

**BLOCK EXEMPTION COMMUNIQUÉ ON
RESEARCH AND DEVELOPMENT AGREEMENTS
(COMMUNIQUÉ NO: 2016/5)**

SECTION ONE

Purpose, Scope, Basis and Definitions

Purpose

Article 1 - (1) The purpose of this Communiqué is to determine the conditions for block exempting R&D agreements made between undertakings, from the application of the provisions of article 4 of the Act on the Protection of Competition dated 07/12/1994 and numbered 4054.

Scope

Article 2 - (1) This Communiqué covers R&D agreements which fall under the scope of article 4 of the Act no. 4054.

(2) Agreements which have another basic goal such as joint production, resale and transfer of intellectual rights, and which involve merely subsidiary provisions concerning joint R&D fall outside the scope of exemption provided by this Communiqué.

Basis

Article 3- (1) This Communiqué is prepared on the basis of Articles 4, 5 and 27 of the Act no. 4054.

Definitions

Article 4- (1) For the purposes of implementing this Communiqué,

a) Agreement: an agreement, a decision by an association of undertakings or a concerted practice,

b) Research and development (R&D): the process in relation to obtaining technical information, testing products, technology or production processes, carrying out theoretical analyses and observations, realizing experiments including experimental productions, establishing necessary facilities for these issues, and obtaining intellectual rights related to results,

c) Specialization in the context of research and development: means that all of the parties carry out the research and development activities covered by the research and development agreement and they cooperate in a way convenient for them, except for paid-for research and development,

d) R&D agreement: an agreement between two or more parties under which those parties pursue:

1) joint research and development of contract products or technologies and joint use of the results of that research and development,

2) joint use of the results obtained within the framework of a prior agreement between the same parties for joint research and development of contract products or technologies,

3) joint research and development of contract products or contract technologies without joint use of the results,

4) Paid-for research and development of contract products or technologies and joint use of the results of that research and development,

5) joint use of the results obtained within the framework of a prior agreement between the same parties for paid-for joint research and development of contract products or technologies,

6) Paid-for research and development of contract products or contract technologies without joint use of the results,

e) Paid-for R&D: means research and development where one of the parties finances and the other carries out research and development,

f) Specialization in the context of exploitation: allocation by the parties of the benefits of the results such as allocation by parties of certain tasks such as production or distribution, or impose restrictions upon each other about certain territories, customers or fields of use regarding the exploitation of the results or the production and distribution by only one party of the contract products on the basis of an exclusive license granted by the other parties,

- g) Actual competitor: an undertaking that actively operates in the market,
- h) Intellectual rights: industrial rights, copyrights, and neighboring rights,
- i) Financing party: a party that finances paid-for research and development but does not carry out any of the research and development activities,
- j) Relevant product market: the relevant market for the products that are capable of replacing, improving or substituting the contract products;
- k) Relevant technology market: the relevant market for the technologies and processes that are capable of replacing, improving or substituting the contract technologies,
- l) The Act: the Act on the Protection of Competition no. 4054
- m) Know-how: a secret, substantial and identified package of practical information, resulting from experience and testing,
- n) Potential competitor: an undertaking that, in the absence of the research and development agreement, would, in case of a small but permanent increase in relative prices , within not more than 3 years, enter the market by making the necessary additional investments or bearing other necessary switching costs
- o) Competing undertaking: actual or potential competitor operating in the same product or technology market,
- p) Exploitation of the results: the production and/or distribution of the contract products or the application of the contract technologies or the assignment/licensing of intellectual property rights or sharing technical information required for production or application
- q) Contract technology: production process and/or technologies that are the subject or result of R&D
- r) Contract product: goods and/services that are the subject or result of R&D or goods and/or services manufactured or provided through the contract technologies;

- s) Party: undertaking or undertakings party to the agreement
- t) Technical information: information protected by know-how or intellectual property rights,
- u) Trade secret: all kinds of information and documents related to undertakings' field of operation, which undertakings have a discretion to keep confidential and are known and obtained by a limited group and disclosure of which to the public or third parties is likely to cause serious harm to the undertaking concerned.

Cases, where R&D is carried out or its results are exploited jointly by the parties:

Article 5- (1) In the following cases, it is deemed that R&D is carried out or its results are exploited jointly by the parties:

- a) R&D studies are carried out by a team, an organization or an undertaking set up together or via a third undertaking appointed together or there is a division of labor between parties through specialization with respect to R&D or exploitation.
- b) Parties cooperate for the transfer of intellectual rights or the passing of know-how within the meaning of sub-paragraph (p) of the first paragraph of Article 4.

SECTION TWO

Conditions and Scope of Exemption

Exemption

Article 6 - (1) R&D agreements fulfilling the conditions listed in this Communiqué shall be block exempted from the application of the provisions of article 4 of the Act.

(2) Research and development agreements containing provisions which relate to the assignment or licensing of intellectual property rights to one or more of the parties or to an entity the parties establish to carry out the joint research and development, paid-for research and development or joint exploitation, provided that those provisions do not constitute the primary object of such agreements, but are directly related to and necessary for their implementation shall benefit from exemption within the scope of this Communiqué.

General Conditions of Exemption

Article 7 - (1) Agreements fulfilling the conditions listed below shall benefit from exemption within the scope of this Communiqué:

- a) In case the agreement involves the joint use of results and at least two of the undertakings are competing undertakings in the relevant market, total market shares of all parties in the relevant market do not exceed 40 %,
 - b) In case the agreement involves joint exploitation of results and at least two of the parties are competing undertakings in the market, with respect to paid-for R&D, if one of the parties is a financing party in more than one R&D agreements involving contract products and technologies, total market shares of all parties, including the financing party, do not exceed 40%,
 - c) The scope and object of R&D are clearly defined.
 - d) With respect to joint or paid-for R&D, all parties to the agreement have full access to the results of the study, except for appropriately restricting access to the results in case of specialization in the context of exploitation,
 - e) In case the agreement is only directed at R&D, parties are not prevented from being able to use technical information and R&D results, except for trade secrets and confidential information, independently of each other,
 - f) Joint exploitation is limited to R&D results, and these results constitute the essential facility in the production of contract products or the application of contract techniques,
 - g) With respect to agreements covering specialization in the context of exploitation, in case it is not decided that contract products are jointly distributed by a team, an organization or an undertaking set up together or via a third undertaking appointed together, or distributed only by the manufacturing party, the undertaking or undertakings which assume(s) the production meet(s) the orders of parties in relation to the contract products,
- (2) In case the contract products are raw materials or intermediate goods used in the production of another good or service

by parties, and in case such products constitute the essential facility of the final good or service, the market concerning the said final good or service is taken as the basis in calculating total market share of parties,

(3) R&D agreements, whose parties are not competing undertakings in the relevant market, are not subject to the threshold conditions specified in the first paragraph.

Duration of Exemption

Article 8- (1) Exemption granted by this Communiqué to agreements involving solely R&D is valid during the agreement. In case of joint exploitation of R&D results, exemption shall be valid for seven years, as of the date contract products are first launched in the market within the borders of the Turkish Republic.

Hardcore Restrictions

Article 9- (1) - Agreements which involve the following restrictions shall not benefit from the block exemption granted by this Communiqué:

a) Restriction of the freedom of one or more of the parties to conduct R&D activities independently on its/their own or with third persons, in areas which are not associated with the subject of the R&D agreement between them, or in an area related with the subject of the R&D agreement or paid-for R&D agreement after the expiry of the agreement,

b) Joint determination of the production or sale amount of the contract products or limitation of the power of one or more of the parties to independently determine the production or sale amount of the said products,

1) In case joint exploitation covers joint production of contract products, determining production goals,

2) In cases where contract products are jointly distributed by a team, an organization or an undertaking set up together or via a third

undertaking appointed together and joint exploitation covers joint distribution or joint licensing of contract product, determining sales targets,

3) The existence of practices related to specialization in the context of joint exploitation

4) During the period of joint exploitation of the results, prohibition of production, sales, allocation or licensing of products and technologies in the same relevant product or technology market as the contract products and technologies,

c) In case the joint exploitation of the results includes the joint distribution of the contract products or the joint licensing of the contract technologies, the fixing of prices when selling the contract products or licensing the contract technologies to third parties, with the exception of the fixing of the prices charged to immediate customers or the fixing of license fees charged to immediate licensees

d) Except exclusive licensing, the restriction of passive sales to customers or territories and except R&D agreements including specialization in the context of exploitation, restrictions covering allocation of customers or territories between parties,

e) Prevention, through various measures, by using intellectual rights being in the lead, of distributors' obtaining and/or launching in the market, or users' obtaining the contract products which have been legally launched in the market by parties or the consent of one of the parties.

Excluded Restrictions

Article 10 - (1) The exemption provided for in Article 6 shall not apply to the following restrictions contained in R&D agreements:

a) Abolishing the rights of the parties to challenge the validity of intellectual property rights after completion of R&D or after the expiry of the R&D agreement,

b) Prohibition of granting licenses by one or more of the parties to third parties to manufacture the contract products or to apply the contract technologies unless the agreement provides for the joint exploitation of the results of joint R&D or paid-for R&D agreements or such exploitation does not take place.

SECTION THREE

Other Provisions related to the Implementation of Exemption

Market Share Thresholds

Article 11- (1) In the implementation of the market threshold, the following principles apply:

a) The market threshold shall be calculated on the basis of the market sales value. If sales value data are not available, estimates based on other reliable market data, including market sales volumes, may be used to calculate the market share of the undertakings concerned.

b) The market share shall be calculated on the basis of data relating to the preceding calendar year,

c) Within the scope of the first paragraph, sub-paragraphs (a) and (b) of Article 7, in case the market share is initially not more than 40 % but subsequently rises above that threshold without exceeding 45 %, the exemption shall continue to apply for a period of two years following the year in which the 40 % threshold was first exceeded;

Within the scope of the first paragraph, sub-paragraphs (a) and (b) of Article 7, in case the market share is initially not more than 40 % but subsequently rises above 45 %, the exemption shall continue to apply for a period of one year following the year in which the level of 30 % was first exceeded,

d) The rights provided by sub-paragraphs (c) and (d) may not be combined so as to exceed a period of two years.

Withdrawal of the Block Exemption

Article 12 - (1) The Competition Board may withdraw the benefit of the block exemption granted as per this Communiqué, in case it finds that the agreement has effects incompatible with the conditions of Article 5 of the Act. In this case, the Board takes the written and/or oral opinion of the parties before making its final decision.

Application of article 6 of the Act

Article 13 - (1) The exemption granted under the provisions of this Communiqué shall not prevent the implementation of Article 6 of the Act.

SECTION FOUR

Various and Final Provisions

Repealed Legislation

Article 14- (1) Block Exemption Communiqué on Research and Development Agreements (Communiqué No: 2003/2), published in the Official Gazette dated 27/8/2003 and numbered 25212, has been repealed.

(2) The references made to the Block Exemption Communiqué on Research and Development Agreements (2003/2) in other legislation shall be deemed to be made to this Communiqué.

Transition Provisions

Temporary Article 1 - (1) In case Agreements signed before the date on which this Communiqué entered into force and which comply with the conditions regulated in the Block Exemption Communiqué on Research and Development Agreements (2003/2) but do not comply with the conditions regulated in this Communiqué are amended to comply with this Communiqué within 30 days following the effective date of this Communiqué, shall be deemed to be under the scope of this Communiqué.

Entry into Force

Article 15 - This Communiqué shall enter into force on the date it is published.

Execution

Article 16 - (1) The provisions of this Communiqué shall be executed by the President of the Competition Authority.