

GENERAL GROUNDS¹ FOR THE BLOCK EXEMPTION COMMUNIQUÉ IN RELATION TO THE INSURANCE SECTOR

The insurance sector differs from the other sectors due to reasons stemming from both the nature of service offered and the structuralization of the sector. Such difference and special circumstances arising out of it should be taken into consideration in applying article 4 of the Act No. 4054 to the insurance sector.

The leading one among the characteristics that differ the insurance sector from the other sectors is the efficiency-enhancing effect of resorting to cooperation in the calculation of average costs which are also called as net premium or risk premium. As a matter of fact, joint calculation of an average cost incurred due to having placed in the past certain risks under the coverage of guarantee (or the preparation of tables such as life insurance death rate, sickness, accident, disability frequency etc.) facilitates the identification and assessment of risk, encouraging the realistic formation of prices and facilitating market entry. Likewise, researches that would put forward the effect of general external conditions such as global warming, earthquake, flood and erosion on future injury realization frequency and profitability also are of a nature to contribute to understanding risk.

On the other hand, while making the regulations cited above, insurance companies should not be precluded from carrying out their commercial activities freely, and sufficient area should be left for competition. For this reason, it is required that the calculations, tables and researches in question do not bear the nature of determining and fixing commercial premiums.

Another issue to be taken into consideration within this framework is that failure to open calculations, tables and researches to the access of undertakings to newly enter the market may constitute a barrier to market entry. In order to rule out this probability, results of calculations, tables and researches should also be made available for the use of undertakings to newly enter the market under reasonable conditions and without making discrimination. That insurance undertakings

¹ This Section as to the general grounds has not been published in the Official Gazette.

(especially large undertakings) avoid from providing data to be employed in the preparation of calculations and tables, but that however they are able to reach results would create an unfair advantage in favor of such undertakings. In order to prevent this situation, it would be relevant to deem reasonable that despite being granted the opportunity to participate in work under fair terms, undertakings which avoid from it be denied the results of work.

Coinsurance and coreinsurance groups also known as insurance pool are institutional structures set up with a view to placing under guarantee those risk groups to which insurance companies and reinsurance companies are unable to offer sufficient guarantee with their own institutional resources. These structures jointly insure risk groups about which insurance companies do not have sufficient information, also enabling them to identify the risks in question. On the other hand, when it is taken into consideration that in the Turkish insurance sector, the average size of an undertaking is quite below international averages and that therefore, the financial power of the sector is low, it is seen that a similar benefit should also be valid in terms of risks that have not been previously placed under guarantee in Turkey. The facilitation of jointly placing such risks under guarantee would encourage the development of new products in the sector.

On the other hand, cooperations that have a temporary nature and that are not institutionalized, which are created for purposes of placing individual risks under guarantee are not considered as coinsurance or coreinsurance within the meaning of this Communiqué. As long as they emerge due to the fact that the parties do not have financial resources or technical and managerial information to assume the risk on their own, such kind of cooperations do not cause a competition-restricting effect. On the contrary, it is considered that cooperations having the qualities listed above have in general effects of promoting competition and enhancing product supply. As a matter of fact, by means of placing under guarantee in cooperation those risks that they are unable to place under guarantee on their own, undertakings either increase supply by offering a service which cannot be offered otherwise or create a competitive pressure upon large undertakings.

Even though the reinsurance sector presents a globally integrated appearance, the fact that there exists a single reinsurance undertaking operating in the Turkish insurance sector should also not be disregarded while making an evaluation in respect of coreinsurance. For this reason, it would be relevant that pools where reinsurance undertakings are also involved continue to be subject to the provisions of individual exemption. In other words, this Communiqué only covers coinsurance and coreinsurance structures where insurance undertakings are involved.

Coinsurance and coreinsurance agreements should be subjected to certain limits of market power, securing the leaving of an area for competition in the relevant markets. Within this framework, when the fact that the practical effects of coinsurance and coreinsurance agreements considerably overlap is also taken into consideration in addition to the Communiqué's merely covering contracts concluded between insurance undertakings, it is seen that it would be relevant to determine a joint market share threshold for both types of agreements.

The final area of cooperation included within the scope of the Communiqué is aimed at security instruments and security-building measures, and agreements and assents intending to determine standards as to security equipment and measures benefit from block exemption under the conditions determined.

Taking into account the foregoing statements, the Competition Board decided on the issue of this Communiqué.

**BLOCK EXEMPTION COMMUNIQUÉ IN RELATION TO THE INSURANCE
SECTOR
(COMMUNIQUÉ NO: 2008/3)**

Purpose

ARTICLE 1 - (1) The purpose of this Communiqué is to determine the conditions for exempting as a block certain categories of agreements in the insurance sector from the application of the provisions of the Act on the Protection of Competition dated 7/12/1994 and numbered 4054.

Scope

ARTICLE 2 - (1) Under article 5 of the Act No. 4054 and the provisions included in this Communiqué;

a) Jointly doing so by undertakings in the insurance sector;

- 1) The calculation of an average cost of having covered a particular risk in the past (calculations),
- 2) In connection with insurance operations, the preparation of capitalization and death lists, and tables indicating the frequencies of sickness, accident, disability (tables),
- 3) The distribution of the results of these calculations, and tables to undertakings,

b) In a particular risk or risk category, jointly searching the likely effects of general external conditions not associated with undertakings on the frequency and scale of future compensation claims or the profitability of investments of a different type (researches), and the distribution of the results of these researches,

- c) Aimed at particular risk categories, setting up and operating coinsurance and coreinsurance groups with a view to ensuring joint guarantee,
- d) Jointly doing so by undertakings in the insurance sector in respect of security devices, provided that the applicability of regulations as to standards determined by authorized public agencies and organizations to be valid in Turkey is not restricted;

Agreements having the nature of limiting competition, concluded between undertakings operating in the insurance sector for purposes of determining, introducing and distributing

- 1) technical specifications and rules of application,
- 2) procedures as to assessing and approving the conformity of devices to such rules,
- 3) technical specifications and rules of application in respect of the assembly and maintenance of devices,
- 4) procedures as to assessing and approving the conformity of undertakings performing the assembly and/or maintenance of devices to the rules in question

have been exempted as a block from the prohibition in article 4 of the Act No. 4054, based on article 5 paragraph three of the Act No. 4054, provided that they conform to the conditions provided in this Communiqué.

Basis

ARTICLE 3 - (1) This Communiqué has been prepared based on articles 1 and 5 and article 27 sub-paragraph (f) of the Act No. 4054.

Definitions

ARTICLE 4 - (1) In implementation of this Communiqué,

- a) **Act:** Expresses the Act on the Protection of Competition No. 4054.
- b) **Agreement:** Expresses an agreement, a decision of an association of undertakings or a concerted practice.
- c) **Participating undertakings:** Express undertakings which are party to an agreement, and undertakings which are deemed “affiliated” with them pursuant to the provisions of the Communiqué on Mergers and Acquisitions Calling for the Authorization of the Competition Board No. 1997/1, which entered into force by having been published in the Official Gazette dated 12/08/1997 and numbered 23078.
- d) **Coinsurance groups:** Express groups which are set up by insurance undertakings and accept to insure a particular risk category on behalf and on own account of all participating undertakings, or which empower, for this task, an insurance undertaking, a joint agent or a structure set up to this end.
- e) **Coreinsurance groups:** Groups which are set up by insurance undertakings to make mutual reinsurance of risks in a particular risk category partially or wholly or to accept reinsurance of risks in the same category on behalf and on own account of all participants, or which empower, for this task, an insurance undertaking, a joint agent or a structure set up to this end.
- f) **New risks:** Express risks which did not exist before and which, in order to enable that they are insured, necessitate the formation of an entirely new insurance product rather than expanding, developing or changing an existing insurance product.

g) **Security devices:** Express parts, equipment or systems comprised of such elements designed for the prevention or decrease of injuries.

h) **Commercial premium:** Expresses the total paid to an insurance undertaking in return for ensuring insurance protection.

Joint calculations, tables and researches

ARTICLE 5 - (1) In order to enable that the exemption granted by article 2 paragraph one sub-paragraph (a) is valid, calculations and tables are required to provide the following conditions:

a) Calculations and tables should be based on the collection of data that are of adequate number to constitute a base which can be processed by statistical methods and that relate to the same or a comparable risk during a particular number of risk years selected as an observation period. Among data to be obtained as a result of such activity;

1) The number of damage / compensation claims realized within the period determined

2) The number of individual risks insured in each risk year of the observation period selected

3) The amount of compensation paid or likely to be paid in connection with damages realized within the period determined

4) The sum of insurance cost in each risk year of the observation period selected may be found.

b) Statistical data included in calculations and tables should just be detailed insofar as it is required by actuary operations.

- c) Calculations and tables should by no means contain information in respect of reserves allocated for extraordinary circumstances, revenues arising from reserves, costs or gains of administrative or commercial activities, revenues arising or profits expected from investments.

ARTICLE 6 - (1) In order to enable that the exemption granted by article 2 paragraph one sub-paragraphs (a) and (b) is valid, it is required that the results of calculations, tables and researches

- a) do not contain identity information of the relevant insurance undertaking or any insured party,
- b) also contain an expression that they are not binding when their distribution is made.
- c) It is required that a copy of these calculations, tables and work be provided to all demanding insurance undertakings under reasonable and non-discriminating terms, also including undertakings not operating in the relevant product market and the relevant geographical market.

ARTICLE 7 - (1) In the event that participating undertakings engage in a commitment among themselves for not deviating from the results of calculations, tables and researches bearing the conditions for exemption determined by this Communiqué or force the other undertakings in this matter, the exemption granted shall not be valid.

Ensuring joint guarantee for particular kinds of risks

ARTICLE 8 - (1) The exemption granted by article 2 paragraph one sub-paragraph (c) is subject to the below-mentioned principles of application and market share thresholds:

- a) Coinsurance and coreinsurance groups set up for placing under guarantee new risks or those risks which have not been previously covered in Turkey,

after the date of entry into force of this Communiqué shall benefit from the exemption mentioned in article 2 paragraph one sub-paragraph (c), during 3 years from the date they are established, regardless of their market share.

- b) Coinsurance or coreinsurance groups which are not included in sub-paragraph (a) or whose period has exceeded three years despite being included in this sub-paragraph shall benefit from exemption as long as this Communiqué remains in force on condition that insurance products offered by their participating undertakings within the scope of group arrangements do not form more than 20 % of the relevant market.

(2) In the calculation of market share thresholds determined by paragraph one sub-paragraph (b), the following rules shall be applied:

- a) Market shares shall be calculated over commercial premium revenues. If data of commercial premium revenues do not exist, in the calculation of market share of the relevant undertaking, the other reliable market information can be used, also including insurance guarantee provided and risk value insured.
- b) Market share shall be calculated over the data of the preceding calendar year.

(3) In the event that while the market share mentioned in paragraph one sub-paragraph (b) does not exceed 20 % market share threshold initially, this threshold is exceeded later up to 22 %, exemption shall continue to be applied during two years following the year the 20 % threshold has been exceeded the first time.

(4) In the event that while the market share mentioned in paragraph one sub-paragraph (b) does not exceed 20 % market share threshold initially, this threshold is exceeded later such that it is at a level above 22 %, exemption shall continue to be applied during one year following the year the 22 % threshold has been exceeded the first time.

(5) It is not possible to use the exceptions granted by paragraphs three and four by combining them such that it exceeds two years in total.

ARTICLE 9 - (1) Exemption granted to coinsurance and coreinsurance groups by article 2 paragraph one sub-paragraph (c) shall be valid in the event that the following conditions are provided:

- a) Every participating undertaking should have the right to leave the group without being subject to any sanctions, subject to a notification period not longer than one year.
- b) None of the members of a group should be obliged to make insurance or reinsurance over the group partially or wholly related to the risk category concerned.
- c) One should not lead to product or sales limitation, or market or customer sharing by group arrangements.
- d) No member of a group or no undertaking having a decisive influence on the commercial policy of a group should also be a member of another group operating in the same relevant market or should have a decisive influence on the commercial policy of such a group.
- e) Members of a coreinsurance group may not make an agreement aimed at determining a commercial premium in respect of a direct insurance activity.

Security devices

ARTICLE 10 - (1) The exemption granted by article 2 paragraph one sub-paragraph (d) shall be valid in the event that the following conditions are provided:

- a) Technical specifications and conformity assessment procedures should be explicit and clear, technically reasonable, and proportionate to the performance obtained by the security device concerned.

- b) Rules in respect of the assessment of assembly and maintenance undertakings should be related to the technical capabilities of undertakings and objective; they should be applied without making discrimination.
- c) In insuring operations, insurance undertakings should be free to accept, under the terms and conditions they wish, the other security devices or installation and maintenance undertakings which do not conform to the specifications and rules granted an exemption by this Communiqué. Those specifications and rules granted an exemption by this Communiqué should be prepared and distributed such that they contain an explicit expression as regards this issue.
- d) Specifications and rules should be available for the access of everyone interested.
- e) Each list related to security devices and assembly and maintenance undertakings in harmony with specifications should also contain a classification made by taking the level of performance as the basis.
- f) It should be possible that conformity assessment is requested any time by any applying candidate.
- g) For conformity assessment, any cost not proportionate to the cost of approval procedure should not be requested from the applicant.
- h) Devices and assembly and maintenance undertakings meeting the assessment criteria should be approved within six months from the date of application without subjecting to any discriminative treatment, apart from those situations where technical assessments justify a reasonable additional period.
- i) Conformity or approval should be documented by a letter.

- j) Grounds for the rejection of the provision of conformity certificate should be provided in writing; a copy apiece of proceedings in respect of the results of tests and controls performed should be enclosed with the letter.
- k) Grounds for the rejection of a request for conformity assessment should be provided in writing.

Revocation of exemption

ARTICLE 11 - (1) In case it is established that an agreement granted exemption by this Communiqué has effects incompatible with the conditions provided in article 5 of the Act No. 4054, the Competition Board may, based on article 13 of the Act No. 4054, revoke the exemption granted to the agreement by this Communiqué. In this situation, the Competition Board shall ask for the written and/or oral opinions of the parties prior to taking its final decision.

Application of the Communiqué to concerted practices and decisions of associations of undertakings

ARTICLE 12 - (1) This Communiqué shall also be applicable to concerted practices between undertakings and decisions of associations of undertakings caught by article 2 of the Act No. 4054.

Application of Article 6 of the Act

ARTICLE 13 - (1) Exemption granted pursuant to the provisions of this Communiqué shall not hinder the application of article 6 of the Act No. 4054.

TEMPORARY ARTICLE 1 - Agreements which have been concluded before the date of entry into force of this Communiqué and are still in force, and which bear the conditions provided in this Communiqué shall also fall under this Communiqué.

Entry Into Force

ARTICLE 14 - This Communiqué shall enter into force on the date it is published.

Execution

ARTICLE 15 - The provisions of this Communiqué shall be executed by the President of the Competition Authority.