

BLOCK EXEMPTION COMMUNIQUÉ ON VERTICAL AGREEMENTS IN THE MOTOR VEHICLES SECTOR

(COMMUNIQUÉ NO. 2017/3)

SECTION ONE

Purpose, Scope, Grounds and Definitions

Purpose

ARTICLE 1 — (1) The purpose of this Communiqué is to set the conditions for exempting vertical agreements in the motor vehicles sector as a group from the application of the provisions of article 4 of the Act on the Protection of Competition, dated 7/12/1994 and numbered 4054.

Scope

ARTICLE 2 — (1) This Communiqué is related to the block exemption of vertical agreements concerning the purchase, sale or resale of new motor vehicles, the purchase, sale or resale of motor vehicle spare parts, and the provision of maintenance and repair services for motor vehicles from the prohibition of article 4 of the Act no 4054 if they include vertical restraints, provided they fulfill the conditions regulated under the Communiqué herein, based on paragraph 3, article 5 of the same Act.

(2) Vertical agreements concluded between competing undertakings operating in the motor vehicles sector may not benefit from the exemption granted with this Communiqué. However, agreements which do not include reciprocity where the supplier is the manufacturer and distributor of the contract goods or services and where the buyer is not the manufacturer but solely the distributor of goods and services competing with the contract goods or services may benefit from the exemption of this Communiqué.

Grounds

ARTICLE 3 — (1) This Communiqué is issued based on articles 4, 5 and 27 of the Act no 4054.

Definitions

ARTICLE 4 – (1) In the application of this Communiqué,

- a) Buyer: Refers to the undertakings parties to the vertical agreement and which purchase the goods or services from the supplier, including those which purchase goods or services on behalf of or on account of another undertaking;
- b) Independent spare part distributor: Refers to an undertaking distributing spare parts for motor vehicles without participating in a distribution system established by the vehicle supplier;
- c) Maintenance and repair chain: Refers to a maintenance and repair chain established through the inclusion of more than one undertaking into a network within the framework of a franchising agreement by the network founder, according to certain standards;
- c) Distributor: Refers to buyers and/or chain service stations;
- d) Vertical agreements: Refers to agreements concluded between two or more undertakings operating at different levels of the production or distribution chain for the purposes of buying, selling or reselling certain goods or services;
- e) Vertical restraints: Refers to the competition restraints included in a vertical agreement and falling under the scope of article 4 of the Act no 4054;
- f) Spare parts of matching quality: Refers to parts manufactured with the purposes of replacing the original parts used in the assembly of a motor vehicle, which is certified by an accredited organization to comply with mass, dimension, material and functionality criteria as determined by comparison to the original part according to testing and inspection methods specified by the relevant legislation;
- g) Motor vehicle: Refers to self-propelled vehicles with three or more tires, used for transporting people, animals or cargo on roads;
- g) Exclusive distribution system: Refers to a distribution system where the supplier guarantees to sell its products to a single distributor for resale in a certain region and where the distributor is simultaneously restricted from making active sales to other exclusive regions;
- h) Quantitative selective distribution system: Refers to a selective distribution system in which the supplier uses criteria to directly or indirectly limit the number of distributors;

l) Qualitative selective distribution system: Refers to a selective distribution system in which the criteria used by the supplier for distributors are solely qualitative, required by the nature of the contract goods and services, determined and presented to be the same for all candidate undertakings applying to join the distribution system, implemented in a non-discriminatory manner, and which do not directly or indirectly limit the number of the distributors.

i) Original spare part: Refers to spare parts which are of the same quality with the parts used in the assembly of the motor vehicle and which are manufactured in accordance with the technical specifications and production standards introduced by the motor vehicle manufacturer for the production of the relevant spare parts (Spare parts manufactured at the same production line with the parts of the motor vehicle fall under this framework. These parts are assumed to be original spare parts in case the part manufacturer certifies that they are of the same quality with the parts used in the assembly of the motor vehicle concerned and that they are manufactured in accordance with the technical specifications and production standards introduced by the vehicle manufacturer, until proven otherwise.);

j) Private service station: Refers an undertaking which provides maintenance and repair services for motor vehicles without participating in a distribution system established by the vehicle supplier;

k) Non-compete obligation: Refers to all types of direct or indirect obligations placed on the buyer which prevent the buyer from manufacturing, purchasing, selling or reselling goods or services that compete with the contract goods or services (In addition, based on the purchases of the buyer in the previous calendar year, any direct or indirect obligation placed on the buyer forcing the buyer to make its purchases of the relevant goods or services in the relevant market, or the substitutes thereof from the supplier or from an undertaking designated by the supplier at a level of over 80% in the new motor vehicles sales market and over 30% in the after-sales market shall be considered a non-compete obligation.);

l) Supplier: Refers to the undertaking which is a party to the vertical agreement and which sells the contract goods or services to the buyer;

m) Selective distribution system Refers to a distribution system in which the supplier guarantees to exclusively sell the contract goods or services directly or indirectly to distributors selected in accordance with determined criteria, and in which these distributors, in turn, guarantee not to sell the goods or services concerned to unauthorized distributors within the region defined by the supplier for the operation of this system;

n) Exclusive supply: Refers to the direct or indirect obligation on the supplier to sell the contract goods or services exclusively to a single buyer within Turkey for the purposes of own use or resale;

o) Spare part: Refers to the goods required for the use of a motor vehicle, other than fuel, which may be installed on or in a motor vehicle to replace the parts of a motor vehicle;

ö) Authorized distributor: Refers to an undertaking which simultaneously deals with the sales of motor vehicles, distribution of motor vehicle spare parts and provision of maintenance and repair services within a distribution system established by the vehicle supplier;

p) Authorized seller: Refers to an undertaking which solely deals with the sales of motor vehicles within a distribution system established by the vehicle supplier;

r) Authorized service station: Refers to an undertakings which deals with providing maintenance and repair services for motor vehicles within a distribution system established by the vehicle supplier;

s) Authorized spare parts distributor: Refers to an undertaking which exclusively deals with the distribution of spare parts for motor vehicles within a distribution system established by the vehicle supplier;

ş) Chain service station: Refers to an undertaking which provides maintenance and repair services under the framework of maintenance and repair chains.

SECTION TWO

Conditions of Exemption

General conditions

ARTICLE 5 — (1) The exemption granted by this Communiqué shall apply to quantitative selective distribution agreements and exclusive distribution agreements where

a) The market share of the vehicle supplier in the relevant market in which it supplies motor vehicles does not exceed 30%,

b) The market share of the vehicle or spare part supplier in the relevant market in which it supplies spare parts does not exceed 30%,

c) The market share of the vehicle supplier in the relevant market in which it provides maintenance and repair services does not exceed 30%, and

ç) For maintenance and repair chains, the market share of the network founder does not exceed 30% in the maintenance and repair market.

(2) There are no market share thresholds for qualitative selective distribution systems.

(3) In vertical agreements with exclusive supply obligations, exemption shall be applied on the condition that the market share of the buyer in the relevant market where it purchases the contract goods and services do not exceed 30%.

(4) The exemption shall be applied provided that the agreement concluded between the supplier and the distributor

a) Has a duration of at least five years and both of the parties accept a provision in the article to notify their wish not to renew at least six months before the expiration of the agreement, or

b) Has an indefinite duration and the notice of termination period is at least two years for both parties, which is reduced to at least one year where the supplier is required by law or by the agreement to pay appropriate compensation in case it terminates the agreement or where the supplier terminates the agreement because it must reorganize a significant portion or the entirety of the distribution system.

Limitations which prevent agreements from taking advantage of the block exemption

ARTICLE 6 — (1) Vertical agreements which include the following restrictions aimed at directly or indirectly preventing competition shall not benefit from the block exemption granted by this Communiqué:

a) Prevention of the distributor's freedom to set its own sales price. However, the supplier or the network founder may set maximum or recommended sales prices, provided these do not transform into fixed or minimum sales prices as a result of pressure or encouragement from one of the parties.

b) Introduction of restrictions related to the region or customers to which the distributor may sell the contract goods or services, with the exception of the following cases.

1) Restriction of active sales to an exclusive region or an exclusive customer group allocated by the supplier to itself or to another buyer, provided the restriction does not include sales by the customers of the buyer.

2) Restriction of sales to final users by a buyer operating at the wholesale level.

3) Restriction of sales by selective distribution system members to unauthorized distributors within the region allocated by the supplier for the operation of the system concerned.

4) In case of parts procured for assembly, restriction of the buyer from selling these parts to the competitors of the supplier, which is in the position of the manufacturer.

c) In markets with selective distribution systems, restriction of active or passive sales by selective distribution system members operating at the retail level to final users. However, solely for agreements concerning the sales of new motor vehicles, the right to prohibit a system member from operating at a location where it is not authorized is reserved.

ç) In selective distribution systems, prevention of sales and purchases between the members of the system.

c) Restriction of the authorized dealer's right to transfer its obligations related to maintenance and repair services to authorized service stations via sub-contracts.

d) Restriction of the authorized service station's freedom to limit its operations to maintenance and repair services and spare part distribution.

e) Restriction of the freedom of authorized distributors, authorized service stations or authorized spare parts distributors to sell motor vehicle spare parts to private service stations for use in the maintenance and repair of motor vehicles.

f) Restriction of the possibility to sell spare parts or equipment such as repair equipment and diagnostic devices to authorized distributors, authorized or independent spare part distributors, authorized or private service stations or to final users through an agreement to be signed between a motor vehicle supplier and a supplier of the aforementioned goods.

g) Prevention of the authorized distributor or authorized service station from purchasing original spare parts or spare parts of matching quality from a third undertaking of its own choice and from using these parts in the maintenance and repair of motor vehicles. However, for instances of under-warranty repair, free maintenance and vehicle recall, motor vehicle supplier may require the use of spare parts procured from the supplier itself.

g) Introduction of restrictions preventing a spare part supplier from displaying its brand or logo on the parts provided in an effective and distinctly visible manner through an agreement signed between a motor vehicle manufacturer and the supplier of the spare parts it uses in its motor vehicles.

Non-compete obligations and restrictions on opening additional facilities

ARTICLE 7 (1) The exemption granted by the Communiqué herein shall not be applied to the non-compete obligations listed below:

a) In relation to the distribution of motor vehicles;

1) Non-compete obligations on the buyer with indefinite periods or with a period exceeding five years.

2) Non-compete obligations for the period following the expiration of the agreement.

3) Obligations placed on the selective distribution system members not to sell products of certain competing suppliers.

b) In relation to the distribution of spare parts;

1) All kinds of non-compete obligations placed on the buyer for the duration of the agreement. However, in relation to the spare parts distribution networks established by independent spare part suppliers, non-compete obligations with a duration of up to five years placed on independent spare part distributors shall benefit from the block exemption.

2) Non-compete obligations placed on the buyer for the period following the expiration of the agreement. Obligations placed on the selective distribution system members not to sell products of certain competing suppliers.

c) In relation to the provision of maintenance and repair services;

1) All kinds of non-compete obligations placed on the buyer for the duration of the agreement. However, in relation to maintenance and repair chains, non-compete obligations with a duration of up to five years placed on chain service stations shall benefit from the block exemption.

2) All kinds of non-compete obligations placed on the buyer for the period following the expiration of the agreement.

(2) In relation to the distribution of spare parts and/or maintenance and repair services, the exemption of this Communiqué shall not be applied to direct or indirect obligations concerning the opening of additional facilities where selective distribution system is implemented.

Withdrawal of the Exemption

ARTICLE 8 — (1) In case it is determined that an agreement exempted under this Communiqué has effects incompatible with the conditions set out under article 5 of the Act no 4054, the Competition Board may withdraw the exemption granted under this Communiqué based on article 13 of the Act. In this case, the Competition Board shall request written and/or oral opinions from the parties before taking its final decision.

(2) In case the coverage of parallel networks comprised of vertical restrictions with similar characteristics exceed 50% of the relevant market, the Competition Board may issue a separate communiqué to exclude agreements in the market with certain restrictions from the exemption granted by this Communiqué.

Calculation of market shares

ARTICLE 9 — (1) Within the purposes of this Communiqué, market share shall be calculated as follows:

a) In the distribution of new motor vehicles, over the number of the contract goods in addition to other goods also sold by the supplier, which are considered to be substitutes in terms of the characteristics, price and intended use by the buyer ;

b) In the distribution of spare parts, over the number of the contract goods in addition to other goods also sold by the supplier which are considered substitutable in terms of the characteristics, price and intended use by the buyer;

c) In the provision of maintenance and repair services, over the value of the contract services in addition to other services also offered by the supplier or the network founder, which are considered substitutable in terms of the characteristics, price and intended use by the buyer or the chain service;

(2) Where quantity data for these calculations cannot be obtained value data may be used, and vice versa. If such information is also unavailable, estimates based on reliable market information may be utilized.

(3) The following rules shall apply for the implementation of the 30% market share threshold prescribed in this Communiqué.

a) Market share shall be calculated based on data from the previous year.

b) If the market share starts out below 30% and later goes above the threshold without exceeding 35%, the exemption shall continue to be valid for two years following the year in which the 30% market share threshold was first exceeded.

c) If the market share starts out below 30% and later goes above 35%, the exemption shall continue to be valid for the year following the year in which the 35% market share threshold was first exceeded.

c) Rights granted by paragraphs (b) and (c) may not be combined to extend the duration beyond two calendar years.

Application of the Communiqué to concerted practices

ARTICLE 10 — (1) This Communiqué shall also apply to concerted practices between undertakings within the scope of article 2 of the Communiqué.

Application of article 6 of the Act

ARTICLE 11 — (1) An exemption granted under the provisions of this Communiqué shall not hinder the application of article 6 of the Act no 4054.

SECTION THREE

Various and Final Provisions

Repealed legislation

ARTICLE 12 — (1) Block Exemption Communiqué on Vertical Agreements and Concerted Practices in the Motor Vehicles Sector (Communiqué No: 2005/4), published in the Official Gazette dated 12/11/2005 and numbered 25991, has been repealed.

Transition Period

PROVISIONAL ARTICLE 1 — (1) Agreements which are taking advantage of the block exemption granted by the Communiqué no 2005/4 at the date this Communiqué becomes effective but which do not meet the criteria for benefiting from the block exemption specified in this Communiqué must be amended to fulfill the conditions set out in this Communiqué within two years following the effective date of this Communiqué, in order to benefit from the exemption specified herein. Within this period, the prohibition of article 4 of the Act no 4054 shall not apply to the aforementioned agreements.

Entry into Force

ARTICLE 13 — This Communiqué shall enter into force on the date of its publication.

Execution

ARTICLE 14 — (1) The President of the Competition Authority shall execute the provisions of this Communiqué.