

**GUIDELINES EXPLAINING THE BLOCK EXEMPTION COMMUNIQUÉ
ON VERTICAL AGREEMENTS IN THE MOTOR VEHICLES SECTOR, NO 2017/3**

1. INTRODUCTION

- (1) Article 5 of the Act no 4054 on the Protection of Competition (Act no 4054) vests the Competition Board with the power to issue communiqués which grant block exemptions to types of agreements fulfilling certain conditions, as well as to determine the conditions in question. Distribution networks in the motor vehicles sector are organized via resale agreements with similar restraints which may be defined as a category. In terms of the application of competition rules, distribution agreements in the motor vehicles sector have a different position than those in other sectors, both in the European Union and in Turkey.
- (2) Within this context, exemption rules different from those in other sectors have been introduced for distribution agreements in question, and the first block exemption communiqué on the subject, the Block Exemption Communiqué on Distribution and Service Agreements for Motor Vehicles, no 1998/3 (Communiqué no 1998/3) was put into force after its publication in the Official Gazette dated 01/04/1998. Within the framework of the experience of more than five years gained from the application of the Communiqué in question, it was concluded that some regulations of the Communiqué no 1998/3 were insufficient to attain the goal of a competitive market, while some could cause risks in practice. In light of these findings, the Communiqué no 1998/3 was replaced by the Block Exemption Communiqué on Vertical Agreements and Concerted Practices in the Motor Vehicle Sector, no 2005/4 (Communiqué no 2005/4), which was published in the Official Gazette dated 12/11/2005 and numbered 25991, and which came into force on 01/01/2006.
- (3) Problems encountered during the application of the Communiqué no 2005/4 created the need to study the effects of the relevant Communiqué on the market, and in this context, a sector inquiry was conducted with an aim to establish the competitive structure of the motor vehicles sector and to evaluate the development of the sector through the years. The “Motor Vehicles Sector Inquiry Report”¹ prepared accordingly also aimed to establish how successful each regulation introduced by the Communiqué no 2005/4 were in achieving its intended goal. The findings of the sector inquiry basically showed that the new motor vehicles distribution market presented a rather competitive structure and it became even more competitive in the period

¹

<http://www.rekabet.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fSekt%C3%B6r+Raporu%2fmotorlutasityeni.pdf>

following the Communiqué; however, competitive problems and concerns existing before the Communiqué no 2005/4 persisted in terms of maintenance and repair services provision and spare parts distribution activities. These fundamental findings were examined during the preparation of the Block Exemption Communiqué on Vertical Agreement in the Motor Vehicle Sector, no 2017/3 (Communiqué no 2017/3), and they were instructive for the basic tenets and objectives of the Communiqué.

- (4) Although the systematics introduced by the Communiqué no 2005/4 was preserved in essence in the Communiqué no 2017/3, the latter Communiqué also brings some differences, particularly in terms of general exemption conditions. Experience from the application of the Communiqué no 2005/4 showed that the regulations on transfer freedom and requiring justification for termination were essentially interventions in the contractual relationship between the parties; moreover, these did not constitute infringements of competition on their own and therefore efficient intervention could not be ensured under the Act no 4054 in cases of failure to meet the requirements related to these provisions. Therefore, the new regulation does not include provisions on transfer freedom and termination justification, in light of the fact that the goals of these conditions could be achieved through the provisions of the Turkish Code of Obligations no 6098, Turkish Code of Commerce no 6102, and other relevant legislation. In addition, the fact that the provision granting the right to take contractual disputes to an independent expert or arbiter without prejudice to the parties' right to go to court was in conflict with the regulation of article 413 of the Code of Civil Procedure no 6100 was taken into consideration, and this condition was not specified for agreements to benefit from the block exemption in the new regulation. However, since it was understood that provisions concerning termination periods of agreements were important in terms of establishing intra-brand competition, it was concluded that these provisions should be retained in their present form.
- (5) Studies of the motor vehicles distribution market showed that this market was facing an increasing demand structure, sales numbers presented a yearly-fluctuating dynamic picture, concentration ratios were at the thresholds generally accepted as the competitive level and were displaying a positive performance, and a real increase did not occur in passenger car prices following the Communiqué no 2005/4. Therefore, it was concluded that this market did not have any market failures requiring strict regulation. For that reason, the Communiqué no 2017/3 includes regulations which will allow suppliers to establish more flexible distribution networks in the distribution of new motor vehicles. In this framework, amendments were made to the provisions on multi-branding and opening additional points of sales, and it was specified that

restrictions on multi-brand distribution structure and on the freedom to open additional points of sales included in a vertical agreement on the distribution of new motor vehicles would not the agreement benefiting from the exemption granted by the Communiqué.

- (6) On the other hand, in relation to the after-sales activities which cover the distribution of motor vehicle spare parts and the provision of maintenance and repair services for these vehicles, it was concluded that, unlike the sales market, there were still problems with the potential to distort competition and some regulations were required to establish competition in this market. It was observed that profit margins were within the 15-35% range in the maintenance and repair services market, authorized services were still the most important player in the market especially for vehicles below three years of age, and private service stations were having difficulties in becoming strong alternatives to authorized distributors and authorized service stations. For this reason the Communiqué no 2017/3 includes provisions to make it easier for private service stations to become alternative players in the market, which would strengthen competition in the sector by putting quality and price pressure on authorized distributors and authorized service stations, and those provisions of the Communiqué no 2005/4 serving that purpose have been preserved. In addition, with regard to the provision of after-sales services, restrictions on opening additional facilities and provisions concerning multi-branding have been regulated separately from sales activities.
- (7) It was also found that the system introduced by the Communiqué no 2005/4 regarding the determination of the relevant product market and calculation of market shares for maintenance and repair services lead to the adoption of qualitative selective distribution systems by most vehicle suppliers in practice. It was observed that the adoption of qualitative selective distribution allowed the formation of a flexible distribution network in the market and lead to an increase in market entries in the field of maintenance and repair services field, where profit margins are high. It was concluded that this regulation, the goal of which was for consumers to have access to a larger number of service stations, partly attained its goal. Consequently, the principles regarding the qualitative selective distribution system were essentially preserved in the new regulation. On the other hand, these Guidelines include additional explanations concerning market definitions and market share calculations in light of previous practices.
- (8) Apart from this, the Communiqué includes provisions on access to spare parts, and the regulations introduced in the Communiqué no 2005/4 concerning access to spare parts were retained.

- (9) Provisions on access to technical information were also reviewed, based on the assumption that private service stations should have access to the same technical information, training, instruments and devices with authorized distributors and authorized service stations. Within this context, it should be noted that private service stations' access to technical information are regulated in detail with the Regulation on Type Approval of Motor Vehicles with respect to Emissions from Light Passenger and Commercial Vehicles (EURO 5 and EURO 6) and on Access to Vehicle maintenance and repair Information ((EC) 715/2007), published in the Official Gazette dated 21/04/2009 and numbered 27207, and the Regulation on Type-Approval of Motor Vehicles with respect to Emissions from Heavy Duty vehicles (Euro 6) and on Access to Vehicle maintenance and repair Information ((EC) 595/2009), published in the Official Gazette dated 03/08/2011 and numbered 28014. Since the aforementioned regulations are considered to be sufficient for the purposes of private service stations' access to technical information, a separate regulation under the Communiqué has not been introduced. At this juncture, it must be noted that disputes related to access to technical information may also be addressed under article 6 of the Act no 4054 and the assessment to be conducted within the framework of this article will take the principles in the aforementioned legislation into consideration. Furthermore, it is also possible to make assessments under article 6 of the Act no 4054 concerning those disputes related to blocking access to training and to information requests on vehicles launched in the market before 2008, which are not covered by the legislation in question.
- (10) With respect to spare parts, it was found that authorized distributors and authorized service stations are generally dependent on original spare parts and a significant portion of their purchases were from motor vehicle suppliers, that the use of spare parts of matching quality was limited in the sector in general though increasing at private service stations, which was a result of definition and registration problems concerning spare parts of matching quality, that the sales by spare parts suppliers to the direct market was limited, and that spare part provision was still mostly dependent on the key industry. These conclusions indicate a need for provisions with the goal of ensuring spare part suppliers make direct sales to the market as well as for provisions on spare parts of equivalent quality as well as on brands and logos in order to facilitate reaching this goal. To that end, the aforementioned provisions are retained in the Communiqué no 2017/3.
- (11) With respect to heavy commercial vehicles, due to the concentrated structure of the market in question and in order to allow the Board to monitor the changes that may occur in the market

as well as the competitive effects thereof, it was assessed that introducing a separate regulation in the Communiqué aimed at heavy commercial vehicles was not necessary. At this point, it is possible to remark that the provision of the Communiqué no 2005/4 related to this segment which stated that restrictions could be brought to opening additional sales and delivery locations was extended with the Communiqué no 2017/3 to cover all types of motor vehicles and that a similar situation was introduced in regard to multi-brandings as well.

- (12) In line with the needs listed above, the Board has adopted the Communiqué no 2017/3. The goal of publishing these Guidelines is to clarify, as much as possible, the points to be taken into consideration by the Board in the application of the Communiqué, thus minimizing the uncertainties that may arise in the interpretation of the Communiqué by undertakings.
- (13) Undertakings which are hesitant as to whether they benefit from the block exemption granted by the Communiqué no 2017/3 despite the explanations given in the Guidelines or which wish to request individual exemptions for those agreement that cannot benefit from the aforementioned block exemption may make notifications to the Board under article 12 of the Act no 4054 by filling the form annexed to the “Guidelines on the Voluntary Notification of Agreements, Concerted Practices and Decisions of Associations of Undertakings”.

2. THE SCOPE OF THE COMMUNIQUÉ

- (14) As specified in the “Scope” article of the Communiqué, the provisions of the Communiqué no 2017/3 shall be applied to vertical agreements concerning the purchase, sale or resale of new motor vehicles; purchase, sale or resale of spare parts of motor vehicles, and provision of maintenance and repair services for motor vehicles. In other words, the Communiqué is applicable to vertical agreements at all levels in the motor vehicles sector, from the first procurement of a new motor vehicle by its supplier to the resale of the vehicle to the final user, and from the first procurement of spare parts by their suppliers to the provision of maintenance and repair services to the final user. However, the vertical agreements in question must first include vertical restraints to be subject to block exemption.
- (15) The scope article of the Communiqué also regulates that vertical agreements between competing undertakings may not benefit from the block exemption granted by the Communiqué, as a rule. In the application of this regulation, suppliers which operate or have the potential to operate in the same relevant product market in Turkey are considered competing undertakings, regardless of whether they are in operation in the same relevant geographical markets. The only exception to this rule are those vertical agreements where the supplier is both

the manufacturer or importer and the distributor of the contract goods/services while the buyer is the distributor but not the manufacturer or importer of competing goods/services. This exception allows undertakings which are in the position of suppliers and network founders to distribute their products or provide their services through independent distributors while also distributing products or providing services themselves.

3. DEFINITIONS

(16) Article 4 of the Communiqué includes detailed definitions of some concepts used frequently within the Communiqué. Some explanations on the definitions that were deemed necessary are presented below.

- a) Network Founder: Article 4, paragraph one, sub-paragraph c of the Communiqué defines maintenance and repair chains. The network founder mentioned in this definition refers to the undertaking which includes independent undertakings providing maintenance and repair services into a network as chain service stations within the framework of a franchising agreement.
- b) Buyer: Article 4, paragraph one, subparagraph (a) of the Communiqué defines buyer as undertakings, including those who purchase goods or services on behalf of or on account of another undertaking, which are parties to the vertical agreement and which purchase the goods or services from the supplier. Within the framework of this definition, it may be said that buyers include, but are not limited to, undertakings which are authorized distributors, authorized sellers, authorized service stations, authorized spare part distributors or independent spare part distributors.
- c) Independent Spare Part Distributor: Independent spare part distributor is defined in article 4, paragraph one, sub-paragraph (b). Independent spare part manufacturers distribute through their own networks or through the authorized services of the motor vehicle manufacturer. Within the context of this definition, authorized spare part distributors which are involved in a distribution system set up by one motor vehicle supplier yet distribute spare parts for motor vehicles provided by a different motor vehicle manufacturer shall be considered independent spare part distributors for the purposes of this particular distribution activity.
- ç) Spare parts of matching quality: Article 4, paragraph one, sub-paragraph (f) of the Communiqué defines spare parts of matching quality as 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 established by the relevant legislation. Within this context, certification bodies are required to have accreditation for the ISO/IEC 17065 standard from the Turkish Accreditation Authority or from accreditation bodies which signed mutual recognition agreements for the relevant standards under the International Accreditation Forum.

- d) Qualitative Selective Distribution System: Article 4, paragraph one, sub-paragraph (1) of the Communiqué defines the qualitative selective distribution system. In accordance with this definition, a supplier who adopts a qualitative selective distribution system may only introduce qualitative criteria for its distributors and will be required to allow all distributors meeting those criteria to operate under the framework of the network, including those whose agreements have expired but who wish to continue their operations under the supplier's network. Clearly, in accordance with general law principles, justified termination of the agreements will be exempted from this obligation. Suppliers implementing the qualitative selective distribution system must notify its criteria to all concerned parties and apply the same criteria for distributors in similar regions. Within this framework, it is accepted that the supplier may check whether the applicant fulfills the criteria, but the applicant must be appointed as a member of the selective distribution system as soon as it fulfills the criteria in question. The criteria must be the same for all applicants, whether or not they serve as the distributors of the relevant brand. In accordance with the non-discrimination principle, the supplier must introduce and apply the same criteria for undertakings in the same situation.² In principle, qualitative criteria introduced by the supplier must be relevant to the requirements of the activity comprising the subject matter of the vertical agreement. Only under those circumstances will truly qualitative criteria be possible. However, many problems were encountered during the application of the Communiqué no 2005/4, including those related to which criteria may be considered qualitative or those related to the establishment of whether applicants meet the qualitative criteria. Since these problems may be settled before courts under private law provisions, it was decided that they would not prevent the implementation of the system; therefore, for the

² Competition Board decision dated 25.11.2009 and numbered 09-57/1349-345 evaluates the implementation principles for qualitative distribution systems.

purposes of the application of the Communiqué, it was left to the courts to determine the nature of the criteria as well as whether the criteria were fulfilled.³

e) Original Spare Parts: Article 4, paragraph one, subparagraph (i) of the Communiqué defines original spare parts. Within the framework of this definition, there are three groups of spare parts which may be considered original spare parts. These are:

1. Spare parts produced by the motor vehicle manufacturer.
2. Spare parts provided to the motor vehicle manufacturer by independent spare part manufacturers which are not motor vehicle manufacturers. Motor vehicle manufacturers do not produce every part in their vehicles themselves, but have spare part manufacturers produce most of these parts according to the technical specifications and production standards they establish. Production within this framework involves spare part manufacturers producing spare parts both for use in the assembly and for later use during maintenance and repair services, and providing these spare parts they produce to the motor vehicle manufacturer. Parts produced this way are considered original spare parts in spite of the fact that they were not produced by the motor vehicle manufacturer itself.
3. Spare parts which were not provided by the spare part manufacturer producing for the motor vehicle manufacturer to the latter but which were produced in accordance with the technical specifications and production standards determined by the motor vehicle manufacturer. As mentioned above, spare part manufacturers produce spare parts for motor vehicle manufacturers for use in assembly, maintenance and repair services and provide these spare parts to the vehicle manufacturer. However, the spare part manufacturer can also offer a portion of the spare parts it produced according to the vehicle manufacturer's technical specifications and production standards and probably on the same production line directly to the after-sales market. In this case parts carrying the same standards with those parts used in the assembly may be offered directly in the market by independent spare part manufacturers, without the intermediation of the vehicle manufacturer's authorized network. These parts are also considered original spare parts. In relation to such parts, the agreement which shows that the relevant spare part was provided by the spare part

³ 13th Chamber of the Council of State decision numbered 2009/4911 E., 2015/425 K.

manufacturer in question to the motor vehicle manufacturer, together with the spare part manufacturer's statement that the parts directly offered to the market are produced in accordance to the technical specifications and production standards of that agreement will indicate that the relevant parts may be considered original parts. Where the motor vehicle manufacturer claims otherwise, the conflict will be settled in accordance with the general conditions.

- f) Private service station: Article 4, paragraph one, sub-paragraph (j) of the Communiqué defines private service stations. Under this definition, authorized service stations which, while being involved in a distribution system established by a vehicle supplier, also offer maintenance and repair services to motor vehicles provided by another vehicle supplier are considered private service stations with relation to this particular service they provide.
- g) Non-Compete Obligation: For the purposes of the interpretation of the non-competes obligation concept, defined in Article 4, paragraph one, sub-paragraph (k) of the Communiqué, buyer refers to the legal person party to the relevant agreement. The Communiqué states that the non-competes obligation will be determined based on the purchases of the buyer in the previous calendar year. At this juncture, the total purchases from different suppliers made by the buyer in the previous calendar year concerning the contract goods or services must be taken as the basis. If the purchases of the buyer in the previous calendar year is not known, an estimate of the total annual requirement of the buyer may be used instead.
- ğ) Supplier: Supplier is defined in article 4, paragraph one, sub-paragraph (l) of the Communiqué as the undertaking which is one of the parties to the vertical agreement and which sells the contract goods or services to the buyer. Within the framework of this definition, it can be said that undertakings which are manufacturers and/or importers of motor vehicles or spare parts have the status of suppliers.
- h) Spare Part: Article 4, paragraph one, sub-paragraph (o) of the Communiqué defines spare parts. Under this definition, products which are used for the maintenance and repair of motor vehicles and for replacing the parts thereof and which are specific to motor vehicles are included in the scope of spare parts. However, products such as oil and paint, which carry the aforementioned characteristics, may be applied into or on a vehicle in order to replace parts of a motor vehicle, but they may also be applied on other vehicle types, such as motorcycles or tractors which are not considered motor

vehicles under the Communiqué, or they may be used in completely different fields, such as construction. Vertical agreements concerning the distribution of products of this nature which may be used for different purposes are only considered to fall under the scope of the Communiqué where it is generally accepted that the products may be applied in or on a motor vehicle. For that reason, aforementioned vertical agreements will only fall under the Communiqué no 2017/3 if the buyer is operating in the sector for maintaining and repairing motor vehicles or if it is providing goods for that sector. For instance, in light of the situation mentioned above, agreements concerning the sale of paint or oil to fuel stations or supermarkets have been excluded from the scope of the Communiqué. Such agreements may benefit from the block exemption of the Block Exemption Communiqué on Vertical Agreements, no 2002/2 (Communiqué no 2002/2), provided they meet the conditions therein. On the other hand, the Communiqué no 2017/3 does cover agreements such as those made between oil manufacturers/importers and their distributors or between distributors and service stations concerning the distribution of automotive oils. However, accessory products which are not necessary to the use of the motor vehicle, such as radios, CD-players, on-board GSM equipment, navigation systems or luggage racks are not considered to be spare parts.

Spare parts must be interpreted to be limited to original spare parts and spare parts of matching quality for the purposes of this definition and the rest of the Communiqué.

- 1) Authorized Service and Authorized Spare Part Distributor: Article 4, paragraph one, sub-paragraphs (r) and (s) of the Communiqué include the definitions for authorized service and authorized spare part distributor. Motor vehicle suppliers do not generally establish a separate distribution network for distributing parts and instead use their authorized service stations as spare part distributors. However, some motor vehicle suppliers do have a spare part distribution network separate from their maintenance and repair network. In this context, authorized spare part distributors are defined as undertakings which exclusively deal with the distribution of spare parts for motor vehicles within a distribution system established by the vehicle supplier.

4. GENERAL CONDITIONS

- (17) Communiqué no 2017/3 first regulates the general conditions vertical agreements must meet for the application of the block exemption granted by the Communiqué. Within this framework, the general conditions for vertical agreements covered by the Communiqué to benefit from the exemption are limited to the parties not exceeding a certain market share threshold in the

relevant market, and complying with the notice of termination periods specified. Accordingly, in order for the Communiqué to be applied to agreements which fall under its scope, first the parties must establish the market they are operating in, calculate their market share in this market based on the provisions of article 9 of the Communiqué and then ascertain that the market share thus calculated is below the thresholds specified in article 5 of the Communiqué.

- (18) In terms of those vertical agreements where the parties do not exceed the 30% threshold, if exclusive distribution systems, quantitative distribution systems or qualitative distribution systems are utilized, it may be said that the relevant agreements meet the first of the general conditions for benefiting from the exemption of the Communiqué. On the other hand, vertical agreements in which the market share of the parties exceed 30% will only benefit from the block exemption of the Communiqué if they adopt the qualitative distribution system. When determining whether an agreement prescribing exclusive supply obligations can benefit from the block exemption, the determinant factor will be whether the market share of the buyer is above 30%.
- (19) Adoption of a 30% market share threshold for both the sales market and the after-sales services markets is an indication that the separate thresholds system adopted during the Communiqué no 2005/4 has been abandoned. As known, the Communiqué no 2005/4 had set market share thresholds for the application of the block exemption within the sales market at 30% for exclusive distribution and at 40% for quantitative selective distribution. Meanwhile, no market share threshold had been prescribed for qualitative distribution system. However, it has been observed that this separation in terms of market shares did not provide any efficiencies in the formation of distribution systems and, on the contrary, it created difficulties in practice for the market actors. Within this framework, it was decided that simplifying the system to establish a single threshold for all distribution systems when assessing block exemption would be more appropriate, and this threshold was set at 30% in light of the market shares of the players active in the market.
- (20) The second general condition for allowing an agreement between a supplier and a distributor to benefit from the block exemption is that the agreement must have a duration of at least five years and both of the parties accept a provision in the agreement to notify their wish not to renew at least six months before the expiration of the agreement, or, where the agreement is for an indefinite duration, the notice of termination period must be at least two years for both parties. This regulation is intended to prevent the provider from immediately terminating the

agreement due to distributors engaging in practices which may not be restricted in accordance with this Communiqué and to protect intra-brand competition.

5. LIMITATIONS WHICH PREVENT AGREEMENTS FROM TAKING ADVANTAGE OF THE BLOCK EXEMPTION

- (21) Article 6 of the Communiqué lists the limitations which prevent vertical agreements falling under the scope of the Communiqué from taking advantage of the block exemption. Accordingly, in order to benefit from the block exemption of the Communiqué, vertical agreements must not include, either directly or indirectly, the limitations listed in article 6 of the Communiqué. Inclusion of one or more of these restrictions in a vertical agreement prevents not only the relevant vertical restraint, but the whole agreement from taking advantage of the block exemption. These restrictions may be achieved via indirect means as well as direct ones, and the restrictions introduced via indirect means have a similar effect on competition as when the relevant restriction is explicit in the written agreement between the parties.
- (22) Restrictions listed in article 6 of the Communiqué will be explained under different headings below.

5.1. Restrictions on the Setting of Resale Prices by the Distributor

- (23) Article 6, paragraph one, sub-paragraph (a) of the Communiqué lists preventing the distributor from freely setting its own sale prices as one of the restrictions which exclude the vertical agreement from the block exemption. The provider can fix resale prices of the distributor either directly by including explicit provisions in the agreement, or indirectly by setting the profit margins of the distributor, by setting maximum rates of discount the distributor can implement over announced recommended price levels, by introducing additional discounts to the distributor to the extent it complies with the recommended prices, or by delaying deliveries or terminating the agreement in case the distributor fails to comply with recommended prices. However, the supplier may set maximum sales prices for the distributor or offer recommended sales prices to the distributor, provided these do not transform into fixed or minimum sales prices. In other words, vertical agreements which set maximum or recommended prices may benefit from the block exemption. In order to ensure that maximum or recommended sales prices notified to the distributor do not become minimum or fixed prices, price lists or packaging of the product must clearly indicate that the prices concerned are maximum or recommended prices.

5.2. Restrictions Related to the Region or Customers to Which the Distributor May Sell

(24) Article 6, paragraph one, subparagraph (b) of the Communiqué provides that, as a rule, introduction of restrictions by the provider or network founder related to the region or customers to which the distributor may sell is one of the restrictions which prevent the vertical agreement from taking advantage of the block exemption. However, there are four exceptions to this rule. Accordingly;

- In cases of exclusive distribution systems, distributors may be restricted from making active sales to an exclusive region or customer group allocated by the provider to itself or another distributor. Restriction of passive sales to that exclusive region or exclusive customer group shall be considered a restriction which excludes the agreement from the block exemption. At this point, the distinction between active sales and passive sales becomes important. “Active sales” are sales made to individual customers in a particular distributor’s exclusive region or exclusive customer group, made by another buyer through direct marketing methods such as letters or visits. In addition, building a warehouse or a sales or delivery point in a region other than the one allocated in order to access the customers in that region also constitutes active sales. “Passive sales” are sales made by a distributor with an allocated region in order to meet the demand from customers in the region or customer group of a different distributor, which are not received in response to the active efforts of the distributor. General advertisement activity or promotions in the media as well as internet sales are considered passive sales methods.
- The first exception of article 6.1(b) of the Communiqué includes the wording: “...provided the restriction does not include sales by the customers of the buyer.” This phrase means that the provider may only prevent active sales of the buyer. In case the provider places any obligation on the buyer related to active sales made by the customers of the buyer, the vertical agreement will not benefit from the block exemption. In other words, for the vertical agreement between the provider and the buyer to benefit from the block exemption, customers who are not parties to the relevant vertical agreement and who procure goods and services from the buyer may sell the goods and services concerned to whomever they wish, without regard to any active-passive sales distinction. For instance, under a distribution agreement implementing the exclusive distribution system signed between a manufacturer in the position of a supplier and an authorized seller in the position of a buyer, if the authorized seller sells the products to showrooms, the showrooms which are not

parties to the agreement must be free to actively or passively sell the products they bought from the authorized seller to any customers in any region, in order for the agreement to benefit from the block exemption.

- In accordance with the second exception specified in article 6.1(b) of the Communiqué, sales to end users by a buyer operating at the wholesale level may be restricted. Introduction of such a restriction is considered necessary to maintain the efficiency of the distribution network and to ensure that goods and services are provided to the consumers at the end points under equal conditions. However, the restriction that may benefit from the block exemption is limited to the sales of the buyer operating at the wholesale level to end users who may be characterized as real or legal persons who purchase the motor vehicle for their own use.
- The third exception listed in article 6.1(b) of the Communiqué concerns the nature of the “selective distribution system”. Since motor vehicles hold a significant share in consumer expenditures and brand image is very important, physical specifications of the facilities in which the marketing and after-sales services are provided as well as the qualifications of the staff working there become crucial. Vehicle providers who do not want motor vehicles with a certain brand image to be sold and repaired at unsuitable places by personnel with insufficient knowledge and qualifications generally choose the selective distribution system as their distribution network. In order to ensure that such products are supplied to the end users in the most efficient way, a requirement may be introduced to ensure that the product is sold exclusively by the members of the selective distribution system, and vertical agreements with such requirements may benefit from the block exemption.
- The last exception listed in article 6.1(b) of the Communiqué concerns the sales of parts procured with a view to combining them. Restriction, by the supplier, of the buyers' sale of such parts to the competitors of the supplier, which is in the position of producer, is not considered a limitation that would exclude the agreement from the scope of the block exemption.

5.3. Restrictions Concerning the Implementation of the Selective Distribution System

- (25) As stated in article 6.1(c) of the Communiqué, members of a selective distribution system may not be prohibited from making active or passive sales to end users if the vertical agreement is to benefit from the exemption of the Communiqué. In other words, distributors who are members to a selective distribution system may engage in active or passive sales to end users

in any region. However, limited to the sales of new motor vehicles, the supplier may prevent a distributor which is a member of the system from changing the location of the point of sale it operates in, or from opening a new point of sale. Such prevention does not take the relevant vertical agreement out of the scope of the block exemption. This is because, as mentioned above, in the selective distribution system, the physical characteristics of the point of sale is an important factor affecting the success of the distribution system. The other regulation which partly opens selective distribution system to competition is included in article 6.1(ç) of the Communiqué. Accordingly, undertakings which wish to benefit from the exemption of the Communiqué and which adopt the selective distribution system may not place an exclusive purchase obligation on the system-member distributors. In other words, system members are not required to procure the products from the supplier; if an agreement is to benefit from the block exemption, system members may not be prevented from purchasing the products from other member undertakings.

5.4. Restrictions Concerning the Bundled Provision of Motor Vehicle Distribution, Spare Parts Distribution, and Maintenance and Repair Services

- (26) Article 6, paragraph one, sub-paragraphs (d) and (e) of the Communiqué lists the supplier requiring the bundled provision of motor vehicle distribution, spare parts distribution, and maintenance and repair services among the limitations which exclude the vertical agreement from the scope of the block exemption. Within that framework, the block exemption shall not apply if vehicle suppliers place an obligation on authorized distributors to provide after-sales services together with sales services, or if they place an obligation on authorized services to distribute new motor vehicles together with after-sales services. However, since the Communiqué no 2017/3 considers the bundling of sales and after-sales activities by the supplier among the restrictions which exclude the agreement from the scope of the block exemption, vertical agreements that require the bundling of the provision of maintenance and repair services with the distribution of spare parts shall benefit from the exemption.
- (27) Although, the aforementioned regulation does not mean that sales and after-sales services may never be bundled together and those buyers who wish to bundle these services are not prevented from doing so. Besides, the focus of this regulation is to ensure that the authorized distributor is not prevented from transferring its existing obligations related to maintenance and repair services and instead engaging exclusively in sales activities, if it wishes to do so.. A similar case is applicable to authorized service stations.

5.5. Restrictions Limiting the Access of Private Service Stations to Spare Parts

(28) Article 6, paragraph one, sub-paragraph (f) of the Communiqué lists the supplier's restriction of authorized distributors, authorized service stations and authorized spare part distributors from selling motor vehicle spare parts procured from the supplier to private service stations among the restrictions which excludes the vertical agreement from the exemption of the Communiqué. This regulation is especially important for those parts which can only be procured through the motor vehicle supplier (*captive parts*). This is because private service stations are completely dependent on the motor vehicle supplier for the provision of these parts. However, this article does not place an obligation on authorized distributors and authorized services to sell parts to private service stations. The goal of this article is to ensure that if the authorized distributors or authorized service stations wish to make such sales, they cannot be prevented by the supplier.

5.6. Restrictions Concerning the Distribution of Spare Parts

(29) Article 6, paragraph one, sub-paragraphs (g), (ğ) and (h) of the Communiqué regulates the restrictions concerning the distribution of spare parts.

(30) Article 6.1(g) of the Communiqué lists among the restrictions which exclude the vertical agreement from the scope of the block exemption, the introduction, by the motor vehicle supplier, of restrictions through the agreements it signs with spare part manufacturers providing spare parts, or with equipment manufacturers providing various equipment such as repair devices, on the providers of these goods in order to prevent them from selling the goods in question to authorized spare part distributors, authorized service stations, independent spare part distributors, private service stations or end users . The goal of this regulation is to ensure that authorized distributors, authorized spare part distributors, authorized service stations, independent spare part distributors, private service stations and end users are not forced to depend on the motor vehicle supplier for the procurement of the goods in question, and to allow the providers of such goods to be active in the market

(31) Article 6.1(ğ) of the Communiqué lists the supplier restricting the use of original spare parts or spare parts of matching quality procured by authorized distributors and authorized service stations from other sources, with the exception of free-of-charge services provided under warranty, as well as preventing the authorized distributor and authorized service stations from directly purchasing original spare parts from the manufacturer among the limitations which exclude the vertical agreement from the scope of the block exemption. The supplier may only

force the authorized distributors and authorized service stations to use the spare parts purchased from itself or from an undertaking it would indicate for repair services provided under warranty, free maintenance and vehicle recall services. In other words, the supplier may require the authorized distributors and authorized service stations to use the spare parts acquired from itself or from another undertaking it would indicate without having the agreement excluded from the scope of the block exemption, provided that this requirement is limited to repair services provided under warranty, free maintenance and vehicle recall services. However, this rule shall not apply to those maintenance and repair services provided within the warranty period which are not covered by the warranty and are offered to the customer for charge. That is, authorized distributors and authorized service stations may use spare parts of matching quality of original parts procured from other sources in such maintenance and repair services. However, if the parts in question cause a malfunction, general provisions shall apply to the question of whether the warranty would be rendered invalid as a result of such conduct.

- (32) The provider may place an obligation on the authorized distributors and authorized service stations to inform the customer in advance and indicate the relevant parts in the invoice if they use spare parts of matching quality, and vertical agreements with this obligation may benefit from the exemption of the Communiqué.
- (33) Article 6.1(h) of the Communiqué lists restricting the spare part manufacturer from displaying its trade name or logo on the relevant parts in an effective and easily visible manner among the restrictions which takes a vertical agreement out of the scope of the block exemption. This regulation also includes the prevention of displaying the trade mark or logo on the packaging. However, the regulation does not prevent the motor vehicle supplier from also placing its own trade mark or logo on the parts provided to the supplier by the spare part manufacturer.

6. NON-COMPETE OBLIGATIONS AND RESTRICTIONS ON OPENING ADDITIONAL FACILITIES

- (34) Those provisions which do not prevent the entirety of the agreement from taking advantage of the block exemption but which do not benefit from the block exemption themselves are regulated in article 7 of the Communiqué under the title “Non-Compete Obligations and Restrictions on Opening Additional Facilities”. Accordingly, it may be possible to separate these provisions which may not benefit from the block exemption from the whole agreement to ensure that the rest of the provisions can take advantage of the block exemption.

(35) Explanations are given below on the non-compete obligations and restrictions on opening additional facilities, which may not benefit from the block exemption under the present article of the Communiqué.

6.1. Non-Compete Obligation

(36) Non-compete obligations are set out in article 7 of the Communiqué as those provisions which may not benefit from the block exemption, and they are regulated separately for the distribution of motor vehicles, for the distribution of spare parts, and for maintenance and repair services. Below, explanations concerning these regulations shall be given individually for each area of operation.

6.1.1. Non-Compete Obligations Introduced in Relation to the Distribution of Motor Vehicles

(37) Within this framework, similar to the Communiqué no 2002/2, a non-compete obligation was defined as “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”.

(38) For the purposes of the application of article 7(a) of the Communiqué, the duration of the non-compete obligation imposed on the buyer is crucial. Non-compete obligations with indefinite durations or with a duration of over five years may not benefit from the block exemption. Non-compete obligations which can be implicitly renewed to exceed five years do not fall under the scope of the block exemption, either. However, in cases where the duration does not exceed five years or any extension after five years is only possible via the explicit consent of both parties and where the buyer is not prevented from terminating the non-compete obligation at the end of the five year period, the non-compete obligation may benefit from the block exemption.

(39) The same sub-paragraph specifies that non-compete obligations imposed on the buyer for the period following the expiration of the agreement may not benefit from the block exemption.

(40) Another non-compete obligation practice that is may not take advantage of the block exemption is the prevention of the sales of a certain competitor's products by the members of a selective distribution system. This provision should not be taken to mean that selective distribution systems and non-compete obligations may not co-exist. The undertaking in the position of the

supplier in a selective distribution system may mandate that the buyers which are members of the selective distribution system sell its own products exclusively and refrain from selling any competing products. However, it may not allow the sale of the products of some of its competitors while preventing others from using this system. In other words, in a selective distribution system, non-compete obligations must either cover all competing products or none of them. This restriction is particularly important for existing multi-brand dealers, since it aims to prevent non-compete obligations from being utilized to avoid competition from a specific brand or to eliminate new entrants or those undertakings without strong positions in the market.

6.1.2. Non-Compete Obligations Introduced in Relation to the Distribution of Spare Parts

- (41) In relation to the distribution of spare parts, it is important that undertakings in the position buyers are not restricted from purchasing spare parts from other sources in order to ensure that the dependency on the motor vehicle supplier is broken and the consumer is offered alternative choices of spare parts and prices.
- (42) Based on this observation, different provisions are specified on non-compete obligations for the distribution of spare parts than those concerning the distribution of motor vehicles. Accordingly, non-compete obligation is defined as “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 30% in the after-sales market”. The 30% threshold specified within the framework of the definition aims to allow network members to trade goods with at least three different competing suppliers, if they so wish.
- (43) Article 7.1(b) of the Communiqué states that any type of non-compete obligation related to the distribution of spare parts placed on the buyer for the duration the agreement may not benefit from the exemption of the Communiqué. In other words, direct or indirect obligations forcing the buyer to make more than 30% of its purchases of a certain type of product from a single supplier shall not benefit from the block exemption. In light of this regulation, a vehicle supplier wishing to take advantage of the block exemption may not introduce an obligation on the buyer to exclusively use own-brand spare parts. However, if the buyer chooses a single brand on its own, the block exemption shall continue to apply.
- (44) Another point to note with respect to non-compete obligations related to the distribution of spare parts is that a provision in which the supplier requires the buyer to keep spare parts for a

different brand vehicle at a separate section of the facility may not benefit from the block exemption. This is because such a requirement amounts to an indirect restriction of the authorized distributor's or authorized service's right to repair vehicles of other brands.

- (45) This rule related to non-compete obligations on the distribution of spare parts has an exception in the Communiqué with respect to the spare parts distributed by independent spare part providers. The grounds for this exception may be explained as follows: Particularly in agreements mineral oil, paint and tire suppliers conclude with buying undertakings, it has been observed that the buyers are granted cash credits and/or equipment support in return for exclusive purchase requirements. However, it is also clear that the spare parts in question have some different characteristics than those procured from motor vehicle suppliers. For the aforementioned products, buyers are able choose from among the options presented and then deal with whichever supplier they wish. Within that framework, it was regulated that non-compete obligations with a duration of up to five years may benefit from the block exemption, in order to ensure return on the investment made by the independent spare part distributor.⁴ Therefore, independent spare part supplier may introduce a non-compete obligation for the first five years following the effective date of the agreement.
- (46) Another point that must be noted in relation to article 7.1(b) of the Communiqué is the fact that non-compete obligations placed on the buyer for the period following the expiration date of the agreement may not benefit from the block exemption.

6.1.3. Non-Compete Obligations Introduced in Relation to the Provision of maintenance and repair Services

- (47) The principle for the provision of maintenance and repair services is that no non-compete obligations may be placed on the buyer either during the agreement, or following the expiration date thereof. Consequently, direct or indirect restrictions by the vehicle supplier preventing an authorized distributor or an authorized service station in its own network from providing maintenance and repair services to vehicles distributed by a different supplier may not benefit from the block exemption. In other words, authorized dealers and authorized service stations may serve as authorized services or private services for more than one brand if they so wish.

⁴ Competition Board decision dated 29.03.2007 and numbered 07-29/262-93, Competition Board decision dated 04.03.2010 and numbered 10-21/278-102.

- (48) This rule on the non-compete obligations related to the provision of maintenance and repair services has an exception in the Communiqué with respect to maintenance and repair chains. The grounds for this exception may be explained as follows:
- (49) Following the expiration of the warranty periods of motor vehicles, authorized distributors and authorized service stations compete with private service stations and, for certain maintenance and repair jobs, maintenance and repair chains, which have become more common in recent years. Establishment and popularization of maintenance and repair chains has the potential to lead to a general improvement in the sector by increasing the level of competition in the markets for distribution of spare parts and for maintenance and repair services. For that reason, non-compete obligations introduced by the network founder with a period of up to five years has been authorized, in order to ensure return of investment.⁵ Within that framework, the network founder may restrict the chain service station from simultaneously joining another maintenance and repair chain for the first five years following the effective date of the agreement.
- (50) However, non-compete obligations placed on the buyer for the period following the expiration of the agreement shall not benefit from the block exemption.

6.2. Restriction of Opening Additional Facilities

- (51) Second paragraph of article 7 of the Communiqué states that, in vertical agreements implementing selective distribution systems, the exemption of the Communiqué shall not apply to the direct or indirect obligations introduced with respect to opening additional facilities in relation to the distribution of spare parts and/or maintenance and repair services.
- (52) While the supplier is allowed to restrict additional facilities to be opened by authorized distributors and authorized sellers under this Communiqué, restriction of opening additional facilities for the distribution of spare parts and/or maintenance and repair services shall not benefit from the exemption of the Communiqué no 2017/3. Accordingly, authorized spare part distributors and authorized service stations must be free to choose additional facilities where they wish to provide maintenance and repair services, on the condition that they do not close the original facility and they meet the conditions specified for additional facilities.

7. CALCULATION OF MARKET SHARE

- (53) As known, article 5 of the Communiqué on general conditions states that vertical agreements with exclusive distribution systems, quantitative selective distribution systems and exclusive

⁵ Board Decision dated 07.04.2011 and numbered 11-22/392-125.

supply obligations shall only benefit from the block exemption of the Communiqué provided that the market shares of the parties stay below 30%. Consequently, for those agreements falling under the scope of the Communiqué, the first stage in determining whether the agreement benefits from the block exemption is the definition of the relevant markets in which the parties operate, and then the calculation of the parties' shares in this market.

- (54) The ground rules on how to define the relevant market are explained in detail in the “Guidelines on the Definition of Relevant Market,” issued by the Competition Board. For the purposes of the application of this Communiqué, the principles explained in the aforementioned Guidelines shall apply for the definition of the relevant market. For this reason, giving detailed explanations on defining the relevant market was found to be unnecessary. However, if the need arises, information will be given on how to define relevant market for certain activities of particular import for the motor vehicles sector, in light of previous Competition Board decisions. Though it must be noted that these relevant market definitions shall be given merely as examples and shall not be binding for the Competition Board, which will conduct a relevant market assessment specific to each vertical agreement, taking into account the nature of the goods and services comprising the subject matter of that particular vertical agreement.
- (55) Below, explanations shall be given concerning the calculation of market shares as specified in article 5 of the Act, for the distribution of new motor vehicles, distribution of spare parts for motor vehicles, and provision of maintenance and repair services,

7.1. Calculation of the Market Share for the Distribution of New Motor Vehicles

- (56) In order for the block exemption to apply to vertical agreements on the distribution of new motor vehicles with quantitative selective distribution systems, Article 5.1(a) of the Communiqué regulates that the market share of the vehicle supplier in the relevant market in which it provides motor vehicles must not exceed 30%. In terms of the application of this subparagraph, the market share of a motor vehicle supplier in the relevant market shall be calculated by finding the proportion of the sales number attained in the relevant period by all of the brands in the same relevant market distributed by that particular vehicle supplier to the sales number attained in the relevant period for all of the brands in the same relevant market, distributed by all of the suppliers operating in the same relevant market. For the purposes of this calculation, it should be noted that together with the sales number of the contract brand, all brands considered to be operating in the same relevant market with the contract brand shall be taken into account in the calculation.

(57) The reason for calculating the vehicle supplier's market share in the distribution of motor vehicles based on the sales number instead of the sales value is that sales number data are accessible for all players in the market.

7.2. Calculation of the Market Share for the Distribution of Motor Vehicle Spare Parts

(58) In order for the block exemption to apply to vertical agreements on the distribution of spare parts for motor vehicles with exclusive distribution systems or quantitative selective distribution systems, Article 5.1(b) of the Communiqué regulates that the vehicle supplier or the spare parts supplier must have a market share of at most 30% in the relevant market in which it provides spare parts. In order to implement this sub-paragraph, depending on the parties to the vertical agreement concerned, the market share of the motor vehicle supplier or the spare parts supplier in the relevant market must be calculated.

(59) The relevant product market for the spare parts branch of a vehicle supplier is generally defined specific to the brand. For instance: spare parts market for X-brand vehicles.⁶ However, where required by the relevant vertical agreement, it is possible to define a narrower product market, limited to the spare parts for a particular model of the X brand, or for a particular type of spare part.

(60) Since, in relation to the distribution of spare parts for motor vehicles, a vertical agreement may concern spare parts of different types, calculating market shares over sales numbers is not possible. Therefore, calculations for the spare parts market are based on the sales value as a rule.

(61) Within the framework of the explanations above, the market share of a vehicle supplier within the spare parts market for the X-brand vehicles during the relevant period shall be calculated by finding the proportion of the concerned vehicle supplier's turnover generated from the sales of the spare parts for X-brand vehicles during the relevant period to the total turnover generated by all undertakings operating in the relevant market from the sales of the spare parts for X-brand vehicles during the same period. When determining the undertakings operating in the relevant market, the vehicle supplier concerned and the independent spare part providers who sell spare parts for X-brand vehicles shall be taken into account.

⁶ For definition of relevant market in the spare part distribution market see: Competition Board decision dated 25.12.2014 and numbered 14-54/920-416; Competition Board decision dated 02.11.2000 and numbered 00-42/453-247.

- (62) Where the market share of an independent spare parts provider must be calculated for the purposes of the application of article 5.1(b) of the Communiqué, the relevant product market may be defined as the spare parts market. This is because spare parts providers do not generally limit themselves to a single brand vehicle and sell spare parts which may be used in more than one brand of vehicle. However, it must be noted that narrower market definitions may be made specific to the relevant vertical agreement.
- (63) Within the framework of these explanations, the market share of an independent spare parts provider within the spare parts market during the relevant period shall be calculated by finding the proportion of the concerned spare part provider's turnover generated from the sales of the spare parts in the relevant market during the relevant period to the total turnover generated by all spare part providers operating in the relevant market from the sales of the spare parts in the same period. When calculating the total turnover generated by the spare part providers in the relevant market, the turnover generated by vehicle supplier from the sales of spare parts as well as the turnover generated by independent spare part providers from the sales of spare parts shall be taken into account.

7.3. Calculation of Market Shares in Relation to the Provision of Maintenance and Repair Services

- (64) In order for the block exemption to apply to vertical agreements on the provision of maintenance and repair services to motor vehicles with exclusive distribution systems or quantitative selective distribution systems, Articles 5.1(c) and (d) of the Communiqué regulate, respectively, that the vehicle supplier or, in case of maintenance and repair chains, the network founder must have a market share of at most 30% in the market for maintenance and repair services. In order to implement this sub-paragraph, depending on the parties to the vertical agreement concerned, the market share of the motor vehicle supplier or the network founder in the relevant market must be calculated.
- (65) As known, maintenance and repair services are those which may be required following the purchase of a particular brand motor vehicle, and must be procured specific to that vehicle. For that reason, in maintenance and repair services relevant market is generally defined specific to the brand. For instance: repair and maintenance services for X-brand vehicles.⁷ The relevant market defined in this way is comprised of authorized distributors and authorized services

⁷ For relevant market definition in the after-sales services market, see Competition Board decision dated 14.08.2008 and numbered 08-50/738-294.

included in the network of the supplier of that brand of vehicles, of private service stations which can serve that brand of vehicles, and of chain service stations. Consequently, in terms of article 5.1(c) of the Communiqué, when calculating the market share of the vehicle supplier in the relevant market where it provides maintenance and repair services, the principle is to find the proportion of the turnover generated by the authorized distributors and authorized services from the maintenance and repair services provided to that brand vehicles to the turnover generated by all undertakings operating in the relevant market from the maintenance and repair services provided to that brand vehicles in the relevant period.

(66) However, difficulties in accessing data, especially for independent service stations in the market, makes it difficult to make this calculation properly. Setting aside value data, it has not been accurately determined how many vehicles are handled by authorized service stations versus private ones in Turkey.⁸ Previous decisions of the Competition Board were also unable to check and confirm the estimated calculations made by motor vehicle suppliers due to a lack of data. Article 9.2 of the Communiqué, regulating the calculation of market shares, states that where number or value data are unavailable, estimates based on reliable market information may be used in the calculation of market shares. Based on that regulation of the Communiqué, it may be said that where value data is unavailable, an alternative method based on a data set accessible by both the market actors and the Competition Board may be used to calculate the market share of the vehicle supplier in the relevant market where it provides maintenance and repair services. Within this framework, it is assessed that a significant indication of market share may be a calculation based on the proportion of the number of vehicles which procure maintenance and repair services from authorized service stations (the number of vehicles which are serviced) to the number of vehicles in the vehicle fleet of the relevant brand (vehicles with traffic registration).⁹

(67) Above, it was stated that since maintenance and repair services were those needed after the purchase of a particular brand of motor vehicle and must be procured specific to that brand, relevant market for maintenance and repair services was generally defined specific to the brand. Having said that, maintenance and repair chains differ in terms of the nature of the services they offer. That is, chain service stations operating under maintenance and repair chains offer maintenance and repair services regardless of brands. Consequently, the relevant product

⁸ For the determination of market share in the after-sales services market, see: Competition Board decision dated 22.04.2010 and numbered 10-33/512-186

⁹ Competition Board decision dated 21.08.2013 and numbered 13-48/671-287, 6th Administrative Court of Ankara decision numbered 2013/1839 E., 2014/1727 K.

market in terms of the maintenance and repair services provided by maintenance and repair chains may be defined as “the market for after-sales maintenance and repair services for motor vehicles”¹⁰ Thus defined, the product market is comprised of authorized distributors and authorized service stations in the networks of all vehicle suppliers, all private service stations, and all maintenance and repair chains. Therefore, in terms of article 5.1(ç) of the Communiqué, when calculating the market share of the network founder in the maintenance and repair market, the principle is to find the proportion of the total turnover generated by the chain service stations included in the network of the network founder to the turnover generated by all undertakings operating in the relevant market from maintenance and repair services in the relevant period.

- (68) Another point of note in relation to the calculation of the market share concerns how to calculate market shares in those cases with exclusive supply obligations. This is because, in accordance with article 5.3 of the Communiqué, for vertical agreements with an exclusive supply obligation, the market share of the buyer determines whether the agreement should benefit from the block exemption. Therefore, where vertical agreements with exclusive supply obligations are concerned, first the relevant market in which the buyer purchases the contract goods and services must be determined, and then the share of the buyer in this market must be calculated.¹¹ This calculation may be done either over the number or the value, depending on the nature of the contract goods or services. Within the framework of these explanations, the market share of the buyer during the relevant period may be calculated by finding the proportion of the number or price of the purchases made by the buyer in the relevant market during the relevant period to the number or value of all purchases made in relevant market during the same period.

¹⁰ Competition Board decision dated 25.07.2007 and numbered 07-61/716-248

¹¹ 30.04.2014 tarihli ve 14-16/295-126 sayılı Rekabet Kurulu kararı