



Analysing Employment Practices in Automotive Sector: A Competition Law Perspective

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I. Introduction

In scope of the Turkish Competition Board's ("**Board**") decision¹ regarding Doğuş Otomotiv Servis ve Ticaret A.Ş. ("**Doğuş Otomotiv**") negative clearance/exemption application, the Board decided that the practice of recommending base salaries for employee salaries among Doğuş Otomotiv's authorised dealers benefit from the Block Exemption Communiqué on Vertical Agreements No. 2002/2 ("**Communiqué No. 2002/2**").

II. The Board's Sectoral Analysis and Assessments on the Relevant Product Market

With regards to the sector, the Board acknowledged that the automotive sector is characterized by product differentiation and that high competition in the market relies not only on pricing but also on several other factors. Effective marketing, prompt responses to changing demands, the ability to develop new models, a diverse product range, and a broad service network are all crucial elements of competition in the market.

The Board emphasized that the quality of after-sale services directly impacts customers' brand loyalty of the consumers. Surveys and studies indicate a significant connection between the quality of the service and the salaries of the employees who provide these services firsthand. The Board determined that automotive sales and after-sale services are vital for gaining customer loyalty, and the motivation of the employees working in these sectors has an impact on the quality of the service. Therefore, employees' motivation is closely tied to their salaries.

Doğuş Otomotiv's application regards recommending base salaries for "*sales executives, sales consultants in the sales management job family; workshop executives, service engineers, foreman, service consultants, damage consultants, disposition experts, disposition responsible, technicians in the service support job family; spare part executives, spare part responsible, warehouse attendants in the spare part job family; guarantee experts, guarantee responsible,*

¹ The Board's Doğuş Otomotiv decision dated 07.09.2023 and numbered 23-41/796-280

HR executives, HR responsible, customer relations executives, customer relations responsible, accounting specialists, accounting executives, accounting responsible, sales support specialists, sales support responsible, customer advisors in management and operational support job family” employees by Doğuş Otomotiv.

The Board evaluated the recommended base salaries as crucial input in the automotive sales and after-sales services, noting their potential impact on the labour market. However, in line with the Para. 20 of the Guidelines on the Definition of Relevant Market and based on its assessment that the application would not give rise to competition law concerns, the Board left the market definition open and did not specify a geographic market.

III. Background Information on the Application

Doğuş Otomotiv has a wide range of authorised dealers and a distribution network in the Turkish market. As the distributor of various brands, Doğuş Otomotiv conducts both sales and after-sales services through its dealers. Doğuş Otomotiv primarily focuses on exporting and delivering branded vehicles to its dealers. Therefore, Doğuş Otomotiv deems it important to provide high-quality services to customers through its dealers and authorised dealers.

Doğuş Otomotiv’s negative clearance/exemption application pertains to its motivation to provide quality services. In its application, Doğuş Otomotiv stated that the practice of recommending base salaries would vary by province and region, would not include side benefits, and would be shared only with fund holders and executives of the dealers and authorised dealers through a table attached to an e-mail.

IV. The Board’s Assessments on Article 4 of Law No. 4054 and Communiqué No. 2002/2

a. Negative Clearance

Under Article 4 of Law No. 4054, “*agreements and concerted practices between undertakings, and decisions and practices of associations of undertakings which have as their object or effect or likely effect the prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services*” are illegal and prohibited. Article 5 of Law No. 4054 regulates the requirement of negative clearance. To grant a negative clearance certificate, an agreement, decision, practice, or merger and acquisition must not be contrary to Articles 4, 6, and 7 of Law No. 4054.

In line with the foregoing, the Board's assessed that one of the main factors ensuring labour mobility is the difference in salaries. Despite the recommended nature of the relevant application, it may impact salary fixing and therefore eliminate competition between the authorised dealers and dealers in terms of labour and salaries, ultimately restricting labour mobility. In this respect, the Board held that the application falls within the scope of Article 4 of Law No. 4054, and therefore, a negative clearance certificate cannot be issued for the Doğuş Otomotiv's application.

b. Exemption

The Board considered the relationship between Doğuş Otomotiv and its dealers and authorized dealers as a vertical relationship and determined that Communiqué No. 2002/2 will be applicable. Although the Board stated that Communiqué No. 2002/2 should be taken into consideration in the evaluation of the application, it also emphasized the need for interpretation to determine the abstract norm. Therefore, the Board indicated that in the absence of any case law addressing the specific nature of a certain practice and whether it constitutes competition restriction, it would be appropriate to reason by analogy.

The Board assessed that Doğuş Otomotiv's provision of a recommended salary list to its dealers and authorized dealers to be considered in the determination of the salaries of their employees, constitutes a purchase price recommendation. The Board stated that Article 4(a) of Communiqué No. 2002/2, could be considered similar and apply to the concrete case due to the non-existence of a specific provision for the concrete case.

The Board conducted its regulatory assessments in the following steps:

- 1. Article 2 of the Communiqué No. 2002/2:** Firstly, the Board identified the scope of the vertical agreements considering the "*agreements concluded between two or more undertakings operating at different levels of the production or distribution chain, with the aim of purchase, sale or resale of particular goods or services*" definition in Article 2 of the Communiqué No. 2002/2,
- 2. Article 4(a) of Communiqué No. 2002/2:** Considering the vertical nature of the application, the Board determined Article 4(a) of Communiqué No. 2002/2 "*Preventing the purchaser from determining its own selling price. It is to such an extent that the provider may determine the maximum selling price or recommend the selling price, on condition that it does not transform into a fixed or minimum selling price as a result of the pressure or encouragement by any of the parties.*" shall apply,

3. **Para. 17 of the Guidelines on Vertical Agreements:** With regards to the Article 4(a) of Communiqué No. 2002/2 the Board referenced Para. 17 of the Guidelines on Vertical Agreements “*Article 4.1(a) of the Communiqué concerns obstruction of the buyer undertaking's freedom to determine its own prices. Accordingly, setting fixed or minimum sales prices for the buyer is absolutely prohibited. However, the supplier may set maximum sales prices for the buyer or offer recommended sales prices to the buyer, provided these do not transform into fixed or minimum sales prices. In order to ensure that maximum or recommended sales prices notified to the buyer do not become minimum or fixed prices, price lists or packaging of the product must clearly indicate that the prices concerned are maximum or recommended prices*”,
4. **Article 2.2 of Communiqué No. 2002/2 and Para. 219 of the Guidelines on Vertical Agreements:** Considering Article 2.2 of Communiqué No. 2002/2 “*The exemption granted by this Communiqué shall be applied provided the market share of the provider in the relevant market where it provides the goods and services comprising the subject matter of the agreement does not exceed 30%*” and Para. 219 of the Guidelines on Vertical Agreements “*Where the supplier's market share does not exceed 30%, recommended price and maximum price practices are evaluated within the scope of the block exemption, as mentioned in the relevant chapters. The following explanations will provide guidance in the assessment of individual cases where the market share threshold is exceeded and where the block exemption must be withdrawn.*” the Board assessed that total market share of Doğuş Otomotiv’s each job family and service and spare part job family’s total does not exceed 30%,
5. **Para. 221 of the Guidelines on Vertical Agreements:** Under Para. 221 of the Guidelines on Vertical Agreements “*The most important factor in the assessment of possible anti-competitive effects of maximum or recommended prices is the market position of the supplier. The stronger the position of the supplier, the higher the risk of maximum or recommended prices being used somewhat uniformly by resellers, since they may use these prices as a focal point. Resellers may find it hard to deviate from the price recommended by such an important supplier. Under these circumstances, if maximum and recommended prices result in uniformity of price levels, these practices are not likely to fulfill the conditions of Article 5 of the Law.*” the Board indicated that recommended salaries provided by Doğuş Otomotiv could be perceived as reference salaries for dealers and authorised dealers.

The Board further assessed that the primary concern of the application could potentially relate to intra-brand price competition. To ascertain whether Doğuş Otomotiv's recommended salary practice would restrict intra-brand price competition and potentially lead to price fixing within the brand, the Board examined the average salaries received by occupational groups. These salaries are set to be established as advisory base salaries across Doğuş Otomotiv's subsidiaries and dealers in 2021 and 2022. The evaluation concluded that these salaries fluctuate over time and there is no indication of fixed salaries within the relevant occupational groups.

The Board also assessed that career opportunities within the service and spare part job family are more limited compared to the operational support job family. In this regard, the Board examined the potential for salary fixing among the relevant job families. It determined that there are differentiated salaries between Doğuş Otomotiv and its subsidiaries, as well as between dealers active in the same province where Doğuş Otomotiv and its subsidiary are present. Furthermore, the Board found that there are no standardized practices regarding salaries of the employees even within Doğuş Otomotiv's subsidiaries themselves.

Furthermore, the Board requested information from Doğuş Otomotiv's dealers and its subsidiary to gather their opinions on the planned practice by Doğuş Otomotiv. According to the responses, 82% of the dealers expressed that receiving a list of recommended base salaries from Doğuş Otomotiv would be beneficial as it could assist in attracting higher-quality employees. However, they emphasized that while the recommendations may guide them in determining salaries, they retain the independence to decide employee salaries.

Additionally, 15% of the dealers indicated that a negative clearance or exemption application from Doğuş Otomotiv would not adversely affect them. They stated that they would continue applying their policies regarding salaries independently.

V. Conclusion

Consequently, since Doğuş Otomotiv's relevant total market share does not exceed the 30% market share threshold specified in Communiqué No. 2002/2, and it is understood that there is no concern that authorised dealers and dealers apply a standard salary by accepting the salaries recommended by Doğuş Otomotiv as a reference, it is considered that Doğuş Otomotiv can benefit from exemption within the scope of the Communiqué No. 2002/2. In the light of the foregoing substantive assessment, the Board unanimously decided that a negative clearance certificate cannot be issued for the application pursuant to Article 4 of Law No. 4054 but it can grant exemption within the scope of Communiqué No. 2002/2.

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