The Turkish Competition Authority publishes its Motor Vehicles Sector Report and a New Block Exemption Communiqué on Vertical Agreements in Motor Vehicles Sector

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The motor vehicles sector is one of the biggest sectors in today's world, and it has enormous impact in a variety of associated sectors, such as iron and steel, light metals, petrochemical, tire, plastics, tourism, and transportation. The automotive industry is one of the major drivers of the Turkish economy. As per the sector representatives, Turkey's automotive exports are expected to reach $22.5 billion in 2017, with 8% increase from 2016[1]. By virtue of the huge volume of automotive exports, the sector employs approximately 50,000 people, while the supply industry employs 200,000 people, and these figures reach a large number of people when dealerships, logistics, and authorized and private services are counted in[2]. Therefore, the leading position of the automotive industry in the Turkish economy gives rise to plenty of competition law concerns, and leads the Turkish Competition Authority (“TCA”) to turn its eyes on the distribution agreements conducted in this sector.

Sector Inquiry Report

In accordance with the European Union regulations in the automotive sector, the Block Exemption Communiqué on Vertical Agreements and Concentrated Practices in the Motor Vehicles Sector entered into force on January 1, 2006 (“Communiqué No. 2005/4”). After five years of the entry into force of Communiqué No. 2005/4, and in accordance with the automotive sector’s changing conditions, a sector inquiry was conducted by the TCA in order to examine whether Communiqué No. 2005/4, which aims to establish a more competitive market structure, met the targets, and to measure its effects in the market. The TCA finalized its investigations regarding the motor vehicles industry, and published the Motor Vehicles Sector Inquiry Report (“Sector Inquiry Report”) in 2014. In consequence of the major findings of the Sector Inquiry Report, the Block Exemption Communiqué on Vertical Agreements in the Motor Vehicles Sector (“Communiqué No. 2017/3”)[4], repealing Communiqué No. 2005/4, was prepared and entered into force on February 24, 2017.

Framework of the Sector Inquiry Report

Undertakings That Were Investigated Within the Framework of the Sector Inquiry

Thirty-nine motor vehicles producers and importers (suppliers) in the automotive sector that distribute 59 different branded vehicles were asked to share their opinions regarding the impact of Communiqué No. 2005/4. With regard to the maintenance and repair market, the inquiry was expanded in accordance with the data gathered from the authorized services and independent (private) services. Lastly, in order to reveal the effects of Communiqué No. 2005/4 in the auto spare parts market, the spare parts producers and distributors were examined.

Findings of the Sector Inquiry Report

In the scope of the sector inquiry, the TCA examined three segments, consisting of the sales, maintenance and repair and spare parts markets, and revealed its findings, accordingly. In terms of the sales market, the TCA found that: (i) the motor vehicles sector continues to grow in Turkey, (ii) the majority of the most recently sold vehicles are imported vehicles, (iii) prior to (2003-2006) and after (2007-2013) Communiqué No. 2005/4, the passenger car market was at a very competitive level in both periods, while heavy and light commercial vehicles market is concentrated moderately, (iv) the profit margins that suppliers in the industry derive from vehicle sales are lower than after-sales services, (v) the multi-branding that was introduced for the establishment of the intra-brand, and the inter-brand competition spread over the market, the shares of the multi-brand distributors in the total distributors increased, and the number of additional sales / service points was found to be undeniable in the market.

With regard to the maintenance and repair market, the TCA deduced that; (i) the number of the authorized distributors significantly increased after Communiqué No. 2005/4 came into play, (ii) the position of the authorized services in the market is stronger than that of independent services, since their average turnover is higher than that of independent services, (iii) the vehicles within the guarantee period preferred the authorized services for maintenance and repair services, in other means, the core customers of the independent services constitute the vehicles outside the guarantee period, (iv) damaged vehicles coming to the independent service through insurance companies constituted a large part of the total damaged vehicles coming into service, (v) independent services opined that the regulations on spare parts, and technical information introduced with Communiqué No. 2005/4 in order to strengthen independent services are not effective in the market.

From the point of the spare parts markets, the TCA concluded that; (i) from the activity perspective, production of spare parts for installation is predominant; therefore, the spare parts production is dependent on the main industry and this dependency does not change over the years, (ii) despite the replacement market-oriented profit margins is higher, the sales to the replacement market are lower, (iii) the most important customer of spare parts manufacturers is vehicle suppliers, (iv) contrary to expectations, the ratio of spare parts carrying only the logo of the spare parts manufacturer decreased after Communiqué No. 2005/4, (v) over 90% of the spare parts of the vehicle suppliers are distributed to the market through authorized distribution networks, (vi) insurance companies become an important source of supply in terms of the independent services.

New Block Exemption Communiqué

Taking all of the findings of the Sector Inquiry Report into account, the TCA found that the motor vehicles distribution market presented a rather competitive structure, and it became even more competitive in the period after Communiqué No. 2005/4. Nevertheless, the competitive concerns that existed before Communiqué No. 2005/4 were found to be maintained in terms of maintenance and repair services and spare parts distribution activities. These essential findings were examined during the preparation of Communiqué No. 2017/3, and they were considered to be very helpful to determine the Communiqué’s objectives. Although the systematics of Communiqué No. 2005/4 was fundamentally preserved by Communiqué No. 2017/3, the latter introduced certain amendments. Some of the essential modifications introduced with Communiqué No. 2017/3 are briefly examined, below.

References

Primarily, the conditions for granting an exemption have changed. As per Communiqué No. 2017/3, in order for an exemption to be granted, the market share threshold for quantitative selective distribution agreements and exclusive distribution agreements is set at 30%. Therefore, the market share threshold for the quantitative selective distribution system is decreased from 40% to 30%. Additionally, the new Communiqué does not provide a market share threshold for the qualitative selective distribution as it was regulated in Communiqué No. 2005/4.

In terms of the non-compete obligations in relation to the distribution of motor vehicles, the distribution of spare parts and provision of maintenance and repair services were regulated as a whole under Communiqué No. 2005/4. However, the non-compete obligation in these markets are regulated under Communiqué No. 2017/3, separately, and in detail. Another modification introduced within the scope of Communiqué 2017/3 is that the motor vehicle distributors may impose non-compete obligations upon buyers (dealers) up to five years. Also, under Communiqué No. 2017/3, concerning maintenance and repair chains, non-compete obligations up to five years imposed upon independent chain services shall benefit from the block exemptions, unlike Communiqué No. 2005/4.

Another essential point to pay attention to is that Communiqué No. 2017/3 allows suppliers to create more flexible distribution networks in the distribution of new motor vehicles. Nonetheless, Communiqué No. 2017/3 does not provide such flexibility in terms of maintenance and repair services and spare parts distribution activities since the competitive concerns surrounding these persist.

Conclusion

The findings of the Sector Inquiry Report were taken into consideration during the preparation of Communiqué No. 2017/3 and found to be very supportive to determine its objectives. Communiqué No. 2017/3 tries to eliminate existing competitive concerns, especially regarding maintenance and repair services and spare parts distribution activities. Although it is believed that the system introduced by Communiqué No. 2005/4 is basically preserved by Communiqué No. 2017/3, the latter amends the general conditions of the exemption. Lastly, in terms of the transition period, the agreements that do not fulfill the criteria under which to benefit from block exemptions as specified in Communiqué No. 2017/3 must be amended to meet the conditions set out therein within two years following the effective date of Communiqué No. 2017/3.


[3] Please see. [http://www.rekabet.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fSekt%C3%B6r%C3%BCndeki+Dikey+Anla%C5%9Fmalara+%C4%B0li%C5%9Fkin+Grup+Muafiyeti+Tebli%C4%9F.pdf](http://www.rekabet.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fSekt%C3%B6r%C3%BCndeki+Dikey+Anla%C5%9Fmalara+%C4%B0li%C5%9Fkin+Grup+Muafiyeti+Tebli%C4%9F.pdf) (Last access date: 12.09.2017).

[4] Please see. [http://www.rekabet.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fCommunique%2fMotorlu+Ta%C5%9F%C4%B1tlar+Sekt%C3%B6r%C3%BCndeki+Dikey+Anla%C5%9Fmalar%C3%B6n%C3%B6n%C3%B6n+Grup+Muafiyeti+.pdf](http://www.rekabet.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fCommunique%2fMotorlu+Ta%C5%9F%C4%B1tlar+Sekt%C3%B6r%C3%BCndeki+Dikey+Anla%C5%9Fmalar%C3%B6n%C3%B6n%C3%B6n+Grup+Muafiyeti+.pdf) (Last access date: 12.09.2017).