

# New block exemption communique issued for vertical agreements in motor vehicle sector

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## Introduction

The New Block Exemption Communique 2017/3 for Vertical Agreements in the Motor Vehicle Sector in Turkey was published in the *Official Gazette* on February 24 2017. Communique 2017/3 revoked the Block Exemption Communique 2005/4 for Vertical Agreements and Concerted Practices in the Motor Vehicle Sector. The Turkish Competition Board is expected to publish a set of guidelines which will provide further details regarding the implementation of Communique 2017/3.

The decision to draft Communique 2017/3 was triggered by the reform of a number of the restrictive provisions of Law 1400/2002 (particularly with regard to the sale of motor vehicles) in line with EU Regulation 461/2010. In 2011 a sector inquiry was undertaken in Turkey regarding the motor vehicle sector and in 2014 stakeholders provided amendment proposals concerning Communique 2005/4. On March 2 2016 a draft communique was issued for public consultation and stakeholders provided their comments to the Competition Authority. This update provides an introductory summary of the fundamental changes introduced by Communique 2017/3.

## Block exemption conditions

The market share thresholds applied to determine whether an agreement benefits from a block exemption have been consolidated under Communique 2017/3 for quantitative distribution agreements and exclusive distribution agreements. In this regard, the market share threshold provided for quantitative selective distribution has been reduced from 40% to 30%. Further, the 30% market share threshold provided for sales markets and after-sales markets has been preserved. Similar to Communique 2005/4, Communique 2017/3 provides no market share threshold for the application of the block exemption to qualitative selective distribution systems.

The freedom to transfer agreements concluded between distributors and suppliers is no longer a condition for an agreement to benefit from a block exemption. Similarly, a detailed, reasoned and written termination notice is no longer required. Further, granting parties (suppliers and distributors) the right to bring conflicts that arise from the agreement to an independent expert or arbitrator is no longer provided as a condition for the agreement to benefit from a block exemption.

Conversely, the following provisions relating to termination notices have been maintained:

- a six-month notice period for agreements made for at least five years; and
- a minimum two-year notice period for agreements for an indefinite period.

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## **Non-compete obligations and multi-branding**

Communique 2005/4 regulated the sale, maintenance and repair of motor vehicles collectively. In contrast, Article 7 of Communique 2017/3 regulates the sale of motor vehicles and after sale maintenance and repair services separately with regard to non-compete obligations. One of the most substantial amendments that Communique 2017/3 has introduced concerns the revision of non-compete obligations regarding the sale of motor vehicles.

Communique 2017/3 defines a 'non-compete obligation' in terms of the sale of motor vehicles as:

*"any direct or indirect obligation imposed on the buyer, aimed at purchasing, from the supplier or another undertaking to be designated by the supplier, more than 80% of the goods or services, or substitutes of such goods or services subject to the agreement, based on the purchasers purchases within the previous calendar year, in the market for sales of motor vehicle."*

In this respect, with regard to the sale of motor vehicles, Communique 2017/3:

- increases the 30% threshold to 80%, thereby allowing for the multi-branded distribution structure to be abandoned; and
- indicates that non-compete obligations which do not exceed five years – or where an extension beyond five years is possible with the parties' mutual consent and there are no circumstances preventing the purchaser from terminating the non-compete obligation – will benefit from the block exemption.

In parallel to Communique 2005/4, non-compete obligations (regarding the distribution of motor vehicles, spare parts and the provision of maintenance and repair services) are not included in the scope of the exemption following the termination of an agreement.

Communique 2017/3 provides that, in terms of maintenance repair services and the distribution of spare parts, direct or indirect obligations that oblige the purchaser to buy 30% of a certain type of product cannot benefit from the group exemption. Communique 2005/4's provisions regarding repair services and the distribution of spare parts have been preserved.

Conversely, as an exception to the abovementioned provision, non-compete obligations of up to five years attributed to independent spare part distributors in terms of the spare part distribution networks established by independent spare part suppliers and chain services in terms of maintenance repair chains can benefit from the group exemption.

The provisions that prevented the establishment of additional sales under certain conditions have been abolished. However, the same approach has not been adopted for the establishment of additional service points for the distribution of spare parts and maintenance repair services. The exemption will not be applicable to direct or indirect obligations that restrict the establishment of additional facilities and service areas where the selective distribution system is being applied.

## **Equivalent and original spare parts**

The definition of 'equivalent quality original spare part' under Communique 2005/4 provided that the compliance with mandatory standards required by law was documented by the manufacturer, whereas, under Communique 2017/3, the definition was amended as follows to be more definitive:

*"compliance of a part, which has been produced with the purpose of the replacement of the original parts used in a motor vehicle, with the criteria such as mass, size, material, functionality which is determined by comparison to the original part pursuant to inspection methods is to be documented by an accredited institution."*

## **Restrictions preventing benefits of group exemption**

Although there have been minor amendments in terms of restrictions that prevent agreements from benefiting from the group exemption, the provisions in that regard included in Communique 2005/4

have been preserved to a large extent.

### **Withdrawal of exemption**

The text of Communiqué 2005/4 which stated that "the case in which a substantial part of the relevant market is covered" has been changed to "the case in which the application covers more than 50% of the relevant market" (Article 8 of Communiqué 2017/3 on the withdrawal of the exemption). In this regard, the Competition Board may withdraw a block exemption in cases where this threshold is exceeded.

### **Changes to market shares**

Communiqué 2017/3 also contains provisions regarding cases in which the relevant suppliers' market share exceeds the thresholds required to benefit from the block exemption over time. In this regard, parties will still benefit from the block exemption:

- two years after the year in which a 30% market share exceeds the threshold for the first time (without exceeding 35%); and
- the year after the year in which a market share initially below 30% exceeded the 35% threshold for the first time.

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