

# client alert

COMPETITION | TURKEY |

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## LONG-AWAITED AMENDMENTS FOR THE MOTOR VEHICLE SECTOR

The Turkish Competition Authority (the "**TCA**") has introduced a new Block Exemption Communiqué no. 2017/3 on the Vertical Agreements in the Motor Vehicle Sector (the "**New Communiqué**"), published in the Official Gazette no. 29989 dated 24 February 2017, and abrogating the former communiqué no. 2005/4 on the same subject (the "**Former Communiqué**"). The New Communiqué entered into force on the same date as its publication, *i.e.* 24 February 2017. The TCA also introduced a guideline on the implementation of the New Communiqué immediately after its publication.

The New Communiqué offers a two-year adaptation period for agreements that fully comply with the provisions of the Former Communiqué but not with the New Communiqué.

In the New Communiqué, the TCA has updated the definitions that existed in the Former Communiqué and included new definitions (such as unauthorized spare parts distributor, distributor, repair and maintenance chains and service chain). The New Communiqué has also amended provisions regarding general conditions of the block exemption, non-compete obligations and certain thresholds in line with the development and balance of competition between the various actors of the market.

Some examples of amended and added definitions, as well as other amendments made by the TCA are mentioned below:

- In line with current amendments to legislation regarding the certification of equivalent spare parts (*e.g.* industrial property law, circular no. 2015/2, etc.), the definition of "equivalent spare part" has been elaborated to be more inclusive.
- As regards non-compete obligations, it is stated that any direct or indirect obligation imposed on a buyer with regard to purchasing from a supplier (or another undertaking to be specified by the supplier) shall not be more than 80% of the sales of goods or products on the new motor vehicle market. In this respect, the threshold specified for the new motor vehicle market has been increased, but the threshold for the spare part market has remained unchanged (*i.e.* 30%).
- The New Communiqué sets a unilateral threshold, *i.e.* 30% for each market, with regard to the agreements that would benefit from the block exemption. Under the Former Communiqué, the threshold applicable for the quantitative distribution system was 40% of the market share of the supplier.

- Despite the expectations and the practice of the TCA<sup>1</sup>, time periods regarding the term of the agreement and termination notice have remained as they were. The parties to the agreement shall therefore comply with (i) a notice period of at least six months for agreements concluded for a minimum period of 5 years, and (ii) a notice period of at least two years for agreements concluded for an indefinite term. Nevertheless, the following principles and/or obligations have been excluded from the scope of the New Communiqué: (i) the obligation to send detailed and reasoned termination notice in writing, (ii) the freedom to transfer the rights and obligations subject to the vertical agreement, and finally (iii) the compulsory arbitration clause.

## RESTRICTIONS PREVENTING VERTICAL AGREEMENTS BENEFITING FROM THE BLOCK EXEMPTION AND FURTHER NON-COMPETE OBLIGATIONS

Similarly to the Former Communiqué, Article 6 of the New Communiqué indicates that vertical agreements including restrictions to directly or indirectly prevent competition have been deemed as a breach and therefore may not benefit from the block exemption. Consequently, nine different restrictions, including the ones imposed on (i) distributors regarding their freedom of setting a sale price, (ii) members of a distribution system regarding sales made between them, and (iii) distributors regarding the sector or customer to which they might sell the goods subject to the agreement, etc. shall be in breach of Article 4 of Competition Law no. 4054 (the "**Competition Law**"). However, Section C of the same Article introduces an amendment pertaining to a restriction on the activities of the selective distribution system members where the members are not authorised to perform activities. The Former Communiqué stated that agreements restricting members from conducting activities outside their territory may benefit from the block exemption provided that this restriction did not prevent light vehicle and automobile distributors from opening up sales or delivery points. However, the New Communiqué excludes the difference between light and heavy vehicles, and the nature of the activities. Thus, the right to conduct activities only with regard to the sales of new motor vehicles outside the territory has been granted without reference to whether the vehicles in question are light or heavy.

The non-compete obligations have been divided into three areas: (i) the distribution of motor vehicles, (ii) the distribution of spare parts, and (iii) the provision of repair and maintenance services. According to Article 7 of the New Communiqué, block exemption shall not be applicable to the following agreements:

### As regards the distribution of motor vehicles:

Non-compete obligations of less than 5 (five) years shall now be included in the agreements. Additionally, suppliers may prevent selective distribution system members from selling all competitor products and still benefit from the block exemption. In other words, the restriction must be imposed either for the products of all competitors or none of the competitors. Non-compete obligations imposed during the period following the termination shall still be in breach of the New Communiqué's provisions.

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<sup>1</sup> The decisions of the TCA no. 13-59/833-355 and dated 24.10.2013, and no. 16-39/649-290 and dated 16.11.2016

**As regards both distribution of spare parts and providing repair and maintenance services:**

Non-compete obligations of less than 5 (five) years imposed on (i) independent spare part distributors regarding the networks established by independent spare part suppliers, and (ii) chain services regarding the repair and maintenance, shall benefit from the block exemption. With regard to both spare parts and repair and maintenance services, remaining provisions of such shall also be subject to the provisions summarized above, under items 2 and 3.

Last but not least, slight revisions have been made to Article 9 on calculating market share. If a supplier's market share is below 30% and subsequently exceeds the threshold (yet without exceeding 35%), such supplier shall still benefit from the block exemption for two years following the year in which the market share exceeds the said threshold. Similarly, if its market share exceeds 35% when it was previously below 30%, the supplier shall benefit from the block exemption for the following one year. Regarding the provision on withdrawing the exemption, the phrase "substantial part of the relevant market" has been clarified and set as 50% of the relevant market.

*In compliance with Turkish bar regulations, information relating to Turkish law matters are included in this client alert is given by Özdirekcan Dündar Şenocak Avukatlık Ortaklığı, a Turkish law firm acting as correspondent firm of Gide Loyrette Nouel in Turkey.*

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