



Recent Developments in the Turkish Insurance Market

The Turkish insurance market has enjoyed significant growth in the recent years despite the global economic crisis, natural disasters and uprisings in the Middle East and North Africa. The market still offers a great opportunity to grow with new innovative insurance products and developing distribution lines.

I. General Overview of the Turkish Insurance Market

As of August 2011, there were 63 insurance companies and two reinsurance companies registered with the Association of Insurance and Reinsurance Companies of Turkey. Seven of them are operating in the life insurance market, 16 of them are operating in the life and pensions market and 36 companies are operating in the non-life insurance market. The total premium income generated by Turkish insurance companies reached TRY 11,437,934,040 by the end of August 2011. This represents an increase of 23.30% compared to the previous year, and it demonstrates the growth potential of the Turkish insurance market. ¹

Distribution Channels

The main distribution channel for Turkish insurance companies is agency networks. In 2010, 60.14% of the total premiums were generated by agents. ² Although the agency distribution channel has been dominant since the market was created, bancassurance is becoming more prevalent in Turkey. In 2010, 21.98% of the total premiums were generated through the bancassurance distribution network. On the other hand, bancassurance is leading the premium generation in life insurance with a market share of 69.08% due to increasing bank loan insurances.

There are also a number of new distribution channels such as direct marketing, telemarketing and internet marketing. These channels are not yet competitive in Turkey. In 2010, only 5% of the total

¹ <http://www.tsrbs.org.tr/haber/2011-agustos-ayi-istatistikleri-belli-oldu>

² <http://www.sigortacigazetesi.com.tr/arastirma/115-arastirma/2071--bankalar-hayat-acenteler-hayat-dn-seviyor.html>

premiums were generated through the internet. However, insurance holders commonly use the internet for collecting information on insurance products and for comparing insurance companies.

Foreign Investment and Recent Transactions in the Market

Turkey's insurance penetration's ratio to gross domestic product stood at only 1.3% as of December 2010.³ This is below the insurance penetration experienced in developing countries and significantly lower compared to developed countries. However, it shows that there are important opportunities in every business line, distribution channel and client type. Therefore, international players position themselves to take part in one of the world's fastest growing markets.

Foreign insurance companies have gained a significant position in the Turkish insurance market. Nearly 70% of the market is dominated by foreign insurance companies. Axa has the largest share of total non-life premiums with a share of 12%.⁴ Mapfre, Eureko, Talanx, Aegon, Munich Re, Sampo Japan, ZFS and Groupama are other companies that entered the market in recent years and some of are now among the top 10 non-life insurance companies.⁵

As the Turkish insurance market offers strong and fast development opportunities to the market players, more investment is expected in the near future. The European Bank for Reconstruction and Development has teamed up with Sampo Japan in the acquisition of Fiba Sigorta earlier in 2010. The bank has acquired a 9.99% stake in Fiba Sigorta, for TRY 51 million.

The Belgian insurer Ageas, formerly known as Fortis, has acquired 31% of the shares in Ak Sigorta for USD 220 million. This transaction also includes a 15-year exclusivity agreement for the distribution of Ak Sigorta's products through Akbank's branch distribution network. As the long-term exclusive distribution agreements were not very common in the Turkish insurance market, the Turkish Competition Board's (the "**Board**") decision on this distribution agreement was a touchstone for market players. The said decision of the Board is briefly summarized below under Section III.

Another important deal has been the sale of Deniz Emeklilik. Metlife has acquired Dexia's 99.86% stake in Deniz Emeklilik, the life insurance and pension subsidiary of Deniz Bank in Turkey, for EUR 62 million. Furthermore, Garanti Bank has sold its remaining 20% stake in Eureko Sigorta to Dutch Eureko B.V. Eureko entered Turkey in 2007 by buying an 80% stake in Garanti Sigorta for EUR 365 million. In that deal, Garanti was also given a put-option to sell the remaining shares. Garanti has now exercised the option and Eureko has paid EUR 70 million for the remaining 20% stake.

³<http://www.hurriyetdailynews.com/n.php?n=turkey-still-a-key-market-despite-difficulties-insurance-professional-says-2011-06-24>

⁴ <http://www.towerswatson.com/assets/pdf/5066/TW-EU-2011-21459.pdf>

⁵ <http://www.towerswatson.com/assets/pdf/5066/TW-EU-2011-21459.pdf>

II. Legislative Developments

The most important recent development for the insurance market is the enactment of the new Turkish Commercial Code published in the Official Gazette on 14 February 2011 (the “**New TCC**”). The New TCC is a major reform in Turkish commercial law, introducing fundamental changes in various areas including insurance. The New TCC takes into account the dynamic and developing structure of insurance products. It does not separately regulate each insurance product and it only introduces general clauses applicable to each product type. Both the insurer and its agent are required to inform the insured on all major aspects of the insurance policy, including the insured’s rights. Furthermore, the New TCC introduces the concept of professional liability insurance to Turkish law, which is actually quite commonly used in practice.

The New TCC brings important changes with respect to the agencies’ activities. One of these important changes is the compensation right. Following the termination of an agency agreement, the agent may be entitled to seek compensation from the insurer, if the circumstances set forth in the New TCC are present. While this compensation right is governed by the Insurance Law, the New TCC covers the details of the said compensation by determining its conditions, terms and limitations.

Furthermore, the New TCC governs non-compete agreements that may restrict the activities of an agent following the termination of the agency agreement. Accordingly, the term of a non-compete agreement cannot exceed two years after the termination of the agency agreement and it must be limited with the geographical area or group of customers dedicated to the agent as well as with the type of products covered under the agency agreement.

In addition to the important changes introduced by the New TCC, the Undersecretariat of Treasury has introduced various regulations and circulars. The Regulation on Financial Structures of Insurance, Reinsurance and Pension Companies was amended on 17 March 2011. These amendments introduce various financial requirements for insurance companies including collaterals in loan insurances, macro investment policies, derivative instruments, reinsurance policies, pricing policies, information sharing and group supervisions. The amendments also introduce the concept of “financial holding”. Accordingly, the Undersecretariat of Treasury is entitled to monitor the activities of financial holdings which include at least one insurance or pension company.

Another important development for the insurance market is the regulation of corporate governance for insurance companies. The Undersecretariat of Treasury announced the Principles on Corporate Governance of Insurance, Reinsurance and Pension Companies on 27 April 2011. According to these Principles, insurance companies must establish a corporate governance committee and one member of the board of directors must lead the committee. In addition, insurance companies must adhere to the principles of good governance.

III. Competition Law Impact on Insurance Agency Agreements

One of the most significant changes in the Turkish insurance sector over the past few years has been bancassurance. Banking institutions and insurance companies have found bancassurance to be an attractive and often profitable complement to their existing activities. As a result, banks became one of the attractive distribution channels for insurance products in the Turkish insurance market.

Bancassurance agreements are usually executed on an exclusive basis. In other words, under such agreements the bank promotes via its branches and alternative distribution channels, insurance products of the insurance company exclusively. In this regard, from a regulatory perspective, although bancassurance agreements are not *per se* anti-competitive, a long-term exclusivity under a bancassurance agreement may raise some key questions regarding anti-competitive behavior.

According to Article 4 of the Law on the Protection of Competition (the "**Competition Law**"), agreements between undertakings which have an effect or a likely effect on the prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services are illegal and prohibited. That said, certain agreements that satisfy the conditions under the Block Exemption Communiqué on Vertical Agreements No. 2002/2 (the "**Communiqué**") are exempt from Article 4 of the Competition Law, although they prevent or restrict competition in the market. If such an agreement falls outside the scope of the Communiqué, the Board may still grant an individual exemption in accordance with Article 5 of the Competition Law. According to Article 5 of the Competition Law, the following circumstances must be present in order for the Board to grant individual exemption:

- (i) Ensuring new developments and improvements, or economic or technical developments in the production or distribution of goods and in the provision of services;
- (ii) Benefitting the consumer from the above-mentioned paragraph (i);
- (iii) Not eliminating competition in a significant part of the relevant market; and
- (iv) Not limiting competition more than what is compulsory for achieving the goals set out in paragraphs (i) and (ii) above.

According to the Guideline on Vertical Agreements of 2009 (the "**Guideline**") issued by the Board for explaining the Communiqué, competition limitations imposed on an agent under an agency agreement do not fall within the scope Article 4 of the Competition Law. Thus, agency agreements are not subject to the Communiqué. That said, to define an agreement as an agency agreement would not automatically take such agreement outside the scope of Article 4. Whether the relationship between the parties (*i.e.* principal and agent) is within or outside the scope of Article 4 is determined through an assessment of the commercial or financial risks borne by an agent related to the principal's activities for which the agent has been appointed. In other words, if an agent bears limited and

reasonable commercial and financial risk, the agency agreement would be outside the scope of Article 4. In such a case, the agent's activities are considered as part of the principal's activities, *i.e.* the agent would not take commercial and financial risk as a principal, it would only assist the principal for the sale of the principal's products without bearing the commercial risks of the products. On the other hand, if the agent bears an excessive risk almost as a principal, the agreement would not be considered as an agency agreement and would fall within the scope of Article 4. The Guideline provides that the relevant assessment should be made on a case by case basis.

As mentioned above in Section I, Ageas has signed an agreement to buy 31% of the shares in Ak Sigorta. As part of this transaction, Akbank and Ak Sigorta entered into a 15-year exclusive bancassurance agreement for the distribution of Ak Sigorta's products through Akbank's network. The Board granted an individual exemption to this bancassurance agreement, on 4 May 2011. While rendering this decision, the Board considered, among others, the following issues:

- (i) According to the bancassurance agreement, Akbank's responsibility is only limited to the selling of the insurance products to customers and collection of the premiums. Furthermore, it is merely Ak Sigorta's liability to make the necessary payments to the customers under the insurance policies. As Akbank does not bear any commercial or financial risks that are stipulated under the Guideline, the agreement would not fall within the scope of Article 4.
- (ii) Although, for reasons explained in paragraph (i) above, the bancassurance agreement does not fall within the scope of Article 4, since the bancassurance agreement imposes a limitation on competition by introducing long-term exclusivity, it is subject to Article 4 of the Competition Law.
- (iii) In the long term, exclusivity would be beneficial for the consumers and the labour force of the parties. Currently, the exclusivity does not restrict competition in the relevant market.

The Board further stated that if this bancassurance agreement blocks any entry to the market in future, the Board may re-consider its decision and revoke the individual exemption. We believe that this decision sheds light on the Board's view of long term bancassurance agreements. We should expect a higher level of scrutiny by the Board of long-term, exclusive bancassurance agreements.

by Maral A. Minasyan (mminasyan@kolcuoglu.av.tr) & Begüm İncecam (bincecaml@kolcuoglu.av.tr)

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