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**Communiqué on Group Exemption Regarding
Distribution and Servicing Agreements in Relation
to Motor Vehicles
Communiqué No : 1998/3**

Aim

Article 1- The aim of this Communiqué is to determine the conditions of group implementation for “distribution and servicing agreements in relation to motor vehicles” from the performance of provisions pursuant to Article 4, under the “Law on Protection of Competition”, dated 7/12/1994, and numbered 4054.

Scope

Article 2- Agreements having two undertakings as parties, in which one contracting party accepts to supply new public road motor vehicles with three or more wheels, and their spare parts to the other party or to specified number of undertakings taking part in the distribution system together with it, in order to re-sell them throughout or in a defined region of the country, have been exempted as a group, from the prohibition as per Article 4 of the Law, on the basis of the third Clause of Article 5 of the Law, provided that conditions regulated in this Communiqué hereby are complied with.

Definitions

Article 3- While executing this Communiqué, the following definitions shall refer to the following descriptions:

Distribution and Servicing Agreements: Framework agreements concluded between two undertakings where one party (supplier) authorizes the other party (seller) to distribute and provide servicing for contract goods.

Supplier: Undertakings supplying the contract goods

Seller: Undertakings, authorized by the supplier, to distribute and provide servicing for contract goods.

Re-seller: Undertakings, authorized by the seller, to distribute and provide servicing for contract goods.

Servicing: Maintenance, repair and other services regarding contract goods.

Contract territory: All country or a defined region of the country where the obligation of exclusive supply stated in Article 2 of this Communiqué, shall apply.

Contract goods: New motor vehicles having three or more wheels, used on public roads-which form the subject of the agreement defined in Article 2 of this Communiqué- and their spare parts.

Scope of Goods Covered by the Agreement: All goods that are the subject of the agreement.

Spare Part: The part which substitutes the old part and becomes a part of the motor vehicle when fixed in or upon it.

Manufacturer: The undertakings manufacturing or ensuring the manufacture of the motor vehicles, which are among the scope of products covered by the agreement, and the undertakings connected.

Connected Undertakings: The undertakings where one of the parties to the agreement directly or indirectly owns more than half of the capital or business assets of that undertaking, or is authorized to use more than half of the voting rights, or to appoint more than half of the members of the supervisory board, board of directors or bodies legally representing the undertaking, or to manage the affairs of the undertaking.

(Undertakings directly or indirectly having the above-mentioned rights and authorities on one of the parties to the agreement and undertakings directly or indirectly having the same rights and authorities on that undertaking shall also be considered as connected undertakings.)

Undertaking in the Distribution System: Besides the undertakings that are parties to the agreement, the manufacturer, and the undertakings authorized or permitted by the manufacturers to distribute and provide servicing for the contract goods.

Obligations Under Group Exemption

Article 4- Exemption envisaged within the framework of this Communiqué is applied together with the obligations stated in Article 2 despite the presence of one or more than one of the below conditions and obligations restricting competition in the agreement:

a) obligations on the supplier not to sell directly the contract goods within the contract territory and not to provide servicing for these goods.

b) Seller's :

1. obligations not to make any modifications- except for those required by the purchaser- on contract goods regarding a certain motor vehicle without supplier's consent.

2. Obligation not to manufacture contract goods and competitive goods.

3. Obligation not to sell new motor vehicles offered by others rather than the manufacturer except for sales taking place at different sales regions, with different sales methods and as a different legal entity, refraining from complexity of brands.

4. Obligation not to permit third persons' unfair utilization of supplier's investments, especially of tools and devices, and trained personnel, during the course of after-sales services given at joint maintenance and repair units.

5. Obligation not to sell and use spare parts other than those having the same quality with contract goods in repair and maintenance processes.

6. Obligation not to make distribution or servicing agreements regarding contract goods with the undertakings operating within the contract territory, and not to alter or terminate such agreements without supplier's consent.

7. Obligation for the seller to impose conditions, which are similar to those for himself, on the other party to the agreement, and which comply with the provisions of the Communiqué, in case of an agreement concluded within the contract territory as per Paragraph 6.

8. Obligation not to open branches or distribution depots outside the contract territory for the distribution of contract goods, or execute activities regarding the marketing of the same goods, or grant authorization to the third persons regarding the distribution or servicing of these goods.

9. Obligation not to sell contract goods to another seller outside the distribution system, or supply spare parts within the contract programme unless they are to be used in the maintenance and repair of the motor vehicles that are the subject of the agreement.

10. Obligation not to sell agreed-upon motor vehicles via intermediaries that had not received a written authorization from consumers regarding the purchasing or accepting delivery of a specified motor vehicle.

Other Obligations Within the Scope of Group Exemption

Article 5- Exemption envisaged within the framework of this Communiqué is applied in case the seller undertakes one or more than one of the below-stated conditions and obligations.

a) In distribution, sales and after-sales services, obligation to comply with minimum standards regarding especially:

1. The equipment of the business premises and of the technical facilities for servicing,

2. The specialized and technical training of staff,

3. Advertising,

4. Accepting delivery, storing, delivery, sales and after-sales services of contract goods,

5. Maintenance and repair of the contract goods, especially in order to safely and reliably operate the motor vehicle.

b) Obligation to order contract goods from the supplier only at certain times or within certain periods, provided that those intervals do not exceed three months.

c) Obligation to endeavour to sell minimum amount of contract goods, which had been determined by an agreement between the parties, or in case of a dispute, by an expert third person, taking into account the estimated sales and previous sales in his own region, within a specified period of time and within the contract territory.

d) Obligation to keep in stock the contract goods for which the quantity had been determined by the method in Paragraph C.

e) Obligation to keep in stock demonstration vehicles within the contract programme, whose number and type are to be determined in compliance with the method in Paragraph C.

f) Obligation to perform guarantee work, free servicing and recall work regarding the contract goods.

g) Obligation to use only the spare parts within the contract programme for guarantee work, free servicing and recall work performed for the contract goods.

h) Obligation to pre-notify the customers stating that spare parts obtained from other sources can also be used in the maintenance and repair of contract goods.

i) Obligation to notify the customers, in case spare parts obtained from other sources have been used in the maintenance and repair of contract goods.

Mandatory Cases In Order the Exemption to be Granted

Article 6- Exemption is applied only if the following conditions and obligations are present:

1. Concerning contract goods sold by another undertaking within the distribution network;

a) Seller's commitment to:

- honour guarantees, perform free servicing and vehicle recall work undertaken to an extent as per Paragraph f of Article 5 of this Communiqué,
- provide maintenance and repair services complying with the qualifications stated in Paragraph a-5 of Article 5.

2. Seller's commitment to impose obligations upon undertakings, which operate within the contract territory, as per Paragraph b-7 of Article 4 of this Communiqué, and with whom distribution and servicing agreements have been concluded, to the extent of obligations undertaken by the seller concerning guarantees, free servicing and vehicle recall work.

b)Supplier's:

1. Not refusing to permit the seller, set forth in Paragraph b-6 of Article 4 of this Communiqué, to make distribution and servicing sub-agreements, to alter or terminate present agreements unless there are objectively valid reasons.

2. Not acting discriminatingly or inequitably under minimum conditions and criteria, regarding seller's obligations set forth in Paragraph a of Article 5, unless there are objectively valid reasons.

3. Separately calculating the discounts to be made from grand total or quantity of goods purchased by the seller from the supplier or connected undertakings within a specified period of time- at least as in motor vehicles that are covered by the agreement and spare parts and other goods.

Only on the following conditions exemption shall be applied where the seller has the obligation to improve the structure of distribution and servicing envisaged in Paragraph a of Article 5 of this Communiqué:

a) Supplier's lifting the obligations set forth in Paragraph b-3 of Article 4 in case the seller shows that objectively valid reasons are present.

b) In case the agreement is valid for a minimum of five years or for an indefinite period of time, the notice period for termination is a minimum of two years for both parties; however, if the supplier terminates the agreement, supplier is obligated to pay appropriate compensation due to Law or Agreement, or in case the seller has just entered to the distribution system and accepted the agreement period or regular notice period for termination for the first time, this period of time is lowered to a minimum of one year.

c) Both parties' accepting to make the notification six months before the due date of the agreement, regarding their willingness not to renew the agreements which had been concluded for a definite period of time.

Conditions of exemption regulated above shall not affect the rights stated below:

a) Supplier's right to terminate the agreement in case it is obligatory to partially or completely re-organize the distribution system, provided that one year period for the notice for termination is complied with.

b) Parties' right to terminate the agreement in case the other party does not fulfil one of its primary obligations.

Conditions and Obligations Not Included by the Framework of Group Exemption

Article 7- Exemption, set forth in Article 2, shall not be applied in the case of the following:

a) Both parties to the agreement or their connected undertakings being manufacturers of motor vehicles.

b) Adding new provisions to the agreement regarding goods and services other than those included in this Communiqué or implementing the agreement on such goods and services.

c) Parties' envisaging competition restrictions that have not explicitly been exempted by this Communiqué in respect of goods and services covered by this Communiqué.

d) Supplier's keeping reserved the right to make agreement with other selling undertakings operating within the seller's contract territory owing to an agreement, regarding the distribution and servicing of the contract goods or regarding the change of the contract territory.

e) Direct or indirect restrictions by other undertakings in producer, supplier or distribution system, regarding seller's freedom to determine prices and discount in the re-sales of contract goods.

f) Direct or indirect limitations by other undertakings in manufacturer, supplier or distribution system regarding consumers', authorized intermediaries' or sellers' freedom to supply contract goods or services for these goods from any undertaking in the system, or consumers' freedom to re-sell the subject goods provided that the aim is not commercial.

g) Supplier's providing discount or price for the sellers calculated as per receiver's address or destination of the motor vehicles which are to be sold, without any objective reasons.

h) Direct or indirect limitation by the supplier regarding seller's freedom to supply from any third undertaking the spare parts that can compete with and are of equivalent value to contract goods, included in paragraph b-5 of Article 4.

i) Direct or indirect limitation by the manufacturer regarding spare parts suppliers' freedom to supply spare parts of equivalent value to contract goods to any sellers they prefer, including also the undertakings in the distribution system.

j) Direct or indirect limitation by the manufacturer regarding spare parts suppliers' freedom to supply contract goods or their freely use of commercial labels or marks on easily and effectively visible sections of parts supplied for the first installation or repair.

k) Manufacturer's refusal regarding the repairmen's –who do not take part in manufacturer's distribution system- reaching technical information necessary for the maintenance and repair of the contract goods or environmental protection

precautions in return for a moderate cost, provided that industrial and intellectual property rights of the manufacturer are not violated and abused.

If one or more than one of the limitations of competition listed in Paragraphs a, b, c and d of this article take part in the agreement, all provisions of the agreement having features that restrict competition are also not to benefit from exemption. If there are one or some of the limitations of competition listed in Paragraphs e, f, g, h, i, j and k, limitations of competition in favor of the manufacturer, supplier or another enterprise within the distribution system who performs this application cannot benefit from exemption. On whatever condition, the results of those provisions of agreement, which do not limit competition, are not to be affected.

Revocation of Exemption

Article 8- If the Board establishes that an agreement to which exemption is granted via this Communiqué has effects that are incompatible with the conditions regulated in the Article 5 of the Law, it may revoke the exemption granted by this Communiqué, on the basis of the Article 13 of Law on Protection of Competition, numbered 4054, especially in case of the below circumstances:

a) If contract goods are not effectively competing with the same goods or with goods which are considered by consumers to be of equivalent characteristics, price and intended uses throughout or in a substantial part of the country,

b) If there is a significant difference between regions, regarding price or supply conditions of the contract goods due to an obligation to which an exemption is granted by this Communiqué,

c) If an undertaking within the manufacturer or distribution system implements on contract goods discriminative prices or sales conditions which cannot be considered as objectively justifiable.

Implementation of Other Prohibitions of the Law

Article 9- Exemption resulting from the provisions of this Communiqué ensures the prohibition in the Article 4 of the Law not to be implemented. If it bears conditions, prohibitions resulting from other provisions of the Law are implemented.

Notification

Article 10- Distribution and Servicing Agreements for Motor Vehicles, which are included by this Communiqué, are not subject to the notification envisaged in the Article 10 of the Law.

Agreements, which had been concluded before this Communiqué was put into effect and which are still in force and in compliance with the conditions regulated by the Communiqué, are also included under the Communiqué.

Entry Into Force

Article 11- This Communiqué shall enter into force at the date of its publication in the Official Gazette.

Implementation

Article 12- This Communiqué shall be executed by the President of the Competition Authority.