Navigating the AXA/Denizbank Decision: The Boundaries of Exclusivity, Non-Compete, and No-Poaching Obligations in Bancassurance Agreements

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I. Introduction

The Turkish Competition Board's ("***Board***") recent decision[2] involving the negative clearance and exemption application of AXA Sigorta AŞ ("***AXA***") concerning the Non-Life Insurance Agency Agreement ("***Agreement***") concluded with Denizbank AŞ ("***Denizbank***") and Deniz Finansal Kiralama AŞ ("***DFK***") serves as an important decision in Turkiye's non-life insurance and bancassurance markets ("***Decision***"). Assessed within the scope of Article 4 of Law No. 4054 on the Protection of Competition (***"Law No. 4054***"), the Block Exemption Communiqué on Vertical Agreements No. 2002/2 ("***Communiqué No. 2002/2***"), and the Guidelines on Competition Infringements in Labor Markets ("***Labor Markets Guidelines***"), the Decision sets out significant competition law considerations in relation to agency relationships, exclusivity and non-compete obligations, and no-poaching clauses as ancillary restraints.

II. Background Information on AXA's Negative Clearance and Exemption Application and the Assessment of the Bancassurance Agreement

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[2] The Board's *AXA/Denizbank* decision dated 17.06.2026 and numbered 26-22/644-257.

AXA, Denizbank and DFK[3] had previously concluded an agency agreement on July 7, 2011, containing a 15-year non-compete obligation.[4] The previous agreement entered into force on September 23, 2011, and was due to expire on September 23, 2026. To continue their bancassurance relationship, the parties signed the Agreement on May 11, 2023, with an effective date of September 23, 2026, for a term of five years. The Agreement also provided that its renewal would be discussed in good faith one year before the end of that term.

The Agreement concerned the continued exclusive marketing, promotion and sale of non-life insurance products produced and/or supplied by AXA through Denizbank's distribution network in Turkiye, together with the provision of the personnel, information technology and other resources required for those activities. Within this structure, AXA acts as the supplier, while Denizbank and DFK are appointed as its agents. Denizbank is responsible for the marketing, promotion, distribution and sale of the products, and DFK for their distribution and sale. Denizbank and DFK would remain authorized to conclude insurance contracts on AXA's behalf and collect insurance premiums. Where an insured risk materialized, the payment to the customer would be made by AXA, which would bear the relevant commercial risks between the parties.

Under the exclusivity provisions in the Agreement, Denizbank and DFK are prohibited from entering into agency relationships with third-party insurers and from marketing, selling, or distributing their non-life insurance products through the relevant network in Turkiye. The exclusivity obligation applies only to Denizbank and DFK, whilst AXA can market and sell its products through other distribution channels and, within the banking channel, through other financial institutions.

Although the Agreement provides for certain exceptions to exclusivity such as allowing third-party procurement for products AXA discontinues or refuses to develop, insurance provided free of charge as an ancillary component of banking products, employee health policies, and operational risk policies, it also imposes a non-compete obligation on Denizbank during the term of the Agreement. In this respect, Denizbank undertakes that neither it nor its subsidiaries operating in Turkiye will engage in, or derive direct or indirect economic benefits from, non-

[3] DFK is a wholly-owned subsidiary of Denizbank engaged in financial leasing operations and the only Denizbank subsidiary active in the non-life insurance bancassurance services market in Turkiye.

[4] The Board granted individual exemption to the previous agreement through its decision dated September 14, 2011 and numbered 11-47/1165-411.

life insurance activities in Turkiye through an undertaking other than AXA. Subject to the contractual exceptions, the clause also prohibits acquiring a direct or indirect shareholding exceeding 10% in a legal entity carrying out such activities, making such an entity a subsidiary operating in Turkiye, or entering into a merger, joint venture or similar relationship with such an entity.

In addition to the non-compete obligation, the Agreement imposes a mutual no-poaching obligation for twelve months following the expiry or termination of the Agreement. The clause referred generally to the other party's employees, which subsequently became the focus of the Board's proportionality assessment, as provided in detail below.

III. The Board's Assessment

3.1. The Agency Relationship Between the Parties

Initially, the Board examined the nature of the relationship established by the Agreement. Although AXA, Denizbank and DFK operated at different levels of the distribution process, Denizbank and DFK marketed and sold the relevant insurance products on AXA's behalf and therefore performed agency activities.

In this respect, the Board referred to the Vertical Guidelines under which the allocation of commercial or financial risk is decisive in determining whether an agency relationship falls within Article 4 of Law No. 4054. According to the Vertical Guidelines, the factor which determines whether the relationship between the undertakings falls under Article 4 of Law No.4054 is whether the agent takes a commercial or financial risk in relation to the activities assigned to it by its principal. Where the agent does not assume any financial or commercial risks due to the agreement it concludes or mediates, then the relationship between the agent and its principal is consider to beyond the scope of Article 4. In such a case, the buying or selling activities of the agent is considered part of its principal's activities.[5]

Examining the contractual allocation of risk under the Agreement, the Board noted the following facts:

[5] Vertical Guidelines, para. 10

- **Allocation of costs and investment risks:** Denizbank's obligations are confined to administrative and agency functions, appointing management and sales staff, notifying AXA of changes to bancassurance managers, issuing policy documents, transmitting customer data, granting AXA access to train branch staff, informing customers, setting up sales incentive plans, and reporting sold policies in line with AXA's rules (Articles 7.1 et seq. and 7.8).
- **Marketing Costs and Liability Borne by AXA:** All marketing materials distributed by Denizbank to bank customers are supplied by AXA at AXA's own expense and liability (Articles 7.1 et seq.).
- **No Pricing or Commercial Discretion:** Denizbank has no authority to unilaterally modify or negotiate insurance coverage, premiums, or policy terms (Article 7.10), nor can it offer or grant premium discounts, rebates, or waivers to customers (Article 7.11).
- **Reimbursement of Expenses:** Any expenses incurred under the Agreement can be claimed from AXA, and the investments required to market and sell the products do not expose Denizbank to the commercial or financial risks listed in Paragraph 12 of the Vertical Guidelines.

Therefore, the Board concluded that Denizbank does not take the commercial risks identified in the Vertical Guidelines and will act in AXA's name and on its behalf, without independent discretion regarding the insurance contracts. The Board considered that the bancassurance relationship is, in principle, outside the scope of Article 4 of Law No. 4054.

3.2. Non-Compete Obligation

When considering the non-compete obligation separately, the Board stated that clauses preventing an agent from acting as an agent or distributor for competing undertakings may restrict inter-brand competition and create foreclosure effects in the market for the relevant goods or services. Therefore, the fact that the principal bears the relevant commercial or financial risks does not automatically exclude such clauses from Article 4 of Law No. 4054. Against this background, the Board found that the non-compete obligation imposed on Denizbank and DFK brought the Agreement within Article 4 and concluded that negative clearance could not be granted.

By evaluating the market shares which are below 30%, as well as the duration of the non-compete obligation, which is not exceeding five years, the Board decided that non-compete obligation falls within the scope of Communiqué No. 2002/2.

3.3. No-Poaching Clause as an Ancillary Restraint

As the final part of its assessment, the Board evaluated the no-poaching obligation set out in the Agreement. Under this provision, the Agreement imposes a mutual obligation on the parties not to poach each other's employees for twelve months following the expiry or termination of the Agreement.

According to the Labor Markets Guidelines, ancillary restraints are those which are necessary to the implementation of and directly related to the agreement's objectives and which are imposed on the party of an agreement, which does not prevent, distort or restrict competition by object or effect, although they do not constitute the substance of the agreement. In other words, ancillary restraints are restrictions that are not the primary objective of the main agreement but directly related, necessary and proportional for the implementation and sustainability of the agreement.[6]

In this respect, the Board considered that the obligation is related to the parties' activities and necessary for the proper conduct of those activities and realization of the benefits of their cooperation. The Board therefore accepted that the requirements of direct relation and necessity is met. Furthermore, within the scope of proportionality, the Board assessed whether the obligation was limited to the Agreement's objective, geographic scope, duration and parties and found that the clause is consistent with the Agreement's objective, applies only to its parties and is not extend beyond the geographic area in which the Agreement is implemented.

Notably, in assessing the duration of the no-poaching obligation, the Board also referred to paragraph 54 of the Guidelines on the Undertakings Concerned, Turnover and Ancillary Restraints in Mergers and Acquisitions, which generally considers non-compete obligations of up to three years reasonable. Relying on this guidance, the Board found the twelve-month duration reasonable in the circumstances of the case. Accordingly, the Board appears to have drawn upon guidance developed in the merger-control context to assess the duration of the

[6] Labor Markets Guidelines para. 29-30.

ancillary restraint, given that the Labor Markets Guidelines do not prescribe a specific maximum duration.

However, when it comes to the employees covered by the no-poaching clause, the Board identified a concern, as the reference to the other party's employees did not distinguish between personnel involved in the bancassurance activities and other employees. The Labor Markets Guidelines provides that a restraint does not satisfy proportionality where it covers employees other than those of key importance for implementing the main agreement, or where the employees concerned are not clearly identified. The Board therefore requested the notifying party to amend the relevant clause. Accordingly, the parties stated that the amended obligation would cover only employees who are of key importance for the conduct and implementation of the bancassurance activities under the Agreement and who participates in those activities. The Board eventually decided that the revised obligation would satisfy the proportionality requirement and qualify as an ancillary restraint. Accordingly, the Board made the Agreement's eligibility for block exemption conditional upon the implementation of the proposed amendment.

IV. Conclusion

The Board determined that AXA's market shares remained below 30%, the non-compete obligation did not exceed five years from the Agreement's effective date, and the Agreement contained no restriction under Article 4 of Communiqué No. 2002/2 that would otherwise exclude it from block exemption, meaning that no separate individual exemption assessment was required. Consequently, the Board unanimously decided that while the Agreement falls within the scope of Article 4 of Law No. 4054 and cannot be granted negative clearance under Article 8 of Law No. 4054, it benefits from the block exemption under Communiqué No. 2002/2, subject to the amendment of the no-poaching clause.

This Decision underscores that qualifying a contractual relationship as a genuine agency does not automatically immunize all contractual restrictions from competition law scrutiny. Even where the principal assumes all relevant risks, a non-compete obligation preventing the agent from acting on behalf of competing undertakings requires a standalone assessment under Article 4 of Law No. 4054 and Communiqué No. 2002/2, given its potential to restrict inter-brand competition and create foreclosure effects in the relevant market.

Equally important, the Decision reflects the Board's strict approach to the proportionality of no-poaching clauses under the Labor Markets Guidelines. Rather than accepting a blanket restriction covering all of the other party's personnel, the Board conditioned block exemption on narrowing the clause exclusively to employees who are both of key importance to the execution of the bancassurance operations and actively involved in carrying out those activities. Taken together, the Decision offers practical guidance for undertakings entering into long-term agency agreements, serving as a clear reminder that non-compete and no-poaching provisions should be carefully calibrated alongside exclusivity and duration rules to secure block exemption compliance.

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