undue waste of time and means.
5. Competition Issues in the Distribution Sector

5.1. Background

As it became clear from the study of normative legal acts and other public documents of the RA State Commission for Protection of Economic Competition, targeted surveys on certain product and service markets have been conducted by SCPEC in order to reveal competition protection related problems in the distribution sector. Since the end of 2006 SCPEC has investigated beer, cement, plaster, chicken egg, granulated sugar, butter, vegetable oil, meat products, petrol, diesel fuel and other product markets in product distribution sector, and telecommunications (internet) market in the service sector, as well as a specific case pertaining to the distribution system.

5.2. Basic Problems Existing in the Distribution System from Competition Protection Perspective

Outcomes of conducted studies have highlighted a series of problems associated with the distribution sector, especially from the perspective of enforcement of competition legislation provisions. In particular:

- Due to non-transparent distribution system intentionally created by major product manufacturers in certain product markets, products reach the end consumers at significantly increased prices;

- During the studies of product market structures the SCPEC staff encounters problems in qualification and identification of given markets’ product type boundaries, and especially retail and wholesale markets, due to underdevelopment or absence of distribution system in the studied markets;

- Problems arise also in identifying market participants during administrative proceeding or upon determination of economic entities having dominant position: who is the market player – manufacturing or importing company, or their representative.

5.3. Peculiarities of Domestic Companies’ Distribution Systems

The situation observed in domestic companies’ distribution systems is best described in documents published by SCPEC10:

Thus, the Commission has conducted studies in a number of markets where dominant position is present. Studies were focused on price policy (behavior) and distribution systems of dominant and major companies. Product markets of beer, chicken egg, meat products, petrol and diesel fuel, glass, cement, plaster, clamp, clamping wire, granulated sugar, butter and vegetable oil were studied.

10 See the Commission’s website: www.competition.am:
Main volume of “Beer” product market is provided by two major manufacturing companies, “Yerevan Beer” CJSC and “Kotayk” Brewery LLC, one of which operates in Yerevan, and the other in Kotayk Region located in the vicinity of the capital. It is worth mentioning that recently a serious contender for major market player has become “Shirak” Gyumri Beer-Malt Factory CJSC, located in the second biggest city of the country (at 122 kilometers from Yerevan). The market also trades in imported beer, which volumes have recently increased.

Studies of major manufacturers’ price structures revealed that prices are reasonable, and there is no concerted conduct in their price policy. However, such a policy as well as increase in beer prices sold to end consumers was observed in the distribution system.

Study of the policy implemented by the two dominant companies shows that no direct supplies to trading objects are conducted in their distribution system; the companies sell their product to wholesale intermediaries (the cooperation being based on contracts), who deliver the product to trading objects. “Yerevan Beer” CJSC has a firm shop in Yerevan suburbs, which is available only to consumers living in Yerevan, especially suburban residents.

Kotayk“ Brewery LLC carries out direct distribution of beer through approximately 62 individual intermediaries which, in their turn, sell the product to retail, wholesale outlets and other public trading objects. Intermediaries are separate economic entities. They are primarily individual entrepreneurs with own trucks. They receive bottled beer from the brewery, delivering corresponding number of empty bottles or paying the cost of bottles, and forward the product to trade outlets. This means that beer producers do not have their own distribution system. However, intermediary driver-forwarding agents are suspected of maintaining close links with the manufacturer. Study results have revealed that beer prices in trade outlets are significantly higher than the release price and the price of beer sold in firm stores, which indicates that increase of beer price sold to end consumer takes place in beer distribution and sale system, conditioned by peculiarities of the existing distribution system. It is likely that originated difference is shared among the manufacturer, intermediary and trade outlet, or is appropriated by one of them. This is indirectly evidenced by discrepancies and inconsistencies between the Commission’s monitoring results and data submitted by manufacturers and trade outlets. With the entry of aforementioned new market participant, it would be desirable to conduct repeated survey in this product market, since due to the stated fact the market picture and distribution system might undergo changes.

Three major economic entities operating in “Chicken eggs with shell” product market, “Lusakert Pedigree Poultry Plant” Ltd. (dominant), “Arzni Pedigree CPS” Ltd. and "Yerevan Poultry Plant" OJSC, through their concerted actions (conduct) artificially increased chicken egg prices in “Chicken eggs with shell” product market in December 2006.

11 The stated companies gained higher profit under other equal conditions, at the same time production volumes of goods exceeded their sales volumes, and the companies did not export their product, which means that the volume of sold goods was restricted by the companies. Simultaneously the companies proportionally increased their product release prices approximately by 20 AMD, in case when the state has established tax benefits for egg producers are (the latter are exempt from profit tax and value added tax). This means that the companies’ concerted actions in December 2006 led to restriction of competition among those companies in “Chicken eggs with shell” product market and enabled each of the agreement participants to influence on general conditions of goods turnover in the given market (turnover volumes, assortment, price, etc). Behavior of major participants of this market was qualified by the Commission as anticompetitive agreement, and a penalty was imposed on the companies at the rate of one percent of proceeds gained by each of the companies from sales of “chicken eggs with shell” product type in 2006.
Another important circumstance was observed in the given product market, especially from the perspective of distribution system issues. When comparing the information submitted by shops functioning in Yerevan with data furnished by three major companies, the sale price of 1 egg produced and sold by the latter and acquisition prices of shops vary by up to 24 AMD\(^{12}\), whereas those prices should be consistent because of absence of intermediary link, or their difference should be small. All three chicken egg producing companies sell their products via own distribution network, through driver-forwarding agents who are company employees and are responsible for product delivery to trade outlets. Only one of those companies has its own firm shop, but because of its geographical location it is economically almost unavailable. The described situation may be indicative of additional profit gained by one or two of the parties (producing companies and shops) from the difference between release and acquisition prices. All three major companies pursue similar policies in the distribution system.

One common feature for almost all studied spheres is that product sale or service rendering modes of companies (mainly local) operating in a specific sphere are identical. Both of beer producing major companies sell their products to wholesale intermediary companies which deliver the product to trade outlets, i.e. beer producers do not have own distribution network. As opposed to these companies, the three major producers of chicken eggs effect the sales of their production via own distribution network, through driver-forwarding agents who are company employees. In both cases, some companies have their firm shops where they sell the products at rather low prices. Both in the first and second cases, an increase in prices of products sold to end consumer is observed.

Price increase is recorded also in cement and plaster distribution system. There are two major producers in each of these product markets (“Araratcement” CJSC and “Mika Cement” CJSC in cement market, “Gaj” CJSC and “Gajegorts” CJSC in plaster market). There are almost no imports, but large volumes of cement are being exported. Monitoring results conducted by the Commission indicate that in different places of Yerevan plaster was sold at 35500 AMD per ton, whereas according to the data of two economic entities operating in the “Plaster” market, plaster release price ranged from 26300 to 27600 AMD per ton. This means that due to existence of intermediary link in this market, plaster sale prices have increased. As per monitoring results, cement was sold at 42000 AMD per ton in different places of Yerevan, but according to the data provided by two economic entities operating in the “Cement” market, during those months cement release (sale) price ranged from 28300 to 30688 AMD per ton, which means that due to existence of intermediary link in the market, cement sale prices have also increased.

Typically, cement and plaster producing companies do not pay much attention to the distribution system, since they mostly sell their product from the factory and are not concerned about what price is later formed in the market, by whom and how (at least, according to clarifications provided by the companies).

Problems exist in granulated sugar market as well. Here more than 90 percent of the market volume is imported by one company, “Salex Group” LLC, whereas domestic production volume is very small. The mentioned major importing company effects sugar sales both from its own warehouse, and in its own shops. According to data provided by the company, in “Granulated Sugar” product market the release price for 1 kg sugar has made up

\(^{12}\) According to the RA Central Bank exchange rate on November 29, 2007, 1 USD is equivalent to 304,54 AMD.
240 AMD in case of retail sale and 215 AMD in case of wholesale. According to the Commission’s monitoring results, sale price of granulated sugar in trade outlets has reached 270-370 per kg. Naturally, prices for sugar sold from warehouse (considered as wholesale) is lower than those for sugar sold in own shops (considered as retail sale). Nevertheless, sugar prices in shops are rather high, like in case of above described markets.

During studies SCPEC recorded significant price increases in “Butter” and “Vegetable Oil” markets during August-September 2007. Butter and vegetable oil are import products for Armenia. Notwithstanding the fact that prices of those product types had increased in foreign countries, the growth was much higher in Armenia. Import prices of actually imported products remained almost unchanged, or the growth was insignificant, but prices of products delivered to end consumers were several times higher. Prices had been increased both by importing companies, as well as by intermediaries and retail outlets (shops). According to SCPEC study results, the problem had become more complicated due to absence of adequate acquisition and sale documentation in the distribution system, which has made impossible to determine the extent to which the prices had increased in each link of distribution chain.

As per results of “Meat Products” market distribution system study, distribution network of "Geghard Msamterqi Kombinat" LLC, the dominating entity in the market (accounts for 40% of the market sales volume), is rather developed. The company is the producer of wide range of meat products. The Company owns so-called “shops on wheels”, where the whole assortment of the company production is sold; they are placed everywhere and are available to consumers in terms of their geographical locations. Besides, the company supplies its production to trade outlets on its own cars. No significant increase of the Company product prices, as in above described cases, has been revealed, but price differentiation is observed, when the same product is sold to different buyers at different prices. The Commission, based on its inspection authority recently delegated by the legislation13, carries out works directed at detection of reasons for differentiated prices and their substantiations. Other major companies operating in the “Meat Products” market are also producers. They also have own distribution networks and supply their production to trade outlets on their own cars. It is worth mentioning that meat product assortments of almost all producing companies can be found in trade outlets located in different geographical places.

Total volume of petrol and diesel fuel is imported to the Republic. Two major companies, “Flesh” LLC and “Kagh Petrol Service” I/C, who account for over 80% of petrol imports, by the Commission’s decision, have been recognized as dominant companies. “Flesh” LLC, which dominates in the “Petrol” market, is also a leader in the “Diesel Fuel” market. It provides about 40 percent of total imports. Mentioned companies have their own distribution networks – filling stations through which they conduct retail sale of fuel. Besides, they sell the product from own warehouses to other filling stations and major consumers. Studies indicate that the two major importing companies are increasing their retail outlets and taking control over them, which is risky from the aspect of horizontal agreements.

The distribution system in the service market, especially in telecommunications sector, varies from distribution systems of product markets. The ground for formation of the

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13 Article 19 of Chapter 6 of the Law: “Within the scope of its authority, the Commission shall be entitled to: .... c) Conduct research, inspection, study and (or) monitoring according to the procedure defined by the law in order to disclose the reliability of information presented by economic entities, the actual activity of economic entities, or to exercise control over fulfillment of the Commission decisions ...”
distribution system in this sphere is the exclusive right granted by the state to “ArmenTel JV” CJSC in November 3, 2004, for providing public fixed telephone, mobile communication and internet access services, as well as a number of other services deriving there from. It should be mentioned that the exclusive right with respect to mobile communication services terminated on July 1, 2005 with the entry of the second mobile communication operator. Further (after acquisition of shares by the Russian company) “ArmenTel JV” CJSC renounced the exclusive right to other services as well.

Distribution system in internet service sphere is a subject deserving interest.

As mentioned above, “ArmenTel JV” CJSC was granted the exclusive right to provide internet access services in the Republic. ArmenTel was providing internet access to 10 intermediary companies, i.e. major providers (suppliers). These companies, in their turn, were providing internet services (in three ways - through separate line, wireless – by radio modem, and Dial-Up) either to end-users, or to intermediary providers, i.e. second-level providers which were providing the service to consumers – end users. Previously “ArmenTel JV” CJSC was not providing internet services to end users, but now it provides Dial-Up internet service using its public telephone network.

Public Services Regulatory Commission of the Republic of Armenia introduced changes in the given sphere licensing system, as a result of which the companies that had received relevant licenses became market participants instead of the previous 10 major providers, and a part of former major and intermediary providers (who did not have relevant licenses) began to provide the mentioned services on the basis of contracts with licensed companies.

The study of proceedings conducted by SCPEC revealed that in autumn of 2007 SCPEC had considered a case pertaining to the distribution system in vehicle trade sphere.

“EMC” CJSC had applied to SCPEC stating that, acting as the official representative of “KIA Motors” company in Armenia, it was importing KIA brand cars into Armenia at ex factory price. Another company, “Valensia” LLC, had imported from United Arab Emirates KIA brand cars manufactured in 2006 at non-market price, which had passed customs clearance as 2007 production cars. “EMC” had expressed concern that vehicles imported by “Valensia” LLC could be sold as new vehicles at non-market prices, which would result in the decline of “KIA” brand rating, create impediment to the fulfillment of their assumed liabilities and distort the competition.

During investigation of this case SCPEC had faced certain problems: namely, if “EMC” CJSC is the official representative of “KIA Motors” company in Armenia, whether or not any other company has a right to import KIA brand cars into Armenia, whether or not any other company has a right to import KIA brand cars into Armenia, and if yes, on what conditions, at what prices and from which countries. This problem is touched upon also in section 2.3.of this Report.

5.4. Impact of the Distribution Sector on Enforcement of the Competition Law

For purposes of this Research, the impact of the distribution sector on enforcement of the Competition law has been viewed from the perspective of methodological issues.
5.4.1. Qualification of “Respective” Market: Wholesale and Retail Markets

As already stated above, SCPEC’s recent public documents point out that due to faultiness of distribution system in product markets of the Republic certain complications have arisen in the process of “respective” markets qualification, especially in terms of qualification and identification of wholesale and retail markets. For a number of reasons, quite often it has been impossible to identify wholesale and retail sales and, consequently, the respective markets. It should be mentioned that such problems have been basically encountered by the Commission during “structural” studies of those markets.

First of all, investigated markets are not adequately developed, distribution systems are either absent or just non-transparent\textsuperscript{14}, in the consequence of which reliability of indices characterizing sales volumes in studied markets constantly causes suspicion at the Commission.

Secondary legislation published by the Commission, which is currently in force, does not contain special provisions contributing to the regulation of the given issue.

The mentioned problem becomes more complicated due to vagueness of the RA legislation provisions pertaining to the matter in question. Provisions concerning wholesale and retail trade are contained only in the RA Civil Code and the RA Law “On Trade and Services.”\textsuperscript{15}

5.4.2. Problems Associated with Market Participants Qualification

The next problem arisen during the studies, as referred to above, is associated with identification of market participants. There are major producing companies, which, however, do not have actual influence on the market. The problem can be best illustrated by the example of “Table Salt” product market.

Over 95% of salt being sold in the market is the production of “Avan Salt Combinat” CJSC. However this company is merely engaged in organization of the production process. There is another entity with unclear organizational-legal status, which has assumed, or to whom “Avan Salt Combinat” CJSC has granted the status of the company’s exclusive representative. The producer is not engaged in the sales of its production. When consumers apply to the enterprise for acquiring a certain consignment of salt, they are directed by the enterprise to the exclusive representative. This situation gives rise to an obvious question, namely: who should be regarded as the market participant, “Avan Salt Combinat” CJSC or its exclusive representative? Actually, sales volumes, prices, selling conditions and other associated issues are formally determined by the exclusive representative, which implies that the real market player is the representative, and not the producer.

5.5. Circumstances Contributing to the Distribution System Faultiness

The description and consideration of below outlined circumstances that have contributed to the formation and enrooting of the foregoing situation in the product distribution sector is also considered important from the research perspective.

\textsuperscript{14} Detailed discussion of the issue is presented in section 1.1 of this Chapter.
\textsuperscript{15} Description of the legislation pertaining to the issue is brought in Chapter of the Report.
5.5.1. Tax Legislation and Policy. Other Legislative Problems

Applicable tax legislation creates certain impediments for the formation and development of the distribution sector. Below presented examples can confirm this statement.

Thus, for fuel taxation a uniform fixed charge is applied instead of other taxes. Pursuant to the applicable legislation, economic entities involved in fuel imports pay uniform fixed charge replacing the value added tax and excise tax, economic entities involved in imports and sales - uniform fixed charge replacing the profit tax (income tax), and in case of fuel retail trade uniform fixed charge replacing the value added tax and profit tax (income tax) is applied. Importing economic entities pay 112000 AMD per imported ton of petrol and 32500 AMD per imported ton of diesel fuel. In case of imported fuel wholesale trade, the uniform fixed payment replacing the profit tax (income tax) makes up 1% of proceeds gained from petrol sales in the given month, but not less than 2500 AMD for each ton, and in case of diesel fuel wholesale trade - 1% of proceeds gained from diesel fuel sales in the given month, but not less than 1500 AMD for each ton. The fixed charge applied in case of retail trade is calculated as the 30000-fold of the product of pipe quantities and the adjustment coefficient.

Besides, such persons whose previous year sales turnover from all types of entrepreneurial activities does not exceed 50 mln. AMD, pay simplified tax instead of the value added tax and profit tax. It makes up 3.5% (in case of shops) or 5% (in case of other activities) of the sales turnover.

Under such conditions it is difficult to get a clear idea about volumes and prices of products acquired and sold by economic entities, especially intermediary organizations, and often their activities remain almost unidentified.

Study results demonstrate that in most cases companies are not concerned with their product sale (distribution) network, treating it as an additional burden. Instead, they either carry out the sales from their own shops or warehouses, or deliver their products to intermediary organizations, who are charged simplified tax for their activities and whose operations, acquired, sold volumes and prices, remain unknown. Stated intermediary organizations are quite often the protectors of their producers’ interests, and there are suspicions that a part (increase) of sale price of products delivered to end consumer is shared with their help among themselves, producers and shops. The problem becomes more complicated due to almost absence of relevant documentary formulations in the distribution system.

Some conclusions relating to inadequate legislative regulation of the distribution sphere or imperfect legislative framework are already set out in section 2.3 of this Report.

5.6. Distribution System Improvement Directions

In the opinion of the Working Group, the realization of below presented proposals will promote the regulation of detected problems in the distribution system and its development:

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16 Major producers seem to concentrate their forces on the production (which is accepted in international practice), however, there is suspicion that the distribution system “independent of” producers is actually controlled by them. It is unlikely that producers stay indifferent toward a situation when in case of high demand retail traders (intermediaries) receive excess profit.
• Tax legislation improvement and reform – transition from simplified tax and fixed charge to accounting and payment of separated taxes (profit tax (income tax), value added tax and excise tax);

• Ensuring the distinctness and development of legislative framework. Currently no legal framework for the distribution sector regulation is practically in place, and in order to reach conclusion on its further formation and development more in-depth and professional assessment is needed. Definitions and provisions pertaining to the distribution sector, in our judgment, do not have any practical impact, they are of formal character and are not applied in economic relationship building, consequently do not play any regulatory role.

• Establishment and enrooting of business customs and practices, especially relevant to the distribution system, among business community and the public at large, one of the first steps of which is to inform the public about types, possibilities and advantages of distribution system, and provide commentaries concerning the distribution system benefits.

5.7. Distribution Sector and Consumer Rights

Consumers will largely benefit from legislative regulation of the distribution sector. In particular, as a result of regulation and development of exclusive distribution system, consumers of the Republic will be able:

• to acquire goods at lowest prices possible and to enhance their welfare (in the consequence of the distribution system underdevelopment various imported as well as locally manufactured goods reach consumers through several intermediary companies. Exclusive distributors, which basically receive the products directly from the parent factory, set certain premium to the product price and offer to consumers;

• to acquire quality goods: exclusive importers present brands recognized in the international market, thereby urging domestic companies to compete with imported products, to produce quality goods and achieve the replacement of imports;

• to avoid acquiring forged (contrafact)\textsuperscript{17} products: exclusive distribution system offers original goods to consumers;

• to use the civilized system of product post-sale service.

6. Informing Customers

6.1. Purpose

For purposes of the Project “Armenia: Competition Issues in the Distribution Sector”, as reflected in the “Terms of Reference”, as consumers are considered those entities which are engaged in retail sale of products, i.e. the shops (hereinafter “Consumers”).

\textsuperscript{17} In the sphere of imported products, the presentation of contrafact products of foodstuffs, clothes and household appliances has reached significant sizes in intrarepublican market.
Objectives of this section of the Project are as follows:

a) informing customers and raising their awareness regarding:
   - relevant provisions of the RA legislation pertaining to protection of competition, product distribution sector and retail trade;
   - Project results and findings of the “Final Report”;
   - actions and behavior of major economic entities (suppliers) in markets with dominant economic entities and group power structure, which can lead to infringement of consumer rights in the product distribution sector;

b) rendering advice to customers on directions and preferable procedures of “protective” measures granted by the RA legislation in aforementioned situations;

c) elucidation and presentation of “Informing Consumers” section at the conclusive stage of informing the public of the Project findings.

6.2. Outcomes

The Project Working Group, jointly with the NGO for Protection of Consumer Rights invited for implementation of the “Informing Consumers” object, has decided to develop, print and distribute among consumers a special booklet which will include necessary information for achievement of the above objectives. It has been considered appropriate to present the RA competition legislation provisions to consumers in a specially developed question-answer form, which will be more comprehensible for the Project target group consumers.

Due to efforts of the Working Group and NGO for Protection of Consumer Rights, at the completion of the Project it became possible:

- to increase the knowledge of the beneficiary, i.e. consumers, on the distribution sector and the mechanisms of implementing measures directed at protection of their rights;
- to raise the level of the business community’s awareness of competition issues in the distribution sector;
- to contribute to the competition advocacy process;
- to promote interaction with non-government organizations involved in the protection of consumer rights.
7. Discussion of the Project Findings

7.1. Outcomes

Due to communication of the Research results and Project findings, the Beneficiary:

• has raised the Commission Staff’s stock of knowledge on competition issues in the distribution sector and improved the quality of case investigations, as well as has developed capabilities necessary for conducting research;

• is enriched with collective experience of civilized and developed countries in terms of preferable ways of shifting from transitional economy to new economic models in the distribution sector;

• has promoted competition advocacy process;

• through acquisition and exchange of knowledge has extended its cooperation with foreign and international structures in implementation of competition policy in product distribution sector;

• has expanded the collaboration with self-governing and state authorities;

• has informed the business community and consumers of the Republic of their rights relative to the issue under consideration, as well as of preferable ways and mechanisms for their realization in practice.

As a result of the foregoing, the enforcement process of economic competition protection legislation will be improved and developed, which will provide consumers with possibility to acquire quality goods at equivalent prices.

7.2. General Conclusions

Summarizing the information, conclusions and assessments set forth in all five Chapters of this Report we can conclude that the product distribution sector in Armenia is imperfect both in terms of its legislative regulation and as an operating system. It influences the Commission’s proceedings, restricting its possibilities in terms of conducting well-reasoned and valid cases, detecting the actual players in possible violations, as well as drafting proposals on application of sanctions.

7.3. Identifying the Needs

Within the framework of this Research it was apparently impossible to offer options for professional solution of all detected problems without assessment of their impact, which is beyond the scope of the Project objectives and is unrealizable with the human and financial resources envisaged the Project. The Project objective related to such problems can be considered the identification and outlining thereof. However, the need to solve those problems should not be disregarded either, since the practical impact of the sphere under consideration
on the RA economic life and, particularly, the successful enforcement of the competition law, is obvious. For this reason, it is appropriate to present a systematized description of identified problems, and a practical assessment of applicability of efficient models for the Armenian economy.

As it became clear from the Report, revealed problems are multiple, and they identify the future needs which are presented in a summarized form below:

a) Study the adaptation to Armenia reality of preferable models of European countries’ national legislation pertaining to the distribution sector;

b) Based on study results, and jointly with other bodies responsible for the sphere regulation, assess the need for development of preferable model of Armenian legislation regulating the distribution sector, and identify the priorities and proportions;

c) Assess and compare the possible impact of the distribution sector regulatory legislation with objectives of the competition legislation, in particular receive reasoned answers to the following questions:

- Is there a need to introduce a system of distribution sector participants’ state registration?

- Will the market concentration levels increase if the state starts to protect exclusive importers’ rights and grant them legislative advantages over other competitor entities?

- Do relations between the exclusive distributor and the importer of the same good through other schemes need to be regulated? Can the person importing the same good from another place be considered as honest importer or not?. This is not a rhetorical question for companies engaged in medicines import and has quite practical importance.

- Does unfair competition take place when the exclusive distributor invests moneys for product advertising and implementation of other promotional measures, and another importer also sells the given product under the exclusive distributor’s “umbrella”, etc.

d) promote the reform of applicable tax legislation in the Republic;

e) through consistent advocacy foster the establishment in the national business practice of norms of customary law relating to the subject under consideration, as well as business customs having become traditional in civilized economies;

f) pay attention to the circumstance that shops selling a particular product can apply a policy of individual or agreed rejection of suppliers’ goods, and take this fact into consideration when designing its proceedings.
Appendix

Agent Agreement

THIS Contract is made on this <__> day of <__>200<_> BETWEEN:

1. <__> a Company incorporated in <the Netherlands> under number <__> having its registered office at <__> hereinafter referred to as the <Principal> and

2. <__> a Company incorporated in <Russian Federation> under number <__> having its registered office at <__> hereinafter referred to as the <Agent>.

The Principal grants the Agent an exclusive right to sell, on the territory <Russian Federation>, hereinafter called "The agreed territory" the following equipment and machinery bought from the Principal, hereinafter called "the equipment": <Description>

Any sale by the Agent of the equipment on any territory other than the agreed territory may take place only with the written consent of the Principal.

The Principal will have the right to sell the equipment on the agreed territory directly to third parties, if:

i. The transaction is concluded on the basis of an offer made by the Principal prior to the conclusion of this Contract;

ii. The Agent has refused to buy the equipment offered by the Principal;

iii. The equipment is part of a barter transaction;

iv. The equipment is a component part of equipment supplied by the Principal to another customer;

v. The equipment is supplied to governmental bodies or organizations situated on the agreed territory.

Such sales will not constitute an infringement of the terms and conditions of this Contract, and the Agent will have no right to commission.

Except for the cases mentioned above, when the Princi-
непосредственно третьим лицам на договорной территории, кроме вышеуказанных случаев. Агент имеет право на получение комиссионного вознаграждения, размер которого будет устанавливаться в каждом случае по особой договоренности между Принципалом и Агентом в зависимости от объема продажи.

5. Во исполнение настоящего Контракта стороны будут заключать между собой отдельные контракты поставки оборудования и запасных частей.

6. Агент будет продавать купленное у Принципала оборудование третьим лицам от своего имени, однако на Оборудовании должны сохраняться заводские марки и знаки.

7. Расчетные цены, по которым Агент будет покупать оборудование у Принципала, будут устанавливаться в заключаемых между сторонами контрактах, упомянутых в статье II настоящего Контракта.

8. Разница между ценой, по которой Агент покупает оборудование у Принципала, и ценой, по которой он продает это оборудование, будет, составлять комиссию Агента и будет покрывать все накладные расходы, связанные с рекламой и продажей оборудования.

9. При этом Агент обязуется продавать купленное у Принципала оборудование по таким ценам, чтобы продажи этого оборудования не страдали от завышения цен.

10. В течение периода действия настоящего Контракта и заключенных между сторонами контрактов Агент обязуется:

i. Добросовестно охранять интересы Принципала, постоянно увеличивая закупки оборудования.

ii. Ежеквартально, не позднее 15 числа следующего месяца, представлять Принципалу отчеты о своей деятельности по реализации проданного в соответствии с условиями настоящего Контракта оборудования с приложением копий своих счетов, выставленных покупателям, и в тот же срок высылать Принципалу информацию о положении на рынке и деятельности конкурентов Принципала, в частности о ценах и условиях, на которых они продают аналогичное оборудование.

iii. Не представлять без согласия Принципала на договорной территории ни прямо, ни косвенно ни одну фирму, являющуюся конкурентом Принципала.

iv. Систематически организовывать за свой счет редуцирование комиссионного вознаграждения, с целью его увеличения.

pal sells the equipment of the agreed territory directly to third parties the agent will have the right to receive commission the amount of which will be fixed in each case by special arrangements between the Principal and the Agent depending on the volume of the sale.

In pursuance of this Contract the parties will conclude contracts between themselves for the delivery of the equipment and spare parts.

The equipment bought from the Principal will be sold by the Agent to third parties in his own name, but factory marks and signs on the equipment must be left intact.

Prices to be paid by Agent for the equipment bought from the principal will be fixed in contracts concluded between the parties under Article II of this Contract.

The difference between the price, at which the Agent buys the equipment from the Principal, and the price, at which he sells the equipment, will constitute the Agent's commission and will cover all overhead expenses connected with advertising and selling the equipment.

The Agent undertakes to sell the equipment, bought from the Principal, at prices not detrimental to the sales of the equipment due to the prices being too high.

Within the period of operation of this Contract and contracts concluded between the parties the Agent undertakes:

To guard, bona fide, the interests of the Principal, constantly increasing the purchases of the equipment.

Each quarter, not later than the 15th day of the following month, to submit to the Principal reports on his activities in the marketing of the equipment sold under this Contract, attaching copies of the bills drawn on his purchasers, and, within the same period of time, to send the Principal information on market conditions and on the activities of the Principal's competitors, in particular on prices, terms and conditions in their sales of similar equipment.

Not to represent, either directly of indirectly, on the agreed territory, without the Principal's consent, any firm competing with the Principal.

To systematically organize, at his own expense, the
рекламу оборудования в такой форме и объеме, чтобы обеспечить успешную продажу этого оборудования на договорной территории, используя для этого прессу, радио, кино, каталоги и другие средства рекламы на основании представляемого Принципалом печеного материала; после истечения срока настоящего Контракта вернуть Принципалу рекламные образцы оборудования и материалы, если таковые будут находиться у Агента, или поступить с ними по его указанию.

v. Обеспечить консультации, техническое обслуживание и наблюдение за правильной эксплуатацией проданного оборудования, для чего организовывать за свой счет необходимые мастерские и станции обслуживания.

vi. Для обеспечения нормальной эксплуатации оборудования закупать у Принципала необходимое количество запасных частей, содержать за свой счет склады и магазины, а также организовывать бесперебойное снабжение запасными частями покупателей оборудования.

vii. В случаях участия Принципала в международных ярмарках и выставках на договорной территории оказывать Принципалу всемерную помощь в сбыте оборудования.

viii. Сообщать Принципалу о государственных торгах, объявленных на договорной территории, принимать в них участие и сообщать об их результатах.

11. В случае необходимости по Просьбе Агента Принципал будет оказывать покупателям на основании отдельного контракта техническую консультацию по установке проданного Агентом оборудования и его эксплуатации путем посылки своих специалистов.

12. Принципал имеет право досрочно, расторгнуть настоящий Контракт без ущерба своим правам и без права Агента на предъявление претензий на возмещение каких-либо убытков в случаях, если:

i. Агент, несмотря на предупреждение Принципала, не выполнит какое-либо важное условие настоящего Контракта, в особенности условия платежа;

ii. По истечении <> месяцев со дня подписания Контракта стоимость проданного Агентом оборудования составит сумму менее <>

iii. Имущественное положение Агента существенно ухудшится или будет назначен конкурс.

advertising of the equipment in such form and to such an extent that successful marketing of the equipment on the agreed territory should be ensured, using for this purpose the press, radio, cinema, catalogues and other means of advertising on the basis of printed material provided by the Principal; to return to the Principal, after the expiration of this Contract advertisement samples and materials, should these be in the possession of the Agent, or to deal with team according to the Principal's instructions.

To provide consultation and technical service for an have supervision of proper exploitation of the equipment sold, organizing for this purpose, at his own expense, necessary workshops and service stations.

With the view of ensuring proper exploitation of the equipment to buy from the Principal the necessary quantity of spare parts, to keep warehouses and shops at his own expense, as well as to organize uninterrupted supplies of spare parts to purchasers of the equipment.

In case the Principal participates in international fairs and exhibitions on the agreed territory, to render the Principal every assistance in the marketing of the equipment.

To inform the Principal governmental purchases announced on the agreed territory, to participate in them, and to advise the Principal of their results.

Should need arise, the Principal, at the Agent's request and under a separate contract, purchasers in the installation of the equipment sold by the Agent and in its exploitation by means of deputing the Principal's specialists.

The Principal has the right to cancel this Contract before the expiration of the period of its duration without prejudice to his rights and without the Agent's right to claim any compensation, if:

The Agent despite the Principal's notice, does not comply with an important condition of this Contract, especially as payment;

On the expiration of <> months form the day of signing this Contract the value of the equipment sold by the Agent will be less than <>

The financial position of the Agent considerably deteriorates or procedure in bankruptcy is initiated.
13. Действия Агента противоречат интересам Принципала на договорной территории.

The Agent's acts contradict the Principal's interests on the agreed territory.

14. Принципал и Агент примут все меры к разрешению всех споров и разногласий, могущих возникнуть из настоящего Контракта или из отдельных контрактов дружественным, мирным путем.

The Principal and the Agent will take all measures to settle amicably any disputes which may arise from this Contract or from contracts made there under.

В случае, если стороны не договорятся мирным порядком, все споры и разногласия передаются с исключением подсудности общим судам на разрешение <>

In case of the parties being unable to arrive at an amicable settlement, all disputes without application to legal courts are to be submitted for the settlement by <>

Решение Арбитража будет являться окончательным и обязательным для обеих сторон.

The Arbitration Award will be final and binding for both parties.

15. Все устные переговоры и переписка между сторонами, имевшие место до подписания настоящего Контракта, теряют силу со дня его подписания.

All negotiations and correspondence between the parties that have taken place prior to the signing of this Contract shall be considered null and void as from the day of its signing.

16. Все изменения и/или дополнения к настоящему Контракту будут являться действительными, если они совершены в письменной форме и подписаны надлежаще уполномоченными на то лицами.

Any amendments and/or supplements to this Contract shall be valid only if they are made in writing and signed by duly authorised representatives of both parties.

17. Настоящее Контракт вступает в силу со дня его подписания обеими сторонами и будет действительно в течение <>

This Contract is operative as from the day of its signing by both parties and will be valid for <>

18. Если ни одна из сторон не сделает за один месяц до истечения указанного срока письменного заявления о своем желании расторгнуть Контракт или изменить его условия, Контракт автоматически продлевается на <> месяцев.

If, one month before the expiration of the above period of time, neither party notifies in writing of its desire to terminate this Contract or to alter its terms and conditions, the Contract is automatically extended for <> months.

19. Независимо от истечения срока настоящего Контракта или его аннулирования стороны обязаны выполнить свои обязательства по заключенным до этого контрактам.

Irrespective of the expiration of this Contract or its cancellation the parties are to fulfill their obligations under contracts made prior thereto.

От имени и по поручению <Агента>
Подпись: <___>
Имя: <___>
Должность (титул): <___>
Дата: <___>

Signed for and on behalf of <Agent>
Signed: <___>
Name: <___>
Title: <___>
Date: <___>.
Appendix

Subdistributor contract

XXX, именуемое в дальнейшем Компания, в лице xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, действующего на основании Устава, и ZZZ, именуемое в дальнейшем Субдистрибьютор, в лице Генерального директора xxxxxxxxxxxxxxxxx, действующего на основании Устава, с другой стороны, совместно именуемые Стороны, а по отдельности Сторона

ПРИНИМАЯ ВО ВНИМАНИЕ, ЧТО Компания обладает исключительными правами на сбыт продукции, описанной в Приложении 1 (далее "Продукция") и желает организовать сбыт Продукции на Территории (как определено в Приложении 3), и

ПРИНИМАЯ ВО ВНИМАНИЕ, ЧТО Субдистрибьютор желает получить не эксклюзивное право на закупку у Компании и перепродажу Продукции на Территории и имеет для организации такового сбыта прочную финансовую основу;

заключили настоящий Договор о нижеследующем:

2. НАЗНАЧЕНИЕ СУБДИСТРИБЬЮТОРА

(a) Настоящим Компания назначает Субдистрибьютора не эксклюзивным Субдистрибьютором по продаже Продукции на Территории, а Субдистрибьютор принимает данное назначение.

(b) Компания вправе назначить иных Субдистрибьюторов на Территории для сбыта Продукции, кроме Субдистрибьютора.

(c) Компания вправе продавать Продукцию другим лицам кроме Субдистрибьютора для перепродажи в пределах Территории. В отношениях с этими лицами Компания обязана соблюдать ценовую политику, согласованную с и утвержденную в Приложении № 8 "Ценовая политика Компании на Территории".

(d) Если к Компании обращаются любые физические или юридические лица по поводу закупки Продукции на Территории (отличные от Субдистрибьютора или лиц, назначенных Субдистрибьютором), Компания может перенаправить вышеуказанные физические или юридические лица к Субдистрибьютору для контакта с ним.

(e) Субдистрибьютор обязуется ..... (далее опущено)

3. ПРЕДМЕТ ДОГОВОРА

(a) В течение всего срока действия настоящего Договора Компания на основании заявок Субдистрибьютора и в соответствии с Договорами поставки (как определено в Пункте 14(a)) обязуется поставлять и передавать в собственность Субдистрибьютора Продукцию, а Субдистрибьютор обязуется принимать Продукцию и уплачивать за нее цену, в порядке, предусмотренном настоящим Договором и соответствующими Договорами поставки.

(b) Ассортимент и количество поставляемой Продукции, стоимость каждой отдельной партии Продукции, сроки поставки, а также основные условия поставки и грузополучатель (если
Продукция доставляется иному лицу по указанию Субдистрибьютора) фиксируются в соответствующем Договоре поставки.

(c) Купля-продажа каждой отдельной партии Продукции...... (далее опущено)

6. ГАРАНТИРОВАННЫЙ МИНИМУМ ПРОДАЖ

(a) Месячный Обязательный план закупок и, соответственно его фактическое исполнение, не может быть ниже согласованного Сторонами Гарантированного минимума продаж, зафиксированного в Приложении 6 ("Гарантированный минимум продаж ").

(b) Если в течение трех месяцев либо подряд, либо в течение календарного года вышеупомянутый Гарантированный Минимум Продаж не выполнен, и если Субдистрибьютор не докажет, что он не несет за это ответственность, Компания вправе по своему выбору при условии письменного уведомления Субдистрибьютора за один месяц:

i. уменьшить размеры Территории; или

ii. .... (далее опущено)

7. СКЛАДСКИЕ ЗАПАСЫ

(a) С целью максимального сбыта Продукции на Территории Субдистрибьютор обязуется поддерживать полный ассортимент существующей и будущей Продукции Компании, как это определено в Приложении №1 к настоящему Договору.

(b) Для обеспечения оптимального соотношения складских запасов и отгрузок Субдистрибьютор должен использовать систему прогнозирования собственных объемов продаж с тем, чтобы поддерживать в наличии складской запас Продукции Компании в объеме от 5 до 7 дней продаж, исходя из объемов складских запасов, плана продаж и маркетинговой активности рынка.

(c) В случае, если складской запас Продукции Компании на складе Субдистрибьютора снижается до уровня менее 5 дней продаж (исходя из динамики продаж за предыдущие два месяца) Компания может увеличить отпускную цену, в соответствии с п.12 настоящего договора.

8. РЕКЛАМА

(a) Компания осуществляет рекламу и продвижение Продукции на Территории, таким образом, как она считает это уместным в целях стимулирования интереса потребителей и покупки ими продукции.

(b) Компания самостоятельно определяет, какие Рекламные материалы, в каком количестве использовать, а равно каналы и способы распространения рекламы.

(c) ....(далее опущено)

9. ТРЕННИНГИ ПЕРСОНАЛА СУБДИСТРИБЬЮТОРА

(a) Компания в целях повышения эффективности хозяйственной деятельности Субдистрибьютора и увеличения продаж Продукции может проводить тренинг-мероприятия для персонала
Субдистрибьютора. Субдистрибьютор обязуется обеспечить посещение своим персоналом таких тренинг-мероприятий за свой счет.

(b) В случае надлежащего выполнения Субдистрибьютором своих обязанностей по Пункту 9(а) Компания может предоставить Субдистрибьютору привилегии, описанные в Пункте 8 (к) настоящего Договора

10. ТОРГОВОЕ ОБОРУДОВАНИЕ СУБДИСТРИБЬЮТОРА

В целях исполнения настоящего Договора Субдистрибьютор за собственный счет приобретает и содержит необходимые складские помещения, торговое оборудование, транспортные средства для доставки Продукции, средства обслуживания и осуществляет их комплектацию на Территории, включая набор персонала с необходимым уровнем квалификации.

14. ПРОЦЕДУРА ЗАКАЗА

(a) Поставка Продукции осуществляется Компанией в соответствие с Договорами поставки, заключаемыми Сторонами на основании заявок Субдистрибьютора. Форма Договора поставки содержится в Приложении № 5. Заказ Продукции осуществляется партиями кратными не менее чем одному полностью загруженому грузовику/вагону.

(b) Компания обязана принимать и обрабатывать заявки Субдистрибьютора по ассортименту и срокам отгрузок в течение двух рабочих дней с даты их фактического поступления.

(c) В день отгрузки Компания обязана сообщить (по телефону или в письменном виде по факсу/электронной почте) Субдистрибьютору, а в случае указания о доставке иному грузополучателю - также этому грузополучателю - об отгрузке Продукции в его адрес.

21. ОБСТОЯТЕЛЬСТВА НЕПРЕОДОЛИМОЙ СИЛЫ

(a) Ни одна из Сторон не будет нести ответственности за полное или частичное невыполнение своих обязательств, если невыполнение будет являться следствием таких обстоятельств, как наводнение, пожар, землетрясение и другие явления природы, а также война, военные действия, блокада, акты или действия государственных органов или других обстоятельств непреодолимой силы, находящихся вне контроля Сторон, возникшие после заключения Договора. При этом срок исполнения обязательств по настоящему Договору отодвигается соразмерно времени действия таких обстоятельств и их последствий.

(b) Сторона, для которой создалась невозможность исполнения обязательств по данному Договору, немедленно извещает другую Сторону о неблагоприятных обстоятельствах вне ее контроля и предполагаемых сроках их действия. Сертификаты, выпускаемые Торгово-Промышленной Палатой Российской Федерации, являются достаточным доказательством наличия подобных обстоятельств и их продолжительности.

22. АРБИТРАЖ

Все споры и разногласия, которые могут возникнуть по настоящему Договору или в связи с ним, Стороны будут стремиться разрешить дружеским путем посредством прямых переговоров. При
невозможности разрешения споров и разногласий путем переговоров, они передаются на рассмотрение в арбитражный суд XXXXXXXXXXXX.

23. ЗАКЛЮЧИТЕЛЬНЫЕ ПОЛОЖЕНИЯ

(a) Настоящий Договор не может быть изменен, модифицирован, исправлен или дополнен, иначе как в письменной форме и за подписью полномочных представителей обеих Сторон.

(b) Все извещения, уведомления, счета, рекламации которые требуется вручить в соответствии с данным Договором, должны быть составлены в письменной форме и переданы курьером или посланы заказным письмом с уведомлением о вручении или телефаксом (с подтверждением о получении).

(c) Каждая из Сторон подтверждает и соглашается, что другая Сторона не предоставила каких-либо заявлений, гарантий или соглашений любого рода, кроме тех, которые сформулированы в явном виде в тексте настоящего Договора.

(d) Настоящий Договор отражает полное взаимопонимание и согласие Сторон относительно его предмета и отменяет любые предшествующие договоренности и соглашения, заключенные в устной или письменной форме.

(e) Заголовки статей вставлены исключительно для удобства и не являются частью настоящего Договора.

(f) Все Приложения к настоящему Договору, а также подписанные Сторонами Заказы на поставку являются частью настоящего Договора. (g) Все, что не урегулировано настоящим Договором регламентируется действующим на дату заключения настоящего Договора гражданским законодательством РФ.

(h) Договор и приложения к нему подписанные и переданные посредством факсимильной связи имеют юридическую силу.

(i) Настоящий Договор составлен на русском языке в двух экземплярах, имеющих одинаковую юридическую силу, по одному экземпляру для каждой из сторон.
Appendix

Distributor Agreement

This agreement is made this XXth day of XX, 200X between: XXX having its office at <> ("XXX") and ZZZ having its office at <> "DISTRIBUTOR")

WHEREAS:

In previous discussions between the parties, each party indicated that it desired to enter into an Agreement by which DISTRIBUTOR would render certain services with respect to the distribution within the European Union and certain other countries of XXX's product, <> (hereinafter referred to as the "Product"), including without limitation, importation of the Product, storage and inventory management of the Product, label and package insert printing and label placement for the Product, packaging into individual boxes, picking, packing and shipping of the Product to end users and preparation of XXX invoices for the shipments. Accordingly, there follows the mutual understanding between XXX and DISTRIBUTOR as to the terms and conditions applicable to this Agreement.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. Import of the Product into the European Union

1.1 The Product is manufactured in the Russian Federation. XXX warrants that the Product has the necessary regulatory and legal approvals for the export thereof out of the RF with import, sale, and distribution to countries in the European Union and any other country in which the Product shall be sold. XXX has the responsibility to maintain these approvals. If for whatever reason, DISTRIBUTOR is required to receive regulatory and legal approvals for the Product for the activities covered in this Agreement, XXX will provide DISTRIBUTOR with the information necessary to secure such approvals.

1.2 The port of arrival of the Product is <--------------------->.

1.3 XXX shall arrange for transport of the Product (contained in glass vials) to the port of arrival in accordance with the relevant instructions given by DISTRIBUTOR with respect to the addressing of the shipment, proper labeling in accordance with international regulations, and the contents of the necessary documentation. Cost for transport and insurance fees covering damage and loss of the Product to the port of arrival shall be for the account of XXX.

1.4 Product delivered to DISTRIBUTOR by XXX hereunder for storage, labeling, packaging and distribution will remain at all times under and subject to the ownership, direction and control of XXX until sold to the end users. Title to the Product distributed by DISTRIBUTOR will pass directly from XXX to the end users who purchase the Product from XXX. XXX shall bear the risk of loss of the Product not yet delivered by DISTRIBUTOR to a customer, whether by fire, theft, or other casualty; provided, however, that DISTRIBUTOR shall promptly reimburse XXX for each vial of the Product which is lost or damaged as a result of DISTRIBUTOR's negligence.

1.5 DISTRIBUTOR shall take all reasonable steps to clear the Product through Customs. All clearance fees and levied import duties and taxes, if charged to DISTRIBUTOR as importer of the Product, are for the account of XXX and will be reimbursed by XXX upon DISTRIBUTOR's presentation of the corresponding invoices and/or charge notes.

2. Quality Control of the Product

2.1 XXX warrants to DISTRIBUTOR that each lot of Product imported into the European Union (and into those countries outside of the European Union to which XXX requests DISTRIBUTOR to deliver the Product) shall satisfy, at the time of importation, all quality criteria set forth in its Summary of Product Characteristics. Promptly following arrival of each shipment of the Product, DISTRIBUTOR shall conduct
all necessary quality control inspections, according to procedures and specifications agreed with XXX, including without limitation, labeling, documentation, visual inspection of each lot of the Product for external container or other damage or loss, and inspection of the temperature recorder data accompanying such shipment to determine that the Product was not exposed to temperatures outside of the acceptable range defined by XXX during the transport thereof to the port of arrival. DISTRIBUTOR shall report any such damage or loss to XXX promptly. XXX will promptly notify DISTRIBUTOR of any change made in quality criteria and in quality control procedures and specifications which is relevant to the activities and services provided by DISTRIBUTOR pursuant to this Agreement.

2.2 XXX warrants to DISTRIBUTOR that the packing and storage conditions required for the Product, either in transit or during warehouse storage, are such that the Product will continue to satisfy all quality specifications as defined in the Summary of Product Characteristics during the entire period of storage until a predetermined expiration date, provided DISTRIBUTOR stores and ships the Product in accordance with approved procedures.

2.3 To enable DISTRIBUTOR to perform its packaging and distribution function for the Product, XXX shall provide DISTRIBUTOR with those details relating to the Product as are required by the European Union or applicable national regulations. If required by competent authorities, XXX shall authorize qualified DISTRIBUTOR representatives (Manufacturing and/or Quality Control) (collectively, "DISTRIBUTOR Representatives") to inspect the Product facility and its operational procedures. This inspection does not imply that XXX has any obligation to reveal its trade secrets with respect to the essential steps of manufacturing the Product. XXX shall provide DISTRIBUTOR with all information relevant to the release of each lot of Product, including (but not limited to) the relevant Certificate of Analysis for the Product provided by a European Union-qualified laboratory. DISTRIBUTOR grants the right to XXX to inspect DISTRIBUTOR's labeling, packaging, storage and shipping facilities.

2.4 XXX shall perform or shall have performed on all lots of Product imported, all relevant tests required by European Union regulations, or by the applicable national law of countries outside the European Union. Such tests as XXX is unable to perform itself will be executed by a qualified third party laboratory within the European Union. No lot of Product shall be shipped by XXX to DISTRIBUTOR until the third party laboratory shall have certified that the sample batch therefrom shall have satisfied all required tests.

2.5 XXX will indicate clearly in all its correspondence, documents and product labels the item number, product name, lot number(s), manufacturing date(s) and expiry date(s) of each shipment of Product.

2.6 Any information XXX possesses or receives which casts doubt on the usability of the Product, or a specific lot of the Product, shall be promptly shared with an authorized representative of DISTRIBUTOR and in consultation between XXX and DISTRIBUTOR all the necessary decisions and steps will be made and taken to control further distribution of the Product or specific lot of the Product in question. DISTRIBUTOR will provide XXX with all necessary information and support to perform a recall, if required. The final decision as to whether a recall is required, and notification to end users, is the responsibility of XXX. All costs associated with such actions shall be for the account of XXX, unless such defect shall be due to the fault or negligence of DISTRIBUTOR in performing its obligations under this Agreement, in which event such costs shall be borne by DISTRIBUTOR. The recalled and returned Product shall be kept available to XXX to be treated in the way XXX deems fit. XXX cannot direct return of whatever number of vials of the recalled material DISTRIBUTOR is required by applicable law to retain.

2.7 DISTRIBUTOR Representatives will release the finished lots according to current DISTRIBUTOR procedures and based on (but not limited to) the relevant Certificate of Analysis provided by the authorized European Union-qualified laboratory. If a deviation which might affect the quality of the Product occurs, DISTRIBUTOR will consult with XXX for finished lot approval.

2.8 XXX shall provide DISTRIBUTOR with all necessary information about the Product, including but not limited to, safety data, in order to enable the appropriate and safe handling of the Product by DISTRIBUTOR.
3. Storage of the Product and Inventory Management

3.1 Storage and shipping conditions for the Product have been defined by XXX. DISTRIBUTOR has determined that these conditions can be met. XXX shall have the right to inspect DISTRIBUTOR's facilities to verify DISTRIBUTOR's ability to comply therewith.

3.2 The Product shall be stored by DISTRIBUTOR in a chill room between 2(degree) and 8(degree) C according to the relevant conditions as specified by XXX. DISTRIBUTOR shall at all times reserve sufficient capacity to satisfy XXX's reasonable needs. DISTRIBUTOR shall maintain temperature recorder charts and similar materials, reviewed and approved by DISTRIBUTOR, to evidence actual storage conditions.

3.3 DISTRIBUTOR shall exercise all reasonable care as is usual in the industry for similar categories of product during the handling of the Product before and while in storage and during order picking, packing and shipping actions, and warrants that its personnel is able to exercise such reasonable care by experience and proper training. DISTRIBUTOR shall maintain adequate insurance coverage acceptable to XXX for the storage of the Product under the terms of this Agreement.

3.4 DISTRIBUTOR will maintain records showing the quantity of each lot of Product received, labeled, packaged, shipped to users, and still available for distribution. DISTRIBUTOR will inform XXX weekly concerning the quantity of the Product on hand. When an agreed minimum level of stock is reached, DISTRIBUTOR will inform XXX accordingly, and XXX will take all necessary action to replenish the stock to a level deemed appropriate by XXX.

3.5 DISTRIBUTOR will distribute Product with the earliest expiry date first, unless otherwise directed by XXX. No delivery to end users will take place after the expiration date of any lot of Product or after any date prior to that expiration date determined by XXX and communicated to DISTRIBUTOR in writing.

3.6 XXX will be responsible for directing end users regarding return of the Product. Product for whatever reason returned will not be returned to saleable inventory unless agreed to by XXX and promptly communicated to DISTRIBUTOR. Disposition of returned Product that is not returned to inventory shall be determined by XXX and communicated to DISTRIBUTOR within 30 days. XXX will reimburse DISTRIBUTOR for the costs associated with this disposition.

3.7 DISTRIBUTOR will timely and regularly advise XXX of the number of vials of the Product and their respective lot numbers of any expired Product and shall keep such Product at XXX's disposal until one month after its expiration date. After that date, unless XXX advises DISTRIBUTOR that it expects to be able to extend the expiration date, XXX shall determine the manner of disposition of such expired Product, which shall be at the expense of XXX.

3.8 DISTRIBUTOR will hold the necessary resources available for inspections by the competent authorities of its premises and procedures relating to the Product. DISTRIBUTOR will assist in a manner consistent with practices in the industry to obtain satisfactory results of such inspections.

4. Package Development and Packaging of the Product

4.1 DISTRIBUTOR will manage the development of packaging materials (including labels and package leaflets) with XXX. XXX will provide DISTRIBUTOR with an approved packaging file for each packaging presentation that DISTRIBUTOR will be responsible for managing. DISTRIBUTOR will develop and coordinate the creation of packaging materials according to these approved files. DISTRIBUTOR bears the responsibility for any inconsistencies in packaging materials vis-a-vis the approved packaging files. DISTRIBUTOR will provide specimens of packaging materials to XXX promptly upon preparation.

4.2 DISTRIBUTOR shall maintain a sufficient inventory of labelling/packaging materials.

4.3 XXX will communicate to DISTRIBUTOR changes to the approved packaging in a timely manner and provide an update to the approved packaging file for each packaging presentation which is changed. XXX and DISTRIBUTOR will coordinate the introduction of the changed packaging materials into the market. XXX will reimburse DISTRIBUTOR for the costs associated with the development of changed packaging materials and for the losses associated with the destruction of outdated packaging materials.
4.4 DISTRIBUTOR will label the vials and assemble the final Product package according the approved Product packaging file and in accordance with internal DISTRIBUTOR procedures for the GMP packaging of pharmaceutical products.

4.5 Upon request, DISTRIBUTOR will provide XXX copies of internal DISTRIBUTOR procedures and records related to the packaging and distribution of the Product.

4.6 XXX hereby grants DISTRIBUTOR the non-exclusive right during the term of this Agreement to use the XXXnomedics logo and the mark "XXXnomedics", in addition to its right to use the trademark LeukoScan(R) or such other mark(s) as XXX shall cause to be registered for the Product (together with the marks for any other products of XXX which are included in this Agreement pursuant to Section 10) (collectively the "Marks") in the European Union and such other countries in which DISTRIBUTOR shall distribute the Product in connection with, and confined to the purpose of, the distribution of the Product. DISTRIBUTOR shall use the Marks on labeling, packaging and package inserts for the Product, and in all literature related thereto, and DISTRIBUTOR shall not use any other trademarks or logos on any labeling, packaging, package inserts or literature relating to the Product. DISTRIBUTOR shall comply with and observe the reasonable requirements of XXX relating to (a) the marking of the Product and/or its label, packaging, package insert or other printed materials pursuant to any and all applicable patent laws to indicate that letters patent have been applied for or granted in one or more countries and (b) the use of the Marks in conformity with applicable trademark laws. Prior to its use, DISTRIBUTOR shall submit all such labeling, packaging, package inserts and related literature to XXX for its approval of the use of such Marks. DISTRIBUTOR acknowledges that the Marks are and shall remain the property of XXX, and DISTRIBUTOR disclaims any rights to such Marks other than the rights granted by this Section. DISTRIBUTOR shall not use the Marks or any other XXX trademark, trade or brand name for any purpose other than as provided in this Section.

5. Orders for the Product

5.1 The Product will be offered for sale by XXX in countries of the European Union and in such other countries as XXX determines in its sole discretion. XXX warrants that the Product is or will be properly approved for sale in each of the countries in which it is offered.

5.2 All sales and marketing efforts for the Product and all order entry are the sole responsibility of XXX and constitute no part of this Agreement. XXX warrants that, to the best of its knowledge, each end user ordering and receiving the Product meets all necessary legal and regulatory requirements to do so.

5.3 All orders will be communicated by XXX to DISTRIBUTOR's customer service representative. DISTRIBUTOR warrants that all orders received will be executed in a timely manner and in accordance with agreed cut-off times and service requirements by market, provided the available stock of Product is sufficient.

5.4 Though all reasonable efforts shall be directed towards error-free and reliable communications systems, DISTRIBUTOR shall not be liable for any consequences for delay in filling orders due to transmission failures or other disturbances in the communication channels beyond DISTRIBUTOR's normal control.

6. Order Picking, Packing, and Shipping

6.1 Except to the extent that specific requirements are included in this Agreement, the Product will be supplied to the end users by the application of DISTRIBUTOR's standard routines, procedures, modes of transport, routings and time schedules, all as used in or designed for, and with the same degree of care and diligence as DISTRIBUTOR applies to, the distribution of DISTRIBUTOR's products to the end users in that country. The Product shall not be stored or repacked in, or trans-shipped from, the country of destination. DISTRIBUTOR shall reimburse XXX for any Product damaged and not saleable due to improper shipment conditions by DISTRIBUTOR.
6.2 Orders for the Product will be processed and dispatched according to agreed cut-off times and service requirements by market.

6.3 The Product will be packed in DISTRIBUTOR's standard transport packaging components and will be shipped to the final destinations under the shipping conditions established pursuant to Section 3.1 and in accordance with DISTRIBUTOR's standard procedure for handling of chilled products. Shipment shall be made via DHL or other carrier acceptable to XXX.

6.4 Though DISTRIBUTOR's distribution methods intend to minimize transit times and to assure timely and reliable delivery, DISTRIBUTOR shall not be liable for any delay in transit due to circumstances beyond its control, including (but not limited to) modifications in legal requirements, international regulations, changes in carrier's time schedules or refusals to accept consignments or handling errors by freight carriers, security quarantine, inclement weather conditions, floods, earthquakes, wars, strikes, riots or other civil disturbances.

7. Invoicing

7.1 End user prices for the Product, in the local currency of the end user (unless otherwise specified by XXX), FOB Giessen, and discount schemes shall be determined by XXX for each country under this Agreement.

7.2 For an initial period to be agreed upon, XXX shall prepare invoices for the shipments of the Product and shall transmit the invoice to the end user.

7.3 Following the initial period, at XXX's request, DISTRIBUTOR will prepare an invoice therefor in Giessen at the time of each shipment in the name of, and in the form approved by, XXX. The invoice will be included in the shipment of the Product to the end user, and a copy thereof provided to XXX expeditiously.

7.4 The prices and applicable taxes and fees shown on the invoice will be those provided to DISTRIBUTOR by XXX with the order data.

7.5 XXX reserves the right to direct DISTRIBUTOR to withhold shipment to any end user at its sole discretion.

8. Collection of Receivables

8.1 All collections of amounts due under the invoices for Product shipped will be made by XXX, and DISTRIBUTOR shall have no responsibility therefor.

9. Service Fee; Start-up Costs

9.1 Upon execution of this Agreement, XXX shall advance to DISTRIBUTOR {*} to cover DISTRIBUTOR's start-up expenses including those associated with packaging development and systems-related activities. If this advance payment is not adequate to cover all such expenses, then DISTRIBUTOR, promptly after the third month of its distribution of the Product, shall present to XXX adequate proofs of its start-up expenses, and XXX shall reimburse DISTRIBUTOR for up to an additional {*} evidenced thereby, for a maximum aggregate amount thereof (including the initial advance) of {*}.

9.2 XXX shall pay DISTRIBUTOR a service fee, in the manner provided in Section 9.6, for the services rendered under this Agreement (the "Service Fee"). The Service Fee shall consist of a Product Packaging Fee (which shall be DISTRIBUTOR's compensation for all services rendered and materials required in connection with the importation, storage, inventory management, labeling and packaging of the Product) and a Shipment Fee (which shall be DISTRIBUTOR's compensation for all services rendered and materials required in connection with the filling and shipment of each order of the Product (including invoicing thereof) to the end user).

9.3 The Product Packaging Fee shall be based on the total number of vials of the Product labeled and packaged annually by DISTRIBUTOR pursuant to orders transmitted by XXX to DISTRIBUTOR therefor.
For the first \{*\} vials labeled and packaged in a twelve month period, the Product Packaging Fee shall be \{*\} per vial. For the next \{*\} vials labeled and packaged in that twelve month period, the Product Packaging Fee shall be \{*\} per vial. For each additional vial above \{*\} vials labeled and packaged during that twelve month period, a Product Packaging Fee of \{*\} shall be due.

9.4 The Shipment Fee shall be \{*\} for each order shipped to an end user.

9.5 Freight costs will be negotiated by DISTRIBUTOR and subject to XXX's approval. Freight costs will be added to the end user's invoice. DISTRIBUTOR will pay the freight costs and charge these back to XXX on a monthly basis for reimbursement.

9.6 The Service Fee shall be payable as follows: (a) At the end of each month during the Term, XXX shall pay DISTRIBUTOR, as a downpayment on the Product Packaging Fee and the Shipment Fee, a Monthly Service Fee of \{*\} provided that (in consideration of the payment made by XXX to DISTRIBUTOR pursuant to Section 9.1) no Monthly Service Fee shall be payable in respect of the first three months of distribution of the Product pursuant to this Agreement, but such payments shall be deemed to have been made for purposes of paragraph (b) below. (b) Promptly following the end of the twelfth month of distribution of the Product by DISTRIBUTOR, and following the end of each twelve month period thereafter, the parties shall calculate the amount of the Product Packaging Fee and the Shipment Fee actually due as provided in Sections 9.3 and 9.4 in respect of such services rendered during the twelve months then ended. If the amount paid under the Service Fee thus calculated exceeds the aggregate Monthly Service Fee payments previously made or deemed made (\{*\} in the first year), XXX shall remit the amount of such excess to DISTRIBUTOR within 30 days of receiving DISTRIBUTOR's invoice therefor. (c) The parties agree that following the initial calculation under paragraph (b) above, and at the end of each annual period thereafter, they will reevaluate the fairness and adequacy of the Monthly Service Fee, the Product Packaging Fee and the Shipment Fee with a view to making such adjustments thereto as shall be mutually acceptable.

10. Addition of CEA-Scan(R) as a Product; Other Products

10.1 At the request of XXX, DISTRIBUTOR shall also provide all of the services required of it hereunder for the importation, storage, labeling, packaging and distribution of CEA-Scan(R), an additional product of XXX, and the term "Product" shall then include both LeukoScan(R) and CEA-Scan(R). In such event, the Product Packaging Fee computation to be made under Section 9.3 shall include the total number of vials of LeukoScan(R) and CEA-Scan(R), taken together, labeled and packaged by DISTRIBUTOR. It is also the intention of the parties that other products of XXX can be added to this Agreement in the same manner when approved for sale in which event the term "Product" would then also include such other products.

11. Effectiveness, Expiration and Renewal of this Agreement

11.1 This Agreement becomes effective on the date hereof. The parties anticipate that DISTRIBUTOR's distribution of the Product within Germany will commence on or about XX X, 222X, and elsewhere on or about YY Y, 200Y, subject to any necessary regulatory approvals.

11.2 Subject to Article 12, this Agreement shall continue in force for a period of three years after its becoming effective, and shall be automatically renewed unless terminated in writing by either party, giving to the other party six months notice of such non-renewal.

11.3 The validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the parties hereunder will be governed by the laws of the <____>, excluding those laws that relate to the choice of law. The exclusive jurisdiction and venue for any disputes arising out of or in connection with this Agreement will be an appropriate federal court located in the ______, and each party hereby consents to personal jurisdiction in such court and consents to service of process by means of certified or registered mail, return receipt requested.
12. Termination

12.1 Either party shall be entitled to terminate this Agreement upon not less than six months written notice to the other at any time for any reason.

12.2 Either party shall be entitled to terminate this Agreement by written notice to the other if that other party commits any material breach of any of the provisions of this Agreement and, in case of a breach capable of remedy, fails to remedy the same within thirty days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied.

12.3 Either party shall be entitled to terminate this Agreement upon not less than three months written notice to the other if there is at any time a change, either directly or indirectly, in the beneficial ownership or control of the other party to an external third party from that at the date of this Agreement. 12.4 XXX shall be entitled to terminate this Agreement upon not less than three months written notice to DISTRIBUTOR if XXX shall enter into a marketing alliance covering the European Union with any entity which, by investment or otherwise, shall become a co-venturer with XXX.

13. Consequences of Expiration or Termination

13.1 Upon expiration or termination of this Agreement for any reason, XXX shall be responsible for collecting all undelivered Product, stocks, labels and packaging materials from DISTRIBUTOR within a reasonable period and at XXX's cost, unless agreement is reached between the parties for the continued distribution of stock of the Product.

13.2 Upon expiration or termination of this Agreement for any reason other than material breach of any provisions of this Agreement by DISTRIBUTOR, any outstanding invoices rendered by DISTRIBUTOR in respect of the Product and/or the Service Fee shall be paid by XXX within thirty (30) days of the effective date of such expiration or termination.

14. No Assignment by XXX or by DISTRIBUTOR

This Agreement is personal to both parties to this agreement and neither party may, without the prior written consent of the other party, assign or dispose of or delegate any of its rights under this Agreement, or subcontract or otherwise delegate any of its obligations.

15. Confidentiality

15.1 Each party ("Receiving Party") shall maintain in confidence all information heretofore or hereafter disclosed by the other ("Disclosing Party") which such party knows or has reason to know are trade secret and other proprietary information owned by or licensed to the other, including, but not limited to, information relating to the Product, and licenses, patents, patent applications, technology or processes and business plans of the other party, including, without limitation, information designated as confidential in writing from one party to the other (all of the foregoing hereinafter referred to as "Confidential Information"), and shall not use such Confidential Information except as permitted by this Agreement or disclose the same to anyone other than those of its officers, directors or employees as are necessary in connection with such party's activities as contemplated by this Agreement. Each party shall use the same efforts such party would use to protect its own information to ensure that its officers, directors and employees do not disclose or make any unauthorized use of such Confidential Information. Each party shall notify the other promptly upon discovery of any unauthorized use or disclosure of the other's Confidential Information.

15.2 The obligation of confidentiality contained in this Article 15 shall not apply to the extent that: (a) the Receiving Party is required to disclose information by applicable law, regulation or order of a governmental agency or a court of competent jurisdiction; (b) the Receiving Party can demonstrate that the
disclosed information was at the time of disclosure already in the public domain other than as a result of actions or failure to act of the Receiving Party, its officers, directors or employees, in violation hereof; (c) the disclosed information was rightfully known by the Receiving Party (as shown by its written records) prior to the date of disclosure to the Receiving Party in connection with this Agreement; or (d) the disclosed information was received by the Receiving Party on an unrestricted basis from a source which is not under a duty of confidentiality to the other party.

15.3 In the event that the Receiving Party shall be required to make disclosure pursuant to the provisions of Section 15.2(a) as a result of the issuance of a court order or other government process, the Receiving Party shall promptly, but in no event more than forty-eight (48) hours after learning of such court order or other government process, notify, by personal delivery or facsimile, all pursuant to Article 16 hereof, the Disclosing Party and, at the Disclosing Party's expense, the Receiving Party shall: a) take all reasonably necessary steps requested by the Disclosing Party to defend against the enforcement of such court order or other government process, and b) permit the Disclosing Party to intervene and participate with counsel of its choice in any proceeding relating to the enforcement thereof.

15.4 The parties acknowledge that their failure to comply with the provisions of Section 15.1 of this Article 16 may cause irreparable harm and damage to the other party for which no adequate remedy may be available at law. Accordingly, the parties agree that upon a breach by a party of such provisions, the non-breaching party may, at its option, enforce the obligations of the breaching party under those provisions by seeking equitable remedies in a court of competent jurisdiction. 15.5 The terms of this Article 15 shall survive the expiration or termination of the Agreement for a period of five years.

16. Notices

16.1 Any notice required or permitted to be made or given hereunder shall be in writing and shall be made or given to the other party by personal in-hand delivery; by telecopier communication; by first-class air mail, postage prepaid; or by air courier to the mailing address or telecopier numbers set forth below: or to such other address or telecopier numbers as either party shall designate by notice, similarly given, to the other party. Notices shall be deemed to have been sufficiently made or given: (i) if by personal in-hand delivery, when performed; (ii) if by telecopier with confirmed transmission, when performed (unless after usual business hours or on a non-business day, in which event, the next business day); (iii) if mailed, ten (10) days after being deposited in the mail, postage prepaid; or (iv) if by air courier, three (3) days after delivery to the air courier company.

17. Entire Understanding

This Agreement embodies the entire understanding of the parties in respect of distribution of the Product and the matters contained or referred to in it, and it overrides or supersedes all previous agreements and understandings between the parties made at any time, whether orally or in writing.

18. Unenforceable Provision

If any provision of this Agreement is or becomes illegal, void, invalid or unenforceable in whole or in part, this Agreement shall continue to be valid as to its other provisions and the remainder of the affected provision.

AS WITNESS the parties have caused this Agreement to be entered into by their duly authorized representatives on behalf of the parties on the date first before written.

<Signatures>

<date>
Appendix

Franchise

This Franchise Agreement ("Agreement") is dated as of the Effective Date by and between <Сторона 1>, a <национальность> corporation ("Franchiser"), and <Сторона 2>, a <национальность> corporation ("Franchisee"),

Capitalized terms used in this Agreement without definition in context shall have the same meanings, if any, given to such terms in Article 1 of this Agreement.

PREAMBLES

1. Franchiser owns the Marks and has developed and owns the System.

2. Franchiser is engaged in the business of licensing the Marks and Proprietary Information and granting franchises to others to operate Franchiser Restaurants utilizing the System.

3. Franchisee's Application to become a Franchiser Franchisee has been approved by Franchiser in reliance upon all of the representations made and information contained in that Application.

4. The Parties intend this Agreement to establish the basis for ensuring uniform standards of quality, performance, operation, and reputation of Franchisee's Franchiser Restaurant; enhancing and protecting the Marks and Proprietary Information; ensuring the full and fair collection of Franchisee's financial obligations to Franchiser; and, generally, providing an objective contractual basis for a fair and mutually satisfactory business relationship between the Parties.

THEREFORE, the Parties agree as follows:

1. DEFINITIONS

These terms shall have the following meanings in this Agreement:

1.1 "Affiliates" shall mean all corporations affiliated with Franchiser, including its parent, subsidiaries, and brother/sister companies, and each of their respective officers, directors, employees, and agents.

1.2 "Agent" shall mean any officer, director, employee, attorney, or other person authorized to act on behalf of a Party.

1.3 "Approved Menu Items" shall mean menu items approved by Franchiser, in its sole discretion, for sale in connection with the Business, in accordance with the Standards.

1.4 "Approved Products" shall mean products or services approved by Franchiser, in its sole discretion, for use or sale in connection with the Business, in accordance with the Standards.

1.5 "Approved Suppliers" shall mean vendors which have been approved by Franchiser in accordance with the Standards.

1.6 "Business" shall mean the business operated by Franchisee on the Premises pursuant to this Agreement, regardless where food is served.
1.7 "Claims" shall mean all claims, demands, suits, causes of action (regardless of merit), liens, losses, costs, expenses, (including Professionals' Fees, pursuant to Section 12.4 of this Agreement), damages, and liabilities, of any nature whatsoever, however caused or incurred, whether in preparation for, response to, or conduct or settlement (whether before or after filing of any court or other proceeding) of actual litigation.

1.8 "Communications" shall mean any directions, instructions, or other communications from Franchiser to Franchisee, by whatever means, of various forms of information including, without limitation, Proprietary Information and other information relating to the System and the operation of the Business.

1.9 "Criteria" shall mean Franchiser's criteria and qualifications, as in effect from time to time, for prospective purchasers of a new Franchiser restaurant franchise.

1.10 "Effective Date" shall mean the date set forth in Schedule A, on which all rights and obligations of the Parties shall be effective.

1.11 "Expiration Date" shall mean the date set forth in Schedule A, on which all rights granted to Franchisees pursuant to this Agreement shall expire.

1.12 "Franchise" shall mean the franchise and licenses granted under this Agreement.

1.13 "Franchise Documents" shall mean a Franchiser Franchise Agreement and all other ancillary agreements and legal instruments used by Franchiser from time to time in connection with the granting of franchises for Franchiser Restaurants.

1.14 "Franchisee" shall mean the individual, corporation, partnership, or other legal person which is the signatory to this Agreement, identified in Schedule A.

1.15 "Franchisee Obligations" shall mean all obligations of Franchisee under this Agreement, and all obligations of Franchisee and any Franchisee Principal to Franchiser or any of its Affiliates under any other agreement relating to the Franchise, the Marks, the Proprietary Information, the System or the Business.

2 1.16 "Franchisee Principal(s)" or "Principal(s)" shall mean Franchisee, if Franchisee is an individual, or any officer, director, or holder of a beneficial interest of ten percent (10%) or more of the ownership of any corporation directly or indirectly controlling Franchisee, if Franchisee is a corporation; or the general partners or any limited partner (including any corporation and the officers, directors, and holders of any beneficial interest of ten percent (10%) or more of the ownership of a corporation that controls, directly or indirectly, any general or limited partner), if Franchisee is a partnership.

1.17 "General Release" shall mean a general release by Franchisee and all Franchisee Principals, in a form satisfactory to Franchiser, generally releasing any and all Claims against Franchiser and its Affiliates, and their respective Agents, that may have arisen out of this Agreement or the relationship between the Parties prior to the date of the release.

1.18 "Good Cause" shall include, but not be limited to, Franchisee's failure to comply with any lawful requirement of this Agreement after being given notice of Franchisee's failure to comply and a reasonable opportunity, which in no event need be longer than thirty (30) days, to cure such failure.

1.19 "Good Standing" shall mean, with reference to the Franchisee, that the Franchisee is not in default under the Agreement.

1.20 "Gross Sales" shall mean all money, cash receipts, credit extended, and/or other things of value, including but not limited to gross sales charges, received or earned by Franchisee from the operation of the Business. Gross Sales shall not include (a) bona fide refunds, credits, or allowances, (b) taxes required to
be collected by Franchisee in connection with the operation of the Business, which taxes are added to the 
price of goods sold or services rendered in the operation of the Business and actually paid to appropriate 
governmental authorities, (c) revenues from vending machine sales at the Premises, or (d) other 
adjustments permitted by Franchiser, from time to time in its sole discretion.

1.21 "Incapacity" shall mean the inability of Principal(s) to operate or oversee the operation of the Business 
on a regular basis, by reason of death or any continuing physical, mental, or emotional disability, chemical 
dependency, or any other limitation, determined in accordance with the Standards.

1.22 "Initial Franchise Fee" shall be the amount specified in Schedule A.

1.23 "Manuals" shall mean the set of materials, however published and delivered, which sets forth the 
Standards, Approved Menu Items, Approved Products, services, Approved Suppliers, and other Proprietary 
Information relating to the operation of a Franchiser Restaurant, including all Communications, 
amendments, supplements, bulletins, notices, and memoranda relating to such materials which may be 
provided to Franchisee by Franchiser in its sole discretion, from time to time.

1.24 "Mark" or "Marks" shall mean the trademark and service mark Franchiser(R), in approved form or 
style as set forth in the Manuals or Communications relating to the Marks, as well as all other trademarks, 
service marks, trade names, slogans, designs, packaging, trade dress, or other descriptive, distinctive, or 
identifying characteristics which may be licensed, adopted and used by Franchiser for use in the System, as 
set forth from time to time.

1.25 "Minimum Advertising Expenditure Level" shall be the percentage of Gross Sales specified in 
Schedule A that Franchisee is obligated to spend on local advertising.

1.26 "National Advertising Fund" shall mean the non-profit mutual benefit corporation which administers 
the national advertising program.

1.27 "National Advertising Fund Fee" shall be the percentage of Gross Sales specified in Schedule A that 
Franchisee is obligated to pay to the National Advertising Fund, or Franchiser on behalf of the National 
Advertising Fund.

1.28 "Network" shall mean the network of all Franchiser Restaurants operated by all Franchiser 
Franchisees and Affiliates.

1.29 "Option" shall mean the option granted to the Franchisee under Section 3.2 of this Agreement to enter 
into the then-current forms of Franchise Documents upon the Expiration Date of this Franchise Agreement.

1.30 "Premises" shall mean the premises of the Franchiser Restaurant operated by Franchisee pursuant to 
this Agreement.

1.31 "Professionals' Fees" shall mean all costs of auditors, accountants, attorneys (including the costs of 
Franchiser's in-house counsel, calculated at outside counsel rates for attorneys of comparable background 
and experience), consultants, or expert witnesses incurred in connection with the enforcement of any 
obligation under this Agreement, including the collection of any amounts owed to Franchiser by Franchisee 
or defense of any Claims.

1.32 "Proprietary Information" shall mean all information, in any form, relating to the System or the 
operation of a Franchiser Restaurant which (a) is not generally available and known to the general public, 
(b) has not been disclosed to Franchisee on a non-confidential basis by a third party, (c) has not been 
developed independently by Franchisee, or (d) has not been publicly disclosed by a duly authorized 
representative of Franchiser. Franchiser Proprietary Information shall include, but not be limited to, the 
contents of the Manuals, marketing and sales information and plans, operations, specifications, procedures,
Approved Menu Items, Approved Products, Approved Suppliers, pricing information, and other items, tangible or intangible, which relate to the System, as modified from time to time by Franchiser in its sole discretion, which modifications shall not materially modify any term or condition of this Agreement.

1.33 "Qualified for Option Exercise" shall mean, with reference to Franchisee, that Franchisee

a. is in Good Standing;

b. has substantially complied, and has caused its Franchisee Principals to substantially comply, with the Franchisee Obligations;

c. qualifies under the Criteria; and

d. has satisfactorily completed, or has caused designated Franchisee personnel to satisfactorily complete, Franchiser's Option training program in accordance with the Manuals.

1.34 "Regional Advertising Fund" shall mean any non-profit mutual benefit corporation established by Franchiser for a defined geographical area within the United States which administers a regional advertising program for such defined geographical area.

1.35 "Regional Advertising Fund Fee" shall mean the percentage of Gross Sales that Franchisee is obligated to pay to a Regional Advertising Fund in respect of each Business located within such Regional Advertising Fund's defined geographical area.

1.36 "Royalty Fee" shall be the percentage of Gross Sales specified in Schedule A.

1.37 "Franchiser" shall mean Franchiser USA Franchise, Inc., a Delaware corporation, the Franchiser under this Agreement, and its successors and assigns pursuant to this Agreement.

1.38 "Franchiser Restaurant" shall mean a restaurant utilizing the Marks and the System.

1.39 "Standards" shall mean the standards, policies, procedures, and requirements relating to the System, the Marks, Approved Menu Items, Approved Products, and Approved Suppliers as set forth in the Manuals.

1.40 "System" shall mean the Marks, the Proprietary Information, the Standards, and all techniques, know-how, standards, specifications, procedures and other methods of doing business used in the development and operation of Franchiser Restaurants, including recipes, menus, interior and exterior decor, and marketing, advertising, management techniques, as developed and modified from time to time, and as set forth in the Manuals.

1.41 "Transfer" shall mean any act by Franchisee to sell, assign, transfer, convey, give away, or encumber all or any part of its interest in this Agreement, or its interest in the franchise granted by this Agreement, or a controlling interest in any proprietorship, partnership, or corporation that owns any interest in this Agreement, the Business, or in the Franchise, to any person.

1.42 "Transfer Fee" shall be the fee payable by Franchisee to Franchiser for the training, supervision, administrative costs, Professionals Fees, and other expenses of Franchiser in connection with any Transfer, in the amount set forth in Schedule A.

2. GRANT OF FRANCHISE

2.1 Subject to all terms and conditions of this Agreement and to the continuing good faith performance of
such terms and conditions by Franchisee during the term of this Agreement, Franchiser grants to Franchisee a nonexclusive franchise:

a. to adopt and use the Franchiser System to operate a Franchiser Restaurant at the Premises specified in Schedule A; and

b. to operate the Business continuously during normal business hours, in accordance with the terms and conditions of this Agreement.

2.2 Franchiser grants to Franchisee the following nonexclusive licenses, to be used by Franchisee only during the term of this Agreement and only in conjunction with the franchise granted by Section 2.1 of this Agreement:

a. a nonexclusive license to use the Marks in strict accordance with the Standards;

b. a nonexclusive license to use the Proprietary Information in strict accordance with the Standards.

2.3 During the term of this Agreement, Franchiser will not operate, or grant any franchise or other right for any other person to operate, any Franchiser Restaurant within One and One-Half (1.5) miles of the Business. You are granted no exclusivity regarding customers by this Section 2.3, and nothing in this Agreement prevents Franchiser, its Affiliates, or any other Franchisee from serving or soliciting customers in your exclusive area, or any area.

2.4 The franchise and licenses granted to Franchisee by this Agreement are nonexclusive. Subject only to Section 2.3, Franchiser shall have, at all times throughout the term of this Agreement and at all places, the unqualified right to open and operate, or to franchise and license others to open and operate, businesses utilizing the System and Marks.

3. TERM OF AGREEMENT AND OPTION

3.1 The term of this Agreement shall commence on the Effective Date and shall continue, unless earlier terminated in accordance with Article 8 of this Agreement, to the Expiration Date.

3.2 Subject to the terms and conditions of Article 3 of this Agreement, Franchiser grants Franchisee an Option to execute the then-current forms of Franchise Documents upon the Expiration Date of this Agreement.

3.3 Exercise of the Option shall be subject to the following conditions:

a. Franchiser has not given notice to the Franchisee under Section 3.5 of this Agreement on or before the time the Option is exercised;

b. Franchisee is Qualified for Option Exercise at the time the Option is exercised;

c. Franchisee has complied with the Option exercise procedures described in Section 3.4 on or before the times indicated;

d. At least ninety (90) days before the Expiration Date, the Premises have been remodeled, refurbished, upgraded, and modernized in accordance with the System as then current.

3.4 Franchisee shall exercise the Option by:
Technical Report

a. Giving notice of its intention to exercise the option to Franchiser not less than six (6) months and not more than nine (9) months before the Expiration Date;

b. Executing and delivering the then-current forms of Franchise Documents within thirty (30) days of delivery to Franchisee;

c. Executing and delivering a General Release effective as of the Expiration Date; and

d. Paying to Franchiser a Option fee equal to Fifty Percent of the then-current Initial Franchise Fee, but not less than Fifteen Thousand Dollars ($15,000).

3.5 If Franchiser elects not to allow exercise of the Option by the Franchisee, then Franchiser shall give Franchisee written notice specifying the reasons of its election not to allow exercise of the Option by the Franchisee not later than ninety (90) days prior to the Expiration Date.

4. PAYMENTS AND FEES

4.1 Upon execution of the Agreement, Franchisee shall pay to Franchiser the Initial Franchise Fee. The Initial Franchise Fee is payable in full at the time of, and deemed fully earned by Franchiser and nonrefundable upon, Franchisee's execution of this Agreement.

4.2 During the term of this Agreement, Franchisee shall pay to Franchiser the Royalty Fee.

4.3 During the term of this Agreement, Franchisee shall spend for local advertising an amount at least equal to the Minimum Advertising Expenditure Level, subject to the provisions set forth in Article 7.

4.4 During the term of this Agreement, Franchisee shall pay to the National Advertising Fund, or Franchiser on behalf of the National Advertising Fund, the National Advertising Fund Fee.

4.5 All amounts due to Franchiser shall be payable at such times and in accordance with such methods as Franchiser may prescribe, from time to time, in the Manuals.

4.6 Any amount owing by Franchisee for Royalty Fees, National Advertising Fund Fees, advertising expenditures, or to Franchiser for any other purpose whatsoever, if not paid when due, whether such amount has been shown on any report required to be submitted by Franchisee or has subsequently been determined by verification, examination, or audit to have been due for any month or other applicable accounting period, shall bear interest from the date such amount was due until paid, at the lesser of one and one-half percent (1.5%) per month of delinquency or the maximum rate permitted by law. Franchisee acknowledges that this provision does not constitute Franchiser's agreement to accept any payments after the due date or a commitment by Franchiser to extend credit for or otherwise to finance Franchisee's operation of the Franchiser Restaurant.

4.7 Notwithstanding any designation by Franchisee, Franchiser shall have the sole discretion to apply any receipts from or on the accounts of Franchisee for any Franchisee indebtedness arising out of the obligations created by this Agreement.

4.8 Franchisee shall maintain an accounting and record keeping system, in accordance with the standards and specifications set forth in the Manuals, which shall provide for basic accounting information necessary to prepare financial statements, a general ledger, and reports required by this Agreement and the Manuals. Franchisee shall maintain adequate and verifiable records and supporting documentation relating to such accounting information, in accordance with the standards and specifications set forth in the Manuals.
4.9 Franchisee shall submit to Franchiser, within five (5) days of the end of each calendar month, a statement of Gross Sales for the previous calendar month, containing all information required and in the format prescribed in the Manuals.

4.10 Franchisee shall make available upon request to Franchiser copies of Franchisee's annual federal income tax returns and quarterly (or other periodic) sales tax returns, including all schedules, exhibits, and tables included in such returns, within thirty (30) days of the date of filing each such return. In the event that such returns are not filed by Franchisee in a timely manner, Franchisee shall make available upon request to Franchiser copies of all extensions of time filed and granted within thirty (30) days of each such filing or granting of such extension(s).

4.11 Franchiser or its designated agents shall have the right at all reasonable times to inspect, at its expense, Franchisee's books and records. Franchiser also shall have the right, at any time, to conduct an independent audit of Franchisee's books and records, by auditors selected by Franchiser and at Franchiser's expense. In the event any such inspection or audit discloses any under-reporting of Gross Sales for any period which exceeds two percent (2%) of Franchisee's Gross Sales during any applicable period, then Franchisee shall pay to Franchiser, within ten (10) days of receipt of a demand based on the report, the amount(s) due as a result of such under-statement, plus all Professionals Fees associated with such inspection or audit.

5. THE SYSTEM

5.1 Franchisee acknowledges and shall not contest the validity of the Marks and acknowledges that the Marks are the sole and exclusive property of Franchiser. All goodwill associated with the Marks, including any goodwill which might be generated by Franchisee, all other Franchiser Franchisees, or any Affiliates, shall be and remain the sole property of Franchiser. Franchisee shall not oppose or seek to cancel any registration of any of the Marks, in the United States or elsewhere, or aid or abet others in such activities, during or after the term of this Agreement. Franchisee agrees and acknowledges that all use by Franchisee of the Marks on goods or in connection with rendering services, has inured and shall inure solely to the benefit of Franchiser. In connection with the use of the Marks, Franchisee shall not in any manner represent that it has any ownership in the Marks or any registrations of the Marks.

5.2 Franchisee acknowledges that it is familiar with the standards and high quality of the use by Franchiser and others authorized by Franchiser of the Marks in the operation of Franchiser Restaurants, and agrees that it will maintain this standard in its use of the Marks.

5.3 Franchisee shall use the Marks solely for the purposes of and to the extent of the rights, licenses, and franchise granted by this Agreement and only in accordance with this Agreement and the Manuals. When using the Marks, Franchisee shall comply substantially with all laws pertaining to service marks and trademarks in force at any time in any jurisdiction in which Franchise uses the Marks. This provision includes compliance with laws and regulations pertaining to the proper use and designation of trademarks.

5.4 Franchisee shall not use the Marks, or any colorable imitation or similar mark, directly or indirectly, for any purpose whatsoever, other than the purposes intended by this Agreement, at any time during or after expiration or termination of this Agreement.

5.5 Franchisee shall not license, sublicense, or grant in any manner, any interest in the Marks to any person at any time during the term of, or after expiration or termination of, this Agreement. Any such act by Franchisee shall constitute irreparable harm to Franchiser and other Franchiser Franchisees and shall constitute a material breach of this Agreement.

5.6 Franchisee shall notify Franchiser immediately of any apparent infringement of or challenge to Franchisee's use of any of the Marks or claim by any person of any rights in any of the Marks. Franchiser
shall have sole discretion to take such action, if any, as it deems appropriate, and Franchisee shall cooperate with Franchiser with all activities reasonably required by Franchiser to preclude or terminate unauthorized use of the Marks or any confusingly similar name or Mark. Franchisee shall not be liable for attorneys fees, court costs, or other legal expenses incurred by Franchiser in pursuit of infringement actions. Any and all damages or other amounts recovered in any such action or proceeding shall be the sole property of Franchiser.

5.7 Franchiser, in its sole discretion from time to time, may determine that use of certain Marks should be modified or discontinued throughout the Network, and/or that the Network shall use one or more additional or substitute trade names, trademarks, service marks, or other commercial symbols, or any items of trade dress or decor. Subject to all other terms and conditions of this Agreement, Franchisee shall comply with Franchiser's directions within a reasonable time after notice to Franchisee by Franchiser.

5.8 Franchiser shall indemnify and hold harmless Franchisee against all Claims arising from Franchisee's use of the Marks in accordance with this Agreement and the Manuals.

5.9 Franchiser shall deliver to Franchisee a current version of the Manuals, which Franchiser shall update and revise, from time to time during the term of this Agreement, in its sole discretion. Franchisee shall insure that its copy of the Manuals is maintained in its most current version at all times. In the event of any dispute as to the contents of the Manuals, the terms of the master copy maintained by Franchiser shall be controlling. The Manuals and the Proprietary Information shall remain, at all times, the sole property of Franchiser.

5.10 Franchisee shall maintain the confidentiality, both during and after the term of this Agreement, of all Proprietary Information disclosed to Franchisee by Franchiser pursuant to this Agreement, and not disclose, duplicate, or otherwise use any Franchiser Proprietary Information in any unauthorized manner. Franchisee shall not use any Proprietary Information for any purpose or in any business activity other than the operation of the Business, or in any manner not contemplated by this Agreement, unless such use has been specifically authorized or approved in writing by Franchiser.

5.11 During the term of this Agreement, unless otherwise expressly permitted by Franchiser in writing, neither Franchisee nor any Franchisee Principal(s), shall:

a. engage in, or own any interest (except as a passive investor of less than five percent (5%) of total debt and equity) in, any mid-scale casual dining concept featuring steak, seafood, and poultry, or any business or other activity that would compete with the Franchiser Restaurant, any other location in the Franchiser Network, or otherwise conflict with the performance of Franchisee's obligations under this Agreement, except as a Franchiser Franchisee; or

b. divert or attempt to divert any business or any customers of the Franchiser Restaurant to any other person or entity, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with Franchiser, the Marks, or the Franchiser Network; or

c. solicit any person for employment with Franchisee who is at that time employed by Franchiser, an Affiliate or another Franchiser Franchisee, or otherwise directly or indirectly induce or seek to induce such person to leave his or her employment.

5.12 For a period of one (1) year following expiration or termination of this Agreement, neither Franchisee nor any Franchisee Principal(s), shall:

a. engage in, or own any interest (except as a passive investor of less than five percent (5%) of total debt and equity) in, any mid-scale casual dining concept featuring steak, seafood, and poultry, or any business or other activity, in the Standard Metropolitan Statistical Area ("SMSA") where the Franchiser Restaurant was
located, that would compete with the former Franchiser Restaurant or any other location in the Network, except as a Franchiser Franchisee; or

11 b. divert or attempt to divert any business or any customers of the Franchiser Restaurant to any other person or entity in the SMSA where the Franchiser Restaurant was located, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with Franchiser, the Marks, or the Franchiser Network; or

c. solicit any person for employment who is at that time employed by Franchiser, an Affiliate or another Franchiser Franchisee, or otherwise directly or indirectly induce or seek to induce such person to leave his or her employment.

5.13 Franchiser shall continue to develop the System as it deems appropriate in its sole discretion, and shall deliver the product of such activities to Franchisee, from time to time.

5.14 Franchiser shall provide Standards for the testing and evaluation of products and/or services for designation as Approved Menu Items and/or Approved Products, as set forth in the Manuals. Subject to Franchiser's prior written consent, Franchisee may conduct such tests in the Business, at Franchisee's sole expense, in accordance with the Standards.

5.15 Franchiser shall provide such other ongoing consultation, advice, and assistance as Franchiser, in its sole discretion, deems appropriate to promote development of the System and to assist Franchisee in the operation of the Business, the performance of Franchisee's obligations under this Agreement, and the maintenance of the Standards and reputation of the Network.

6. RESTAURANT OPERATIONS

6.1 Franchisee shall comply with all terms and conditions of this Agreement, and the Standards, in the operation of the Franchiser Business.

6.2 Franchiser shall make available, at no charge to Franchisee, standard plans and specifications for the exterior and interior design and layout of a Franchiser Restaurant and fixtures, furnishings, equipment, signs fixtures suppliers list. Franchisee is responsible for compliance with local building standards and zoning requirements and may adapt the plans and specifications to conform thereto upon prior written consent of Franchiser. Franchisee shall adapt, at Franchisee's expense, the standard plans and specifications to the Premises. Franchisee shall be solely responsible for maintaining suitable Premises during the term of this Agreement and for all lease payments for such Premises. Franchiser does not guarantee any such payments, and Franchisee may not act in any way which might bind or obligate, or attempt to bind or obligate, Franchiser to the terms of any premises lease.

6.3 In order to maintain the quality and standards of the Franchiser System, Franchisee, or Franchisee's Principal(s) as the case may be, shall:

a. Attend and successfully complete Franchiser's initial training program and such other training courses as Franchiser may prescribe, from time to time.

b. Maintain a competent, conscientious, well-trained staff, including Franchiser-trained and certified Manager(s) on the Premises at all times during operating hours which are set forth in the Manuals.

c. Maintain the condition and appearance of the Premises, consistent with the Standards and improve the
Premises from time to time as may be required or necessary, including, but not limited to, replacement of worn or obsolete furniture, equipment, fixtures, or decor, and maintenance and repair of exterior and interior areas, in accordance with the Standards.

d. Remodel and upgrade the Premises to then-current Standards for new Franchiser Restaurants, pursuant to notice from Franchiser not less than eight (8) months prior to Network-wide implementation of the new Standards. Franchisee acknowledges that such remodeling and upgrades may be required periodically during the term of this Agreement, but not more frequently than every five (5) years since the adoption of Network-wide changes to such Standards, based upon test results satisfactory to Franchiser, in its sole discretion. Franchisee shall complete such remodeling and upgrades within the time periods set forth in the notice from Franchiser. However, notwithstanding the five (5) years limitation, Franchiser may require such remodeling and upgrades of the Premises (i) at the time of any Transfer during the term of this Agreement; and (ii) at the time of the exercise by Franchisee of its Option, pursuant to Section 3.3 of this Agreement.

e. Use the Premises only for the purpose of operating a Franchiser Restaurant, and not for any other purpose.

f. Provide to Franchiser a copy of the lease for the Premises and any amendments or modifications to such lease, during the term of this Agreement.

g. Operate the Business in conformity with this Agreement and the Manuals.

h. Utilize only Approved Menu Items, Approved Products and Approved Suppliers in the operation of the Business.

i. Complete and submit to Franchiser, on a timely basis, all prescribed forms and reports, in accordance with the policies and procedures in the Manuals.

j. Obtain and utilize point-of-sale computer systems specified in the Manuals.

k. Comply at all times with all federal, state, and municipal laws, regulations, bylaws, orders, rulings, permits, and licensing requirements relating to, and pay promptly any and all taxes, assessments, fees, fines, and penalties arising out of, the operation of the Business.

l. Respond promptly to any and all customers' inquiries or complaints and resolve all reasonable complaints to the customer's satisfaction.

m. Notify Franchiser in writing within two (2) days of the commencement of any action, suit, or legal proceeding by any person, or of the issuance of any order, writ, injunction, award, or decree of any court, agency, or other governmental instrumentality, including any citation or notice of any health code violation, or the assertion of any material claim which names Franchiser, or which relates to the operation or financial condition of the Business or the reputation of the Network.

n. Obtain and maintain in force, at its sole expense, a policy or policies of insurance, in such form(s) and for such limits as Franchiser may require in its sole discretion, as set forth in the Manuals. All such insurance policies shall name Franchiser as an additional insured and shall provide that Franchiser shall receive thirty (30) days prior written notice of termination, expiration, or cancellation of any such policies; if Franchisee fails to comply with the obligations of this Section 6.3 (n), then Franchiser shall have the right to procure such insurance and Franchisee shall reimburse Franchiser for all related costs incurred.

6.4 Franchisee shall permit duly authorized representatives of Franchiser to review advertising which Franchisee creates that uses the Marks and also to inspect the Premises, at all reasonable times, for purposes of determining compliance with this Agreement and ensuring uniform standards of quality,
performance, operation and reputation in the use of the Marks in Franchisee's advertising and the operation of the Business and enhancing and protecting the Marks and Proprietary Information.

6.5 From time to time, Franchiser may offer training programs for Franchisee Principal(s) and managers. The content, fees, duration, and location of such training shall be in Franchiser's sole discretion. A description of such training will be as set forth in the Manuals.

6.6 All expenses incurred by Franchisee and its employees in attending all Franchiser training programs, including, without limitation, travel, room and board, and employee compensation and insurance, shall be Franchisee's sole responsibility.

7. ADVERTISING

Franchisee acknowledges the value of advertising and the importance of the standardization of advertising and promotion to the furtherance of the goodwill and the public image of the Network. Therefore, it is agreed as follows:

7.1 Franchiser, or its designee, shall develop, in its sole discretion, all creative concepts, advertising campaigns, and marketing and promotional materials used in the Network. Franchisee shall utilize only Franchiser-approved concepts, campaigns, and materials, in accordance with this Agreement, the Manuals, and Franchiser Communications.

7.2 As provided for in Section 4.3, Franchisee shall spend for local advertising an amount at least equal to the Minimum Advertising Expenditure Level. It is understood that such expenditures must be made by Franchisee within each calendar or accounting year. Franchisee shall supply Franchiser with such copies and other proof of advertising as Franchiser may reasonably request.

7.3 At any time during the term of this Agreement, Franchiser shall have the right to establish a Regional Advertising Fund within any defined geographical area within the United States. Each of Franchiser's Franchisees shall be a member of and participate in each Regional Advertising Fund so established whose geographical area includes Businesses operated by the Franchisee. As a member, a Franchisee has the right to cast one vote for each Business located within the Regional Advertising Fund's relevant defined geographical area. A Franchisee shall pay a Regional Advertising Fund Fee of at least three percent (3%) in respect of each Business that is located within the defined geographical area to the Regional Advertising Fund. All payments to the Regional Advertising Fund shall be paid to the Regional Advertising Fund, or Franchiser on behalf of such Regional Advertising Fund, at the option of Franchiser, and except as provided in this Section, shall be in addition to all other sums and charges provided for in this Agreement and all payments for a particular month shall be payable at such times and in accordance with such methods as Franchiser may prescribe, from time to time, in the Manuals. All Franchiser Restaurants operated by an Affiliate of Franchiser and located in an area for which there is a Regional Advertising Fund shall pay the same Regional Advertising Fund Fee as Franchiser Restaurants operated by Franchisees. Franchisee hereby agrees to be a member of, participate in, and pay a Regional Advertising Fund Fee to any Regional Advertising Fund in existence as of the Effective Date for any Business that is located within the defined geographical area that encompasses such Regional Advertising Fund. All amounts paid by Franchisee to the Regional Advertising Fund may be credited against the amounts required to be spent for local advertising designated in Section 7.2 above. Franchisee shall abide by the by-laws and any other rules of any Regional Advertising Fund of which it is a member.

8. DEFAULT AND TERMINATION
8.1 Any default by Franchisee under any agreement with Franchiser or any of its Affiliates shall be deemed a default under this Agreement.

8.2 Except as otherwise provided in this Article 8, Franchiser may terminate this Agreement before the Expiration Date only for Good Cause.

8.3 Franchiser may terminate this Agreement effective immediately upon delivery of notice of termination to Franchisee without an opportunity to cure if, during the term of this Agreement, any of the following events occurs:

a. The discovery by Franchiser that Franchisee made a material misrepresentation in the application or otherwise relating to the acquisition of Franchisee's Franchise or entering into this Agreement, or that Franchisee or the Business has engaged in conduct reflecting materially and unfavorably upon the operation and reputation of Franchiser, the Marks, or the Network; or

b. Franchisee is convicted of or pleads no contest to a felony or other criminal or civil offense involving charges of moral turpitude or that is otherwise likely to affect adversely the reputation of Franchiser, the Marks, or the Network; or

c. Franchisee makes any unauthorized use, disclosure, or duplication of any Proprietary Information; or

d. Franchisee abandons, surrenders, or transfers control of, or fails or refuses to actively operate the Business continuously for five (5) consecutive days during any twelve (12) months period unless the Business has been closed temporarily for a purpose approved by Franchiser; or

e. Franchisee surrenders or transfers control of the operation of the Business, makes or attempts to make a Transfer not in accordance with Article 10 of this Agreement, or fails or refuses to assign this Agreement or the interest in Franchisee of a deceased or disabled controlling owner as required by Section 10.6 of this Agreement; or

f. Franchisee ceases to be entitled to possession of the Premises; or

g. Franchisee files any petition or action for relief under any bankruptcy, insolvency, reorganization, moratorium, creditor composition law, or any other law for the relief of or relating to debtor's; or an involuntary petition is filed under any bankruptcy law against Franchisee, or receives an appointment of a receiver or trustee, or makes any assignment for the benefit of creditors, or fails to vacate or dismiss within sixty (60) days after filing any such proceedings commenced against Franchisee by a third party; or

h. Franchisee repeatedly fails to submit when due reports or other information or supporting records, to pay when due any payments due to Franchiser and/or its Affiliates, or to any Approved Supplier, or otherwise fails to comply with this Agreement, whether or not such failures to comply are corrected after notice is delivered to Franchisee; or

i. Franchisee commits any other material breach of this Agreement.

8.4 If Franchisee is in substantial compliance with this Agreement and Franchiser materially breaches this Agreement and fails to cure such breach within a reasonable time after written notice thereof is delivered to Franchiser, Franchisee may terminate this Agreement. Such termination shall be effective thirty (30) days after delivery to Franchiser of notice that such breach has not been cured and Franchisee elects to terminate this Agreement. A termination of this Agreement by Franchisee for any reason other than breach of this Agreement by Franchiser and Franchiser's failure to cure such breach, within a reasonable time after Franchiser's receipt of written notice from Franchisee, shall be deemed a termination without cause.
9. POST-TERMINATION OBLIGATIONS

9.1 Upon expiration or termination of this Agreement for any reason, Franchisee shall, at its expense:

a. Within fifteen (15) days after the effective date of such expiration or termination, pay to Franchiser all liquidated and ascertainable sums owing from Franchisee to Franchiser, including all damages, costs, expenses, and Professionals’ Fees incurred by Franchiser as a result of the termination or expiration; and

b. Immediately and permanently discontinue the use of the Marks, the System, the Proprietary Information, and any other materials which may in any way indicate that Franchisee ever operated a Franchiser Restaurant; and

c. Immediately and permanently remove, destroy, or obliterate all signs containing any of the Marks. If Franchisee fails to remove items bearing the Marks within a reasonable time following termination, then Franchiser or its agents shall have the right to enter the Premises to remove items bearing the Marks, with the costs of such removal to be borne by Franchisee; and

d. Immediately return to Franchiser all copies of the Manuals, all Proprietary Information, and all other materials relating to the System; and

e. Take such action as may be required to cancel all assumed names or equivalent registrations relating to Franchisee's use of any Marks; and

f. In the event Franchisee continues to operate or subsequently begins to operate any other business, not to use any reproduction, counterfeit, or copy of the marks, or any colorable imitation of the Marks, either in connection with such other business or the promotion of such business, which would be likely to cause confusion, mistake, or deception, or to dilute Franchiser's exclusive rights in and to the Marks. Franchisee shall make such modifications or alterations to the Premises immediately upon termination or expiration of this Agreement, as may be reasonably necessary to prevent any association between the Network and any business subsequently operated by Franchisee or others, subject to all other terms and conditions of this Agreement. Franchisee shall make such specific additional changes to the Premises as Franchiser may reasonably request for that purpose, including, without limitation, removal of all signage and any other distinctive physical and structural features identifying the System.

9.2 Immediately upon the expiration or termination of this Agreement, for any reason, all rights granted to Franchisee pursuant to this Agreement shall terminate.

9.3 All obligations of Franchiser and Franchisee which expressly or by their nature survive the expiration or termination of this Agreement shall continue in full force and effect subsequent to and notwithstanding such expiration or termination and until they are satisfied or by their nature expire.

10. OWNERSHIP AND TRANSFER

10.1 This Agreement may be transferred by Franchiser to any person that assumes all of Franchiser's obligations under this Agreement.

10.2 Subject to all terms and conditions of this Agreement, Franchisee may make a Transfer of this Agreement subject to the following conditions and requirements:

a. Franchisee, or any partner (if Franchisee is a partnership), or shareholder (if Franchisee is a corporation)
of Franchisee, shall not Transfer by operation of law or otherwise, the Franchise or any interest in the Franchise, or this Agreement, without the prior written consent of Franchiser. Franchisee may not fractionalize the Franchise without the prior written consent of Franchiser. Any purported Transfer without the prior written consent of Franchiser shall be null and void and shall constitute a material breach under this Agreement.

18 b. Franchiser shall not unreasonably withhold its consent to any Transfer of this Agreement when requested; provided, however, that such Transfer shall be subject to compliance with the procedures, conditions, and requirements set forth in the Manuals.

10.3 Franchisee shall pay to Franchiser the Transfer Fee.

10.4 Franchisee shall give not less than thirty (30) days written notice of any proposed Transfer to Franchiser. Franchisee's notice must be accompanied by payment of the Transfer Fee and delivery of all other required documents, as set forth in the Manuals. The thirty (30) days notice period shall commence only after Franchiser's written confirmation of receipt of all materials required by this Article 10 and Franchisee's compliance with all procedures, conditions, and requirements set forth in the Manuals.

10.5 In the event of any proposed Transfer, Franchiser shall have a right of first refusal, exercisable in accordance with the requirements and procedures set forth in the Manuals within thirty (30) days of receipt of Franchisee's notice of proposed Transfer pursuant to Section 10.4 of this Agreement and all material information relating to the proposed Transfer, to acquire the interest proposed to be transferred, on identical terms and conditions as the proposed transferee; if any such terms and conditions are modified subsequent to Franchisee's notice pursuant to Section 10.4, then Franchisee shall provide notice of such modifications and the thirty (30) day period shall restart. In the event that the proposed transferee offers non-cash consideration for the transfer, Franchiser shall have the right to substitute an equivalent amount of cash in lieu of such non-cash consideration in exercise of Franchiser's right of first refusal.

10.6 In the event of the Incapacity of an individual Franchisee or any Franchisee Principal(s), the heirs, beneficiaries, devisees, or legal representatives of such person, within ninety (90) days of such event, shall apply to Franchiser for the right to continue to operate the Business for the remaining term of this Agreement, which right shall be granted upon the fulfillment of all of the conditions set forth in Section 10.2 of this Agreement, except that the right of first refusal granted in Section 10.5 shall not apply to such situations.

10.7 The rights and obligations of Franchiser shall inure to the benefit of and bind Franchiser's heirs, executors, assigns and successors, and the rights and obligations of Franchisee shall inure to the benefit of and bind Franchisee's heirs, executors, assigns and successors.

11. FRANCHISE RELATIONSHIP

11.1 Franchisee is an independent contractor. Franchisee is in no way authorized to make any contract, agreement, warranty, or representation on behalf of Franchiser, or to create any obligation, express or implied, on behalf of Franchiser. This Agreement does not constitute either Party as an agent, legal representative, joint venturer, partner, employer, employee, or servant of the other Party for any purpose whatsoever.

11.2 Nothing contained in this Agreement shall be interpreted as a guarantee of success in the Business. Franchiser does not make any representation or warranty, express or implied, as to the potential success of the business venture contemplated by this Agreement. The success of the Business is speculative and depends, to a large extent, upon the ability of Franchisee as an independent business operator and the active participation of Franchisee in the operation of the Business and the Franchiser Restaurant, as well as other factors.
11.3 Franchisee represents and acknowledges as follows:

a. Franchisee has not received, or relied upon, any representation, warranty, or guaranty, express or implied, as to the revenues, profits, or success of the business venture contemplated by this Agreement, including any oral or written representations that Franchiser will (1) provide customers or locate customers for Franchisee; (2) purchase any portion of Franchisee's products or services; (3) guarantee to Franchisee that Franchiser will derive income in excess of any price paid for this franchise, or refund any portion of such payment; or (4) provide any sales program or marketing plan which will enable Franchisee to derive income in excess of any price paid for this franchise.

b. Franchisee has received, read and understood this Agreement and Franchiser's Uniform Franchise Offering Circular. Franchisee has no knowledge of any representations by Franchiser or its Affiliates that are contrary to the statements made in Franchiser's Uniform Franchise Offering Circular or to the terms of this Agreement. Franchiser has fully and adequately explained the provisions of each of these documents to Franchisee's satisfaction; and Franchiser has accorded Franchisee ample time and opportunity to consult with its own advisors about the potential benefits and risks of entering into this Agreement.

c. Franchisee has received (i) a copy of this Agreement and all Exhibits to this Agreement, at least five (5) days prior to the date on which this Agreement was executed and (ii) the disclosure document required by the Trade Regulation Rule of the Federal Trade Commission entitled Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures (the "FTC Rule"), at least ten (10) business days prior to the date on which this Agreement was executed.

d. Other than the information contained in Franchiser's Uniform Franchise Offering Circular, no other representation has induced Franchisee to execute this Agreement, and there are no representations, inducements, promises, or agreements, oral or otherwise, between the Parties not embodied in this Agreement, which are of any force or effect with reference to this Agreement or otherwise.

12. GENERAL PROVISIONS

12.1 Franchisee shall defend and indemnify and hold harmless Franchiser, and Franchiser's Affiliates, at Franchiser's sole cost and expense, from and against any and all Claims, arising out of rights and obligations of the Parties pursuant to this Agreement.

12.2 No failure of Franchiser to exercise any power reserved to it by this Agreement, or to insist upon strict compliance by Franchisee with any obligation or condition of this Agreement, and no custom or practice of the Parties in variance with the terms of this Agreement, shall constitute a waiver of Franchiser's right to demand exact compliance with any term or condition of this Agreement. Waiver by Franchiser of any particular default by Franchisee shall not be binding unless in writing and executed by and shall not affect or impair Franchiser's right with respect to any subsequent default of the same or of a different nature.

12.3 Any and all notices required or permitted under this Agreement shall be in writing and shall be personally delivered, faxed, delivered by overnight air courier, or mailed by certified mail, return receipt requested, to the respective Parties at the addresses set forth in Exhibit A, as amended from time to time by written notice to the other Party. Any notice by certified mail shall be deemed to have been given three (3) days after the date and time of mailing. Any notice delivered by overnight air courier shall be deemed to have been given one (1) day after the date and time of sending. Any notice personally delivered or sent by fax is deemed given upon delivery or completion of transmission.

12.4 In the event that either Party to this Agreement is required to employ legal counsel or to incur other expenses to enforce any obligation of the other Party under this Agreement, or to defend against any Claims by reason of the other Party's failure to perform any obligation imposed upon such other Party by this Agreement, and provided that legal action is filed and a final order in such action or the settlement of such action establishes the other Party's default under this Agreement, then that Party shall be entitled to
recover from the other Party the amount of all Professionals’ Fees and all other expenses incurred in enforcing such obligation or in defending against such Claims, whether incurred prior to, or in preparation for, or in contemplation of the filing of such action or thereafter.

21 12.5 Each section, subsection, part, term, and/or provision of this Agreement shall be considered severable, and if, for any reason, any section, subsection, part, term, and/or provision of this Agreement is determined in a final order by a court of competent jurisdiction to be invalid and contrary to, or in conflict with, any existing or future law or regulation, then such determination shall not impair the operation of or affect the remaining sections, subsections, portions, parts, terms, and/or provisions of this Agreement, and, to the fullest extent possible, such remainder shall continue to be given full force and effect and to bind the Parties to this Agreement, and any invalid or illegal sections, subsections, portions, parts, terms, and/or provisions shall be deemed not part of this Agreement; provided, however, that if Franchiser determines that such finding of invalidity or illegality adversely affects the basic consideration of this Agreement, then Franchiser, at its option, may terminate this Agreement.

12.6 No amendment, change, or variance from this Agreement shall be binding on either Party unless executed in writing by both Parties.

12.7 All captions used in this Agreement are intended solely for the convenience of the Parties, and none shall be deemed to affect the meaning or construction of any provision of this Agreement. The Preambles are not incorporated into this Agreement. Pronouns are used without regard to gender or number. References to numbers of days refer to calendar days. References to "including" are not exclusive and should be read as "including, without limitation."

12.8 This Agreement may be executed in multiple counterparts, and each copy so executed shall be deemed an original.

12.9 This Agreement shall be interpreted and construed under the laws of the XXX, excluding its conflicts of laws principles, except to the extent governed by the XXX Act of 19XX.

12.10 Any action commenced for the purpose of interpreting or enforcing any term or condition of this Agreement shall be commenced in either the <наименование суда> for the <округ>. The Parties submit to and accept the jurisdiction and venue of these courts and agree to be bound by any judgments and orders rendered by these courts.

12.11 No right or remedy conferred upon or reserved to Franchiser or Franchisee by this Agreement is intended to be, nor shall be deemed, exclusive of any other right or remedy provided in this Agreement or otherwise provided or permitted by law or equity, but each shall be cumulative of every other right or remedy.

22 12.12 Franchiser expressly reserves any and all rights not explicitly granted to Franchisee by the terms and conditions of this Agreement.

12.13 This Agreement, and any Exhibits attached to this Agreement, shall be construed together and constitute the entire, full, and complete agreement between Franchiser and Franchisee concerning the subject matter of this Agreement, and shall supersede all prior agreements.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have duly executed, sealed, and delivered this Agreement effective on the day and year first above written.

Franchiser <>
By: <>
Date <>
QUESTIONNAIRE

for conducting inquiry among participants of distribution system
in “Beer”, “Egg”, “Ice-cream”, “Refreshing Beverages” product markets

Dear businessman,

The Project “Armenia: Competition Issues in the Distribution Sector” (hereinafter “the Project”) is implemented through the grant awarded by International Development Research Centre (Canada) with an aim of further development and improvement of the distribution sector in the Republic of Armenia.

This inquiry is conducted among trade outlets (hereinafter “shops”) involved in the distribution system of “Beer”, “Egg”, “Ice-cream”, “Refreshing Beverages” product markets in order to assess whether the companies having influence in those markets display such a behavior in the process of their products distribution that involves certain compulsion with respect to the shops, which constitutes an abuse of dominant position, namely:

1. existence of clauses in contracts signed with suppliers, which involve imposition of certain conditions not having direct relevance to the core subject of the contract:
   1.1 product demonstration requirements,
   1.2 binding of minimum sale quantity,
   1.3 other.

2. extra-contractual (behavior) compulsion,

3. any other compulsion.

The Project anticipates your assistance and support. Please fill in the questionnaire and return to our employee. When filling in the questionnaire you may choose not to indicate the name of your organization if it prevents you from giving honest answers to the questions. Please mark the answer which complies with your opinion. Confidentiality of answers is guaranteed.

Thank you in advance.
Project “Competition Issues in the Distribution Sector in Armenia:”

QUESTIONNAIRE


1. How long do you work in this sphere?
   - ☐ up to 1 year
   - ☐ 1-3 years
   - ☐ 3-5 years
   - ☐ over 5 years

2. Are you the owner of the shop or premises?
   1. Yes
   2. No, I lease it.
   3. Other (please specify)

3. Please indicate or list the supplier companies from which you receive or acquire products.

<table>
<thead>
<tr>
<th>Number of suppliers</th>
<th>Beer</th>
<th>Egg</th>
<th>Ice-cream</th>
<th>Refreshing Beverages</th>
</tr>
</thead>
<tbody>
<tr>
<td>From 1 supplier</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>From 2 suppliers</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>From 3 suppliers</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>From 4 and more suppliers</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

List supplier companies or indicate by mark “X” in the respective column
4. On what principle is your relationship with the supplier based?

<table>
<thead>
<tr>
<th>Cooperation basis</th>
<th>Name of Product Market</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Beer</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Permanent contract</td>
<td></td>
</tr>
<tr>
<td>Temporary contract</td>
<td></td>
</tr>
<tr>
<td>Making procurements as needed</td>
<td></td>
</tr>
<tr>
<td>Other (please specify)</td>
<td></td>
</tr>
</tbody>
</table>

5. If you work under a contract or based on other forms of cooperation, does the contract contain any clauses which, in your opinion, do not have direct relevance to the contract?

<table>
<thead>
<tr>
<th>Answer</th>
<th>Name of Product Market</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Beer</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>No</td>
<td></td>
</tr>
<tr>
<td>I find it difficult to answer</td>
<td></td>
</tr>
</tbody>
</table>

6. If yes, please specify

<table>
<thead>
<tr>
<th>Answer</th>
<th>Name of Product Market</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Beer</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Not to receive products from another supplier or sell its products</td>
<td></td>
</tr>
<tr>
<td>Not to apply discounts for buyers</td>
<td></td>
</tr>
<tr>
<td>To demonstrate the products (refrigerator) in most visible places</td>
<td></td>
</tr>
<tr>
<td>Other (please specify)</td>
<td></td>
</tr>
</tbody>
</table>
7. “Does the contract signed with you contain any provision establishing obligatory minimum sales quantity?”

<table>
<thead>
<tr>
<th>Answer</th>
<th>Beer</th>
<th>Beer</th>
<th>Beer</th>
<th>Beer</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Indicate by mark “X” in the respective column*

8. If yes, does the satisfaction of that condition serve as a ground for provision of products?

<table>
<thead>
<tr>
<th>Answer</th>
<th>Beer</th>
<th>Beer</th>
<th>Beer</th>
<th>Beer</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Indicate by mark “X” in the respective column*

9. If you have answered “Yes” to Question 7, than what action of the supplier will follow if you fail to meet that requirement?

<table>
<thead>
<tr>
<th>Answer</th>
<th>Beer</th>
<th>Beer</th>
<th>Beer</th>
<th>Beer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Will stop supplying the product</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Will take back the refrigerator provided by it</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other (please specify)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Indicate by mark “X” in the respective column*
10. Please indicate your attitude about the establishment of obligatory minimum sales quantity by the supplier?

<table>
<thead>
<tr>
<th>Answer</th>
<th>Beer</th>
<th>Beer</th>
<th>Beer</th>
<th>Beer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is a lawful requirement</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is a requirement restricting your rights</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is a requirement not having any relevance to the core subject of the contract</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other (please specify)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

11. “Do any relations not regulated under the contract arise during cooperation with the supplier? If yes, please specify.”

<table>
<thead>
<tr>
<th>Answer</th>
<th>Beer</th>
<th>Beer</th>
<th>Beer</th>
<th>Beer</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes, verbal compulsion not to work with other suppliers</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Not to place refrigerators of other companies in the shop</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other (please specify)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

12. “Are you satisfied with the quality of cooperation with suppliers?”

<table>
<thead>
<tr>
<th>Answer</th>
<th>Beer</th>
<th>Beer</th>
<th>Beer</th>
<th>Beer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I find it difficult to answer</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
13. Are there any impediments to the development (expansion) of your business?

<table>
<thead>
<tr>
<th>Answer</th>
<th>Name of Product Market</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Beer</td>
</tr>
</tbody>
</table>

*Indicate by mark “X” in the respective column*

| Yes    | No   | I find it difficult to answer |

14. If yes, please specify.

__________________________________________________________________________________

15. In your judgment, is fair and sound competition present in the given market?

<table>
<thead>
<tr>
<th>Answer</th>
<th>Name of Product Market</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Beer</td>
</tr>
</tbody>
</table>

*Indicate by mark “X” in the respective column*

| Yes    | No   | I find it difficult to answer |

16. Other notes (wishes, proposals, information, data, etc.)

------------------------------------------------------------------------------------------------------------------

We guarantee:

- confidentiality of completed Questionnaire;
- anonymity;
- non-disclosure of provided information for purposes other than those of the Project.

**Thank you in advance for your cooperation.**

For receiving (providing) additional information concerning this Project and the Questionnaire, please contact us by telephone, mail or e-mail.

**Tel:** 545 677 (142, 141, 147)

**Address:** 5b M.Mkrtchyan, Yerevan, 0010, Armenia

**E-mail:** poladkar@netscape.net
Summary tables of questionnaires completed by representatives of 99 shops are presented in the attached document (in MS Excel format).
Appendix 9

Project “Competition Issues in the Distribution Sector in Armenia”

Inquiry Sheet

Product name

1. “What distribution system is used for the company products?” (more than one answers may be selected):
   - through own shop network (by unified accounting),
   - through own shop network (by separated accounting),
   - intermediary organization-forwarding agent - on contract basis;
   - intermediary organization-shop - on contract basis;
   - from own warehouse;
   - other (specify)

2. The product is provided to the consumer organization (more than one answers may be selected):
   - based on contract,
   - based on invoice,
   - other (specify)

3. What mode of payment is applied? (more than one answer may be selected).
   - in cash;
   - in non-cash form, by transfer,
   - before the product sale,
   - after the product sale,
   - other (specify)
4. Are there any quantity restrictions for supplied products?

☐ yes,

minimum _______________________.

indicate

maximum _______________________.

indicate

☐ no

5. Is the size of shop space taken into consideration when supplying products to the shops?

☐ yes,

If yes, indicate sizes _______________________.

indicate

☐ no

6. State the frequency of supplies:

☐ every day,

☐ once a week,

☐ other (specify)

7. What happens with unsold products after expiration of their shelf-life?

☐ is returned to your company,

☐ remains at the disposal of the consumer company,

☐ other (specify)
8. **Does your company provide refrigerators, exposition, storage or other facilities to the consumer company?**
   - yes, 
     if yes, please specify ________________________________.
   - no

9. **What conditions do you offer to the consumer company in case of providing refrigerators, exposition, storage or other facilities?**
   - No similar device of your competitor shall be placed next to the one provided by you.
   - No other product shall be placed next to yours.
   - other (specify)

10. **Does your company apply any discounts?**
    - yes, 
      if yes, please specify ________________________________ ________________________________
    - no.

11. **Are you familiar with your competitors’ distribution systems?**
    - yes, 
    - no.

12. **If yes, do you coordinate your distribution policies with each other?**
    - yes, 
    - no.

13. **Are there any consumer companies not willing to cooperate?**
    - yes, 
      if yes, state the reason ________________________________
    - no.
14. Were there any cases when consumer companies rejected your offer to put up your product for sale?

☐ yes,

if yes, state the reason ______________________________________________________

______________________________________________________

☐ no.

15. Other notes (wishes, proposals, information, data, etc.)

______________________________________________________

We guarantee:

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Grant Project of International Development Research Centre (IDRC) “Competition Issues in the Distribution Sector in Armenia”
Appendix 9

Project “Competition Issues in the Distribution Sector in Armenia”

Inquiry Sheet

1. Whose distributor are you?

☐ manufacturer (parent factory)

☐ another foreign dealer of the manufacturer

☐ other, please specify

2. Please indicate the name and country of the supplier.

3. What is the organizational-legal ground of your cooperation with the supplier?

☐ standard contract with foreign supplier (standard form offered by the supplier)

☐ newly developed contract with foreign supplier

☐ other, please specify

4. On what principle is your cooperation with the supplier built?

☐ product sale on conditions and at prices predetermined by the supplier

☐ product sale within the scope of your organizational and price policy

☐ other, please specify
5. Please list the risks existing in your relations with the supplier.

6. In your opinion, what advantage does the exclusive distribution system provide you in the given market?

☐ operate without competitors

☐ make minimum expenses on advertising or other measures fostering the product sale

☐ other, please specify

7. Are you familiar with the RA legislation provisions pertaining to the exclusive distribution system regulation?

☐ yes

☐ no

8. How do you estimate the level of exclusive distribution system legal regulation in Armenia?

☐ satisfactory

☐ unsatisfactory

9. If you have answered “Yes” to Question 8, then what would you suggest for improvement?

____________________________________________________________________________

____________________________________________________________________________

10. Do you think that distributors’ rights are protected under RA legislation?

☐ yes

☐ no

11. If you have answered “No” to Question 10, then what kind of legislative protection do you expect? Please specify

____________________________________________________________________________

____________________________________________________________________________

____________________________________________________________________________
12. Do you have competitors in the given market?

☐ yes

☐ no

☐ I find it difficult to answer

13. If you have answered “Yes” to Question 10, then how do you estimate their competitive opportunities?

☐ high

☐ medium

☐ low

☐ impossible

14. Are there any impediments to the development (expansion) of your business?

☐ yes

☐ no

15. If yes, please specify


16. In your judgment, is fair and sound competition present in the given market?

☐ yes

☐ no

☐ I find it difficult to answer