



The Turkish Competition Board's Approach on Electric Vehicle After-Sales Services: Key Takeaways from the TOGG/Bosch Exemption Decision

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I. Introduction

Turkish Competition Board (“*the Board*”)’s recent decision¹ involving the exemption application of Türkiye’nin Otomobili Girişim Grubu Sanayi ve Ticaret AŞ (“*TOGG*”) serves as an important decision in Türkiye’s emerging electric vehicles and after sales markets. Assessed within the scope of the Block Exemption Communiqué on Vertical Agreements in the Motor Vehicles Sector (“*Communiqué No. 2017/3*”) and Article 5 of the Law No. 4054 on the Protection of Competition (“*Law No. 4054*”), the decision sets out significant competition law considerations in relation to agency relationship, information exchange and emerging markets.

II. Background Information on the TOGG’s Exemption Application

TOGG’s application pertains to a hybrid system designed for the after-sales services of its upcoming electric vehicles and will exclusively focus on the distribution of the spare parts and providing maintenance and repair services. Under its hybrid system, TOGG plans to establish its own authorized service centers while also cooperating with the authorized chain services of Bosch Sanayi ve Ticaret AŞ (“*Bosch*”) to develop an extensive after-sales service network. Within this framework, two key agreements have been signed between TOGG and Bosch: (i) the Global Network Service Agreement (“*Global Agreement*”) and (ii) the Authorized Chain Service Agreement (“*Chain Agreement*”).

In accordance with the Global Agreement, TOGG aims to cooperate with the Bosch Authorized Chain Services, known as *BWN Garages*, as part of its after-sales service strategy and wants to position the Bosch Service Network as the primary supplier of the services. In this context, Bosch will assist TOGG in recruitment process, so that BWN Garages individually sign the

¹ The Board’s TOGG/Bosch decision dated 21.12.2023 and numbered 23-60/1160-415.

Chain Agreement to be an authorized TOGG service center. As part of this collaboration, Bosch will be paid by the TOGG for the services provided within the scope of the Chain Agreement.

One of the key aspects of the Global Agreement is that the relationship between TOGG, Bosch and BWN Garages will not be exclusive for any party and that TOGG will not be granted any exclusive rights regarding the Bosch Service Network. Additionally, both TOGG and Bosch are able to enter into agreements with regional distributors, workshops, workshop providers, and/or original equipment manufacturers (OEMs) as well as other suppliers and business partners.

Furthermore, Article 5 of the Global Agreement clarifies that Bosch will not provide any services regarding the sales of TOGG vehicles and will not be responsible for the actions of its TOGG authorized service centers that violate the Chain Agreement. Obligations of TOGG are specified within the Article 7 of the Global Agreement. It is laid out, among other things, that TOGG will be solely responsible for managing and resolving all warranty and recall requests related to TOGG vehicles, parts, accessories, and other products.

Moreover, Article 9 of the Global Agreement requires TOGG to share specific information and documents with Bosch when necessary for the provision of the services. These include sales volume planning, vehicle development and production milestones, regional market launch timelines, vehicle delivery volumes, vehicle service history and TOGG diagnostic (detection) data.

As explained above, the Chain Agreement will be signed with service centers within the Bosch's service network that wish to become TOGG-authorized chain services. These authorized services will provide post-sales maintenance and repair services for TOGG-branded passenger cars, store TOGG spare parts on behalf of TOGG and use them in maintenance and repair services for customers. These service centers will operate under Bosch's umbrella and brand assurance but without exclusivity.

III. The Board's Assessment on the Relevant Market

Firstly, the Board acknowledged that the competitive concerns in the after sales maintenance and repair market are intense since consumers rely on brand-specific services and spare parts, and therefore they have limited alternatives for specialized services. Further, the Board highlighted that the relevant product market definition for after sales maintenance and repair services is different from the relevant product market definition for the vehicle distribution market. In this context, the Board referenced paragraphs 59 and 65 of the Communiqué No.

2017/3 and emphasized that the spare parts are generally defined on a brand specific basis and in some instances, the market definition for spare parts may even be narrowed down to specific models or types. Similarly, the Board underlined that the market definition for maintenance and repair services is also considered brand specific.

Moreover, TOGG argued that (i) Bosch Authorized Chain Services system is not a traditional distribution system, (ii) service centers cannot sell spare parts separately, they can only use them as part of the service, and besides spare parts are invoiced on behalf of TOGG, (iii) the relationship between TOGG and Bosch service centres resembles an agency-like structure, (iv) spare parts market for TOGG vehicles is still in the development stage, and (v) therefore a separate analysis of the spare parts market is not required. Within this scope, the Board evaluated that as the market demand grows, it is likely TOGG spare parts may be sold independently. Therefore, there is a potential for a standalone “*TOGG spare parts market*”. In light of this, the Board defined the relevant product markets as “*the maintenance and repair services market for TOGG branded vehicles*” and “*the spare parts market for TOGG branded vehicles*.”

Lastly, the Board defined the relevant geographic market as Türkiye based on the following considerations: (i) the agreements cover products and services to be provided across Türkiye, (ii) competition conditions do not vary significantly across different regions, (iii) Bosch has an extensive service network and each of its affiliated service centers are potential candidates for the Chain Agreement and (iv) the after-sales services distribution network is structured to be applied across Türkiye.

IV. The Board’s Assessments within the Scope of Articles 4 and 5 of Law No. 4054 and Communiqué No. 2017/3

- ***Assessment of Agency Relationship***

The Board emphasized the need to evaluate the commercial relationship between the parties, particularly assessing whether the arrangement between TOGG and Bosch authorized service providers constitutes an agency relationship. In this regard, the Board noted that the relationship between TOGG and the authorized service providers, and the structure of the Chain Agreement differ from the traditional models in the automotive sector. Specifically, the Board highlighted that the fact that the ownership of TOGG spare parts does not pass on the authorized service providers, instead they only store and sell these parts on behalf of TOGG and repair services are invoiced on behalf of TOGG bring the question of agency relationship.

The Board highlighted that while, in principle, the relationship between an undertaking and its agency is not considered as an anti-competitive agreement within the scope of Article 4, assessment of whether the agency takes a commercial or financial risk in relation to the activities assigned to it by its client is crucial.

In this regard, the Board noted that under the Article 17.1 of the Chain Agreement, the authorized service providers are fully responsible for any damages caused by their own fault and negligence in performing its service obligations and besides, they have to obtain liability and other insurance policies to cover the risks. Additionally, the responsibility for storing and providing spare parts lies exclusively with the authorized service providers. Therefore, the Board concluded that the responsibility imposed on authorized service providers goes beyond a typical agency relationship as they bear direct financial liability.

Furthermore, the Board assessed the investments made within the scope of the commercial relationship between TOGG and authorized service providers. The Board noted that to operate in the market, authorized service providers need to invest in various specialized equipment including battery lifts, insulated hand tools, diagnostic devices, electric vehicle charging units, and camera radar calibration equipment. Not only are the authorized service providers required to supply various equipment under the agreement but in the event of non-renewal or termination, they will retain the equipment. Therefore, the Board submitted that the investments to be made by the authorized service providers go beyond the usual investments expected within the agency relationship.

Additionally, the Board underlined that after sales maintenance and repair services will be performed directly by the authorized service providers and thus, they are not positioned as intermediaries. In this regard, the Board concluded that commercial relationship subject to the case cannot be considered as an agency relationship and therefore will be subject to Law No.4054.

Overall, the Board highlighted that the Global Agreement allows certain data to be shared between TOGG and Bosch, and the Chain Agreement shows that TOGG plans to implement a quantitative selective distribution system for maintenance and repair services. The Board emphasized that since the agreements include provisions of information exchange and limit the number of potential service providers, the agreements fall within the scope of Article 4 of Law No. 4054.

- *Assessment under Communiqué No. 2017/3*

The Board noted that while the Global Agreement lays out the general framework and operational structure of the after-sales cooperation between TOGG and Bosch, the Chain Agreement will be signed individually with each of the Bosch affiliated service centers. Therefore, the Board evaluated that since the main object of the agreements is to provide maintenance services for the TOGG branded vehicles, agreements subject to the application should be assessed within the Communiqué No. 2017/3.

Additionally, the Board highlighted that for quantitative distribution agreements and exclusive distribution agreements to benefit from the Communiqué No. 2017/3, the market share of the supplier in the relevant market in which it supplies spare parts and/or provides maintenance and repair services should not exceed 30%. However, the Board explained that given that the relevant market is still in progress and the independent service providers have not been active yet, an exact assessment was not possible whether the market share threshold has been satisfied or not.

Moreover, the Board further added that for the agreements to benefit from Communiqué No. 2017/3, they must have a duration of at least five years and both of the parties accept a provision in the agreements to notify their wish not to renew at least six months before the expiration of the agreements, or, where the agreements are for an indefinite duration, the notice of termination period must be at least two years for both parties.² The Board concluded that the duration and termination notice provisions of the agreements do not meet the requisite requirements set out in Communiqué No. 2017/3, and therefore an individual exemption assessment should be conducted.

- ***Assessment under Article 5 of Law No. 4054***

Article 5 of the Law No. 4054 governs the individual exemption under Turkish Competition Law. Four conditions³ must be satisfied for an agreement, decision or concerted practice to benefit from an individual exemption. The Board evaluated each condition in the case as follows:

² The Board did not disclose the details of the duration of the agreements and termination notice periods.

³ Cumulative conditions for individual exemption are as follows: (i) the agreement must contribute to improving the production or distribution of goods or to promoting technical or economic progress; (ii) the agreement must allow consumers a fair share of the resulting benefit; (iii) the agreement should not eliminate competition in a significant part of the relevant market; and (iv) the agreement should not restrict competition by more than what is necessary for achieving the goals set out in (i) and (ii).

i) New developments and improvements, or an economic or technical development in the production or distribution of goods and in the provision of services

The Board evaluated that the primarily effect of the agreements is to expand the after sales services network significantly. This would also increase the service providers' capacity and experience regarding the services for the other branded electric vehicles. The Board also noted that with the strengthened service network, the demand for electric vehicles would also increase. Additionally, the Board highlighted that the short termination notice periods in the agreements allow dissatisfied service providers to switch to alternative suppliers, which aligns with the above-mentioned effects. Therefore, the Board concluded that the first condition has been satisfied.

ii) Benefit to consumers

The Board asserted that when the after sales markets for electric vehicles are reviewed, it is observed that the level of know-how within the maintenance and services market is not yet sufficient. Therefore, since the agreements has the potential to increase the number of qualified and multi-brand service providers, the level of know-how in the market will also increase. Furthermore, the Board added that the short termination notice periods reduce switching costs for service providers, and this also contributes to the benefit to consumer criterion. Based on these considerations, the Board concluded that the second condition has been satisfied.

iii) Not Eliminating Competition in a Significant Part of the Relevant Market

The Board first assessed the market power and concentration level in the market and submitted that the distribution of the motor vehicles market could be characterized as competitive and dynamic with an increasing demand. The Board then referred the low market share of TOGG branded vehicles and emphasized that TOGG's plan to establish a quantitative selective distribution system aiming to limit the number of authorized service providers will not eliminate competition in a significant part of the market.

Additionally, the Board highlighted that the combination of Bosch's extensive and well-equipped service network and TOGG's know-how regarding electric vehicles will contribute to competition in the market. The Board also considered that the agreements do not contain exclusivity or non-compete clauses. In other words, the Board acknowledged that the authorized service providers are free to offer after sales services to other brands, and even though TOGG

will have priority in relation to the use of some special equipment, if no TOGG vehicles are present and no reservations have been made, the service providers are free to use the idle equipment for other branded vehicles.

Lastly, the Board noted that it could be argued that market entry for after-sales market requires certain investments such as establishing and operating service centers, hiring qualified technicians and acquiring the necessary equipment, and thus accommodate practical barriers. However, the Board submitted that considering the reasonableness of investment costs and short payback period, such entry barriers could be tackled. In light of these, the Board concluded that the third condition has been satisfied.

iv) Not limiting competition more than necessary to achieve the goals set out in paragraphs (i) and (ii)

The Board initially considered that TOGG's role in determining the fees for services provided could be a competitive concern. In this context, the Board noted that while TOGG sets fees for roadside assistance services, such as field service charges and travel costs, these fees can be offered at a lower price if desired by the authorized service providers. Additionally, Article 4.5. of the Chain Agreement submits that TOGG will provide service centers with recommended retail price lists for the products covered in the agreements. The Board concluded that these prices serve as recommended or maximum prices, and therefore the provisions do not raise competitive concerns.

Furthermore, the Board highlighted that since TOGG and Bosch are considered as competitors within the maintenance and repair services market, another potential competitive concern within the agreements pertains to the information exchange between them. As explained above, TOGG will share certain data and documents with Bosch such as sales volume planning, vehicle development and production milestones, regional market launch timelines, vehicle delivery volumes, vehicle service history and TOGG diagnostic (detection) data, but only to the extent necessary for providing the services. The Board considered that (i) sharing data is necessary for maintaining high-quality service, (ii) all transactions and data related to TOGG vehicles will be processed exclusively through UEP software provided by TOGG for authorized service providers and Bosch cannot access this software, (iii) TOGG's training programs will be made available to both authorized service providers and other independent service providers and (iv) the confidentiality agreement signed between TOGG and Bosch stipulates that all information and documents related to the service provided by TOGG will be treated as confidential and will not be disclosed under any circumstance. Therefore, the Board submitted that the information

exchange does not raise any competitive concerns. Overall, the Board concluded that the fourth condition has been satisfied.

V. Conclusion

Consequently, the Board determined that the agreements subject to application could benefit from individual exemption. This decision embraces a pragmatic approach in terms of striking a fair balance between acknowledging the benefits of cost savings, better quality service, and consumer choice while also implementing tools such as restricting data access, and confidentiality agreement to mitigate anti-competitive risks. Considering that the after sales market for electric vehicles market in Turkiye is yet to develop, the decision also demonstrates the proactive role of the Board in terms of emerging markets and sets a precedent for future cases.

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