

Turkey Overhauls Block Exemption for Vertical Agreements the Motor Vehicle Sector

24 Feb 2017

Turkey's block exemption for distribution agreements in the motor vehicle sector has been amended. Changes aim to address problems encountered during implementation of the scheme, as well as experiences gained from similar exemptions in other sectors. Changes differentiate the market into three segments, abolish a range of general conditions for agreements, loosen certain non-compete rules, as well as clarify the definition of equivalent spare parts.

Communiqué No. 2017/3 was published in Official Gazette number 29989 on 24 February 2017, entering into effect on the same date. It makes changes to Communiqué No. 2005/4, which has been in force since 1 January 2006.

Notable changes under the new Communiqué include:

Market share threshold drops to 30% for quantitative selective distribution systems

Certain market thresholds for distribution systems have now been abolished. Rather, quantitative selective distribution and exclusive distribution systems can now only benefit from block exemption if the related undertaking has less than 30% market share (Article 5 of Communiqué No. 2017/3).

Previously, to benefit from the block exemption, market shares were set at:

- 30% for exclusive distribution systems.
- 40% for quantitative selective distribution systems.

There continues to be no specific market share threshold set for qualitative distribution systems.

General exemption conditions

To benefit from the block exemption, certain general conditions were previously required to be met (Article 4 of Communiqué No 2005/4). These conditions have now been removed on the basis that they interfere with the parties' contractual freedom and the intended outcome can be achieved via other means.

Accordingly, these (previously mandatory) general conditions for agreements have now been removed:

- The right to transfer rights and obligations stemming from a vertical agreement of the authorized distributor or service to another undertaking in the supplier's distribution network must not be limited.
- Termination notices must
 - Be made in writing.
 - Include detailed and objective termination reasons.
- Parties must resolve disputes stemming from fulfillment of the agreement's obligations before an independent expert or tribunal.

Only the termination notice terms remain as a general condition for agreements to qualify for the block exemption. According to these, termination notice periods must be:

- Six months if the agreement term is five years or more.
- At least two years if the agreement term is indefinite.

Non-compete and Multi-branding:

Previously, there was no distinction between non-compete obligations at different levels of the market. The market has now been differentiated into three segments:

- Distribution of motor vehicles.
- Distribution of spare parts.
- Maintenance and repair services.

For distribution of motor vehicles:

- Direct non-compete obligations can now be imposed on buyers for up to five years, but cannot extend beyond the term of the agreement.
- For indirect non-compete obligations, the minimum purchase requirement has increased from 30% to 80%. Any obligation imposed on buyers to purchase a certain minimum percentage of goods, services or substitutable items from the seller (or from another undertaking selected by the seller) may be deemed to be an "indirect non-competition obligation" if the quantity is determined based on the buyer's purchase amount during the previous calendar year.

The existing system continues to operate for spare parts distribution, as well as supply of maintenance and repair services. Accordingly, agreements containing the following cannot benefit from the block exemption:

- Direct non-compete obligations on distributors.
- Provisions which impose minimum purchase requirements of more than 30% of the distributors sales during the previous calendar.

However, an exception is introduced for (i) spare part distribution networks established by independent spare part suppliers and (ii) maintenance and repair service chains. Direct or indirect non-compete obligation can be imposed by such networks and chains, so long as the non-compete is limited to five years.

Equivalent spare parts:

The definition of equivalent spare parts has been amended for clarity. Accordingly, "Equivalent Spare Part" is now defined as a part produced to replace original parts used in assembly of a motor vehicle that complies with criteria such as mass, size, material, functionality, etc., determined in comparison with the original part as a result of the test and inspection methods set forth by relevant legislation.

Please see this [link](#) for the full text of the Communiqué (only available in Turkish).

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