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Motor Vehicle Sector Update – 2010 Developments

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Below is our general assessment with final updates of Turkish regulations on product defects, consumer protection and manufacturer liability, competition issues in the automotive sector and the automotive sector itself.

After considering the Turkish Code on Consumer Protection numbered 4077, The Act on Protection of Competition numbered 4054, the Warranty Regulation issued by the Ministry of Industry and Trade, Regulation on the Liabilities Arising From the Damages Caused by Defect Products and Regulation on the After Sale Services of the Industrial Products and Sector Report published by Taysad, this memorandum addresses:

1. The Turkish Automotive Sector as of August 2010
2. New Significant Jurisprudence Relating to the Automotive Sector
3. Anticipated Changes in Legislation
4. Investment Incentives Applied to the Automotive Sector

Sector Information: Turkish Automotive Sector as of August 2010

As per the report published by Taysad in September 2010, the Turkish Automotive Production Sector has grown 14 percent in total since September 2009. The estimated vehicle production shall be between 1.1 million - 1.15 million by the end of the year. Tofaş is leading the sector in number of vehicles produced with 27,433 vehicles produced in September. Tofaş is leading the sector also in the number of the vehicles produced in the year 2010, with 225.908 vehicles. However, Mercedes-Benz Türk is the sector leader in the truck and autobus market by producing 55 percent of the trucks and 48 percent of the autobuses. The Turkish Automotive Sector is a rapidly growing sector in the world market. Please see Annex 1 for production numbers.

However, compared to the same month of the preceding year, the autobus manufacturing market has grown 11 percent. On the other hand, compared to the first nine months of the preceding year, autobus sales have shrunk by 22 percent. But the truck sales market has grown 49 percent in total (total amount of imported trucks and trucks produced in Turkey). The automotive sector is growing despite the heavy tax duties upon manufacturers and buyers.

The Turkish government made a tax reduction in 2009, which scaled up the automotive sales rate. The Minister of Industry and Trade also stated that "Hyundai wants to bring the i20 production to Turkey" according to the news which was published on the ministry's web site on September 20, 2010

New Jurisprudence

A. Consumer Law

In this section, we would like to address some Court of Appeals decisions related to Consumer Law in the automotive sector, which have been publicized.1 The Court of Appeals (numbered 2006/14229 E. and 2007/2854 K. dated 02.03.2007) decided that in the event of a refund claim or the replacement request of the defect product based on repetitive breakdowns (more than two); the consumer is entitled to a refund claim or the replacement of the defect product as per Art. 4/2 of the Turkish Code on Consumer Protection. The Court of Appeals (numbered 2009/8768 E. and 2009/12242 K. dated 03.11.2009) decided that in the event of replacement request of the defect product based on hidden defect; the consumer is entitled to the replacement of defect product as per Art. 4 of the Turkish Code on Consumer Protection. The Court of Appeals (numbered 2009/4-246 and 2009/297 dated 0107.2009) decided that in the event of a replacement request of the defect product based on repetitive breakdowns (more than two); the consumer may continue to use the defect product even after opening a lawsuit, this situation does not affect the liability of the Manufacturer as per Article 4 of the Turkish Code on Consumer Protection and Article 14 of the Warranty Regulation.

B. Product Safety

As per Article 5 of the Law of Technical Legislation on Product Preparation and Implementation "All the new products which will be launched to the market, must be in accordance with technical regulations…" The regulations for the automotive sector are numerous and mainly technical, therefore we would like to mention the Court of Appeals decisions regarding product safety and the liability of the manufacturer.

The Court of Appeals (numbered 2009/2756 E. and 2009/5196 K. dated 08.04.2009) decided that in the event of death due to the defect product the term of litigation is three years and the manufacturer is liable for all damages as per Article 4 of the Turkish Code on Consumer Protection, Article 45 of the Law of Obligations and Article 9 of Regulation on the Liabilities Arising From the Damages Caused by Defect Products. The Court of Appeals (numbered 2009/5597 E. and 2009/771 K. dated 08.06.2009) decided that in the event of death and/or injury because of the defective product the consumer is also entitled to request an indemnity from the manufacturer.

Turkish legislation is in coherence with EU regulations. As per EU Council Guideline numbered 339/93, products coming from the third countries shall be inspected during import. Whether inspected or not inspected, the importers' liability continues for the product that he imported within the scope of market supervision. The Undersecretariat of the Prime Ministry for Foreign Trade inspects and regulates the market for product safety.

Anticipated Legislative Changes

A. Competition Law Regarding the Automotive Sector

Turkish Competition Law regarding the motor vehicles sector has not been changed since our previous memorandum dated April 13, 2010. However, a new regulation was adopted by the European Commission on May 27, 2010 regarding the vertical agreements and concerted practices in the motor vehicle sector ("**New EC Motor Vehicles Regulation**"). The New EC Regulation has entered into force on June 1, 2010 and will remain in force until May 31, 2023.

The EC Regulations are not directly applicable in Turkey. In other words, current Turkish legislation has not been amended by the New EC Motor Vehicles Regulation. On the other hand, according to our previous observations, the Turkish competition legislation follows the changes in the European legislation. Therefore, we would like to explain below the main changes brought about with the New EC Motor Vehicles Regulation, which may be adopted partially or fully by the Turkish Competition Authority in the future.

The essential change in the EU legislation brought up with the New EC Motor Vehicles Regulation is as follows: The purchase, sale and resale of new motor vehicles will be subject to the EC regulation numbered 330/2010 relating to the block exemption of vertical agreements in general ("EC Vertical BER"). In other words, according to the New EC Motor Vehicles Regulation, the vertical agreements relating to the purchase, sale and resale of new motor vehicles will not be subject to stricter provisions than the vertical agreements in other sectors. The change explained under this paragraph will take effect on June 1, 2013.

On the other hand, vertical agreements for the distribution of spare parts and for the provision of repair and maintenance services will benefit from the block exemption of vertical agreements only if, in addition to the conditions set forth under the EC Vertical BER, they fulfill certain conditions listed under Article 5 of the New EC Motor Vehicles Regulation. The change explained under this paragraph is in effect since June 1, 2010.

Investment Incentives Applied to the Automotive Sector

As per Article 5 of the Communiqué on State Support to The Investments ("**State Support Communiqué**") "The fixed investment amount should be one million Turkish Lira for the investment, which will be done in Region I and II. The fixed investment amount should be five hundred thousand Turkish Lira for the investments which will be done in Region III and Region IV" As per Article 10 of the State Support Communiqué "…. all investments which are in accordance with Article 5 of this Communiqué shall benefit from the custom taxes exemption and VAT derogations without making any differences between regions". There are three types of the incentives.

A. General Investment Incentive Regime

The general investment incentive regime is mainly a tax benefit program with credit possibilities. The implementation of the Turkish Incentive Regime varies depending on the location, scale and subject of investment. The major investment instruments are:

Exemption from customs duties - There is a customs tax exemption for imported machinery and equipment for any project with an incentive certificate. CKD components and parts are included to such exemption only to remain during the investment term.

VAT exemption - VAT exemption for locally purchased or imported machinery and equipment for project with an incentive certificate.

B. Incentives for Large-Scale Investments

- Tax Reduction
- Social Security premium contribution up to seven years
- Land Allocation

In order to benefit from these incentives the minimum fixed investment amount should be 250 million Turkish Lira for the motorized land vehicle manufacture sector.

C. Region and Sector based Incentives

- Tax Reduction
- Social Security premium contribution up to seven years
- Land Allocation

Transferring a large scaled investment to another Region is prohibited for a term of five years as per Article 28 of the State Support Communiqué. Only if the Ministry of Industry and Commerce Undersecretariat of Treasury permits and if that investment is applicable in the transfer region, then it is possible to transfer the investment to that Region.

[1] Please note that in Turkey we do not have a precedent system. Not all of the court cases are published and the decisions of the Court of Appeals only serve as "exemplary" decisions which can be provided as references in other similar cases.

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