

Law Bulletin

Competition Law | Turkey | June 2024

The Competition Board decides recommending employee salaries is within the scope of block exemption.

According to the Competition Board's (the "**Board**") decision¹ published on 15 May 2024 (the "**Decision**"), Doğuş Otomotiv Servis ve Ticaret Anonim Şirketi's ("**Doğuş**") base salary recommendations towards its authorized dealers' and resellers' employees is within the scope of the Block Exemption Communiqué No. 2002/2 on Vertical Agreements (the "**Communiqué**"). Although the Turkish Competition Authority (the "**Authority**") frequently examined competition restraints in labor markets in the recent years, this Decision marks the Authority's first decision in which it assessed suppliers' minimum salary recommendations towards its dealers within a vertical context.

The Decision concerns recommending minimum salary towards authorized dealers' and resellers' employees working in sales and after-sales services. In this regard, Doğuş requested exemption to providing its authorized dealers and resellers with minimum salary recommendations which are above the sectoral averages and vary based on provinces/regions. However, the dealers and resellers will be free to set salaries that are above or below the recommended figures. As part of the Decision, the Board established that (i) employing qualified personnel at authorized dealers and resellers is important for Doğuş to increase customer satisfaction, (ii) employee qualification is an important input in automotive sales and after-sales services, and (iii) Doğuş's salary recommendation will have an impact mainly in the labor market. In this regard, the Board

¹ The Board's decision dated 7 September 2023 and numbered 23-42/796-280

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determined that the relevant product market could be defined as "the labor market in the automotive sales and after-sales services".

In its Decision, the Board further examined whether the potential competition restraints in the labor market are relevant to the vertical relationship between the parties. Accordingly, the Board concluded that the vertical relationship between Doğuş and its authorized dealers and resellers actually concern the automotive sales and after-sales services, however, the possible competition restraints in the labor market should be considered as a vertical restraint since it is directly relevant to the parties' vertical relationship. In this regard, the Board analyzed the possible effects of Doğuş's minimum salary recommendations within the framework of the Communiqué and the Guidelines on Vertical Agreements (the "**Guidelines**").

The Communiqué and the Guidelines do not include any explicit provision on the suppliers' recommendation of minimum salaries to the buyers (dealers). However, the Board preferred to interpret Article 4(a) of the Communiqué in determining the legislative norm applicable to the case. Accordingly, the Board concluded that the provision of "preventing the buyer from determining its own selling price" is also applicable to the "preventing the buyer from determining its employees' salaries".

By considering that (i) labor force is an important input for authorized dealers and resellers and (ii) determining buyers' employees' salaries can be considered similar to "determining purchase price" in nature, the Board concluded that Article 4(a) of the Communiqué is also applicable for determining the "purchase price". Indeed, Article 4(a) of the Communiqué regulates that preventing the buyer from determining its own sales price is not within the scope of the block exemption, but it allows for the supplier to recommend resale price to the buyer or determine maximum resale price. In this regard, the Board determined that the relevant provisions of the Communiqué regarding the resale price must be applied to the buyer's purchase price, where applicable. Therefore, the Board concluded that Doğuş's minimum salary recommendation is similar to a "resale price recommendation".

In terms of its assessment on the block exemption conditions, the Board determined that Doğuş's market share in the labor market for automotive sales and after-sales services (in terms of employee number) is below 30%, which is the threshold set out in the Communiqué. In addition, the Board further evaluated that the risk of dealers and resellers embracing Doğuş's recommended salaries, which may lead to a uniformity of salaries, is rather low since the authorized dealers' employees' salaries differ between resellers and provinces. Also, considering the salary recommendations will not be binding on the dealers and resellers and thus the dealers will have the discretion to independently determine their employees' ultimate salaries. Accordingly, the Board concluded that Doğuş's salary recommendations will not have a negative impact on competition in labor market and the relevant practice benefits from the block exemption provided under the Communiqué.

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In conclusion, the Decision has established that suppliers' recommending their dealers/resellers' employees' salaries can benefit from the block exemption, despite the absence of an explicit provision on this matter under the Communiqué. Therefore, for vertical agreements that fulfill the market share threshold and other conditions in the Communiqué, the suppliers' recommendation of buyers' employees' salaries may benefit from the legal certainty provided under the Communiqué if the recommended salaries do not transform to a fixed or maximum salary in practice.

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