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TCA Endorses Innovative After-Sales Model for TOGG Electric Vehicles through BOSCH Partnership

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Introduction

The rise of electric passenger cars has reshaped global markets, driven by decarbonization policies, growing consumer awareness, and innovative marketing strategies. Türkiye is no exception, with the sector developing rapidly. A significant step in this evolution is the Turkish Competition Authority's ("TCA") decision dated December 21, 2023. This decision granted an individual exemption for an after-sales service agreement between Türkiye'nin Otomobili Girişim Grubu Sanayi ve Ticaret A.Ş. ("TOGG") and Bosch Sanayi ve Ticaret A.Ş. ("BOSCH"), setting the stage for a hybrid system in Türkiye's emerging electric car market.

The agreement, critical to the future distribution and servicing of TOGG-branded electric vehicles, introduces a dual-distribution framework where TOGG and BOSCH may become competitors, raising concerns about potential information exchange between rivals. In this article, we delve into the details of this significant decision and the TCA's approach. By examining the TCA's evaluation of market dynamics, know-how dissemination, and consumer benefits, the article sheds light on how the authority balances competition risks with fostering innovation and consumer protection in a rapidly evolving market.

The Scope of the Agreement

The application made within the scope of the file concerns the after-sales services planned to be provided by individual BOSCH services for the electric passenger cars to be launched by TOGG and the service to be provided by BOSCH for the establishment of this system. The after-sales service planned to be provided by individual BOSCH services consists of the provision of maintenance and repair services and the storage of spare parts on behalf of TOGG. In this manner, spare parts that are not subject to a sale between TOGG and appointed BOSCH services and the services will not be sold separately by BOSCH but will only be used as mandatory for the provision of repair services and will be invoiced on behalf of TOGG. In this sense, BOSCH services do not provide an independent distribution activity in terms of spare parts, but only a storage service. Accordingly, the TCA defined the relevant product markets by considering the main concepts in the Agreement as "*maintenance and repair services market for TOGG brand vehicles*" and "*spare parts market for TOGG branded vehicles*".

Concerning this particular situation, the TCA analysed the merits of the commercial relation between TOGG and BOSCH, to determine whether BOSCH's service shops can be considered under TOGG's economic entity, i.e., whether BOSCH service shops must be considered as an agency in terms of the Competition Law. The importance of this distinction lies in application of the Competition Law, as in case the agency does not assume any financial or commercial risks due to the agreement it concludes or mediates, then the relationship between the agency and its client is beyond the scope of article 4 of the Competition Law (see the TCA's Guidelines on Vertical Agreements, para. 10), meaning that such an agreement will not be furtherly analysed and there will not be any need for a clearance for its application in the case where such an entity does not assume financial or commercial risks by its own. However, as it is stipulated in the Agreement that:

- BOSCH service shops shall keep TOGG completely indemnified from any damages caused by its fault and/or negligence in the performance of the service services under the Agreement,
- The responsibility for the storage and provision of spare parts also belongs exclusively to the authorized service shop,
- Authorized service shops that personally provide this service are also made *de facto* liable for the damages arising during the provision of the service through the obligation to issue liability and other insurance policies,
- The price lists sent to the chain services authorized by TOGG are of a recommendatory nature, and there is no obstacle for the maintenance and repair services to provide a more suitable offer to the consumers.

Accordingly, the TCA concluded that, authorized service shops go beyond the intermediary activities of a traditional agency and provide the service themselves and bear the financial responsibility arising from the consequences of this service. Furthermore, the TCA stated that another evaluation factor for agency assessments is the investments made within the scope of the commercial relationship. In this manner, the TCA it is stated that in order to operate in the relevant market, it may be necessary to invest in a lot of equipment; furthermore, the equipment will be provided by service shops and the investments will remain with the service shops in cases such as non-renewal or termination of the contract. In this sense, it is also considered that the investments to be made by authorized services are beyond the ordinary investments expected to be seen in the agency activity.

The TCA's Exemption Analysis

First of all, the TCA made its analysis regarding the block exemption regime stipulated under Block Exemption Communiqué on Vertical Agreements in The Motor Vehicles Sector (“**Communiqué No. 2017/3**”), saying that the main purpose of the agreement is to provide maintenance and repair services for TOGG branded vehicles. Therefore, it is assessed that the Agreement is subject to the notification are within the scope of the Communiqué No. 2017/3. However, as the relevant product markets' market structures in the process of emerging and independent services have not yet started to serve there is no grounds to apply the market share thresholds to benefit the block exemption. All in all, the TCA concluded that the contracts do not meet the general conditions for the exemption set forth in Article 5 of the Communiqué No. 2017/3 in terms of termination periods. Therefore, the TCA assessed that the Agreement cannot benefit from the group exemption within the scope of Communiqué No. 2017/3.

As per the individual exemption regime, the TCA has analysed two positive and two negative conditions for the clearance stipulated under the Article 5 of the Competition Law, as in below.

Ensurance New Developments or Improvements or Economic or Technical Improvement in the Production or Distribution of Goods, and in the Provision of Services

In the application the TOGG and BOSCH stated that, the service network, know-how and brand of BOSCH will be utilized with the TOGG after-sales services network to be established in accordance with the Agreement and the Global Agreement, and thus; BOSCH's chain service network and TOGG's technological knowledge and know-how for electric passenger vehicles will be brought together and the highest quality and state-of-the-art service will be provided to the consumer at the lowest price; in this way, the concerns of consumers regarding after-sales maintenance and repair services and the provision of spare parts, which they experience when buying a vehicle, will be eliminated by establishing a network that will provide a wide and high quality service, thus encouraging consumers' orientation towards electric vehicles. Therefore, it is stated that the carbon footprint of Türkiye will be improved, and a significant contribution will be made to the widespread use of electric vehicles with a lower carbon footprint in the transportation and logistics sector, and the sector and consumers will be supported in raising awareness on climate change, renewable energy and alternative solutions to conventional internal combustion engines.

Accordingly, the TCA assessed that in the event that an exemption is granted to the contracts in question, it is seen that TOGG will have a more effective service network throughout the country with the individual BOSCH service to be authorized in addition to the authorized services already within its own structure. In this sense, although the quantitative selective distribution system will be put into practice with the contracts subject to review, it is understood that the primary effect of the contract is to create a more widespread service network. Accordingly, the TCA concluded that with more services operating as an authorized service for an electric vehicle brand, the capacity and experience of these services to provide services for other brands of electric vehicles will also increase. Thus, it will be possible to achieve the TOGG and BOSCH's above-mentioned statements by increasing the demand for electric vehicles thanks to the strengthened service network. Finally, when the duration of the contracts is analysed, the TCA stressed that it was regulated that both contracts can be terminated within reasonable periods of time by giving notice of termination in advance. It can be evaluated that short termination notice periods will have a positive impact on both consumers and system members in terms of continuity and improvement of service quality and reduction of transition costs of system members; and that they pave the way for services that are not satisfied with their commercial relationship to easily terminate their contracts and focus on providing services to other providers. In this respect, it is concluded that the short termination periods are in line with the developments mentioned above and the first condition of the exemption is met within the scope of all these evaluations.

Consumer Benefit

The TCA said that when the markets for electric vehicles are analysed, it is seen that the level of know-how in maintenance and repair services is not sufficient. Except for the limited number of

authorized services of the suppliers in the market, which have received the necessary trainings related to their own brands/models and can provide the necessary service, it is understood that there is a very limited number of multi-brand services that can provide service to electric vehicles and have the know-how to provide training in this field. Considering the aforementioned market structure, the TCA highlighted the possibility for evaluating the increase in the number of services that have competence in the market for electric vehicles and provide multi-brand services as a consumer benefit.

Furthermore, referencing another regulatory framework, namely the After Sales Services Regulation, the TCA concluded a presumption regarding possible pro-competitive effects of realization of the Agreement that will result in the benefit of the consumer. The main justification for concluding the subject contracts is the obligation of passenger car manufacturers to provide a total of 20 service centres in seven geographical regions in Türkiye within the scope of the After Sales Services Regulation. The TCA considered that as the aforementioned provision is intended to protect the consumer, it can be said that the fulfilment of the conditions of the relevant provision serves the benefit of the consumer thanks to the service network that will be expanded within the scope of the contracts subject to the application.

It has been stated in the application that short termination notice periods are expected to benefit consumers in terms of continuity and improvement of service quality and reduction of transition costs of system members. In this manner, the TCA concluded that since the system subject to the application is a new structure, it is evaluated that not applying strict rules regarding termination does not create a contradiction with the expected consumer benefits.

The Non-Elimination of Competition in a Significant Part of the Relevant Market

The TCA assessed that the motor vehicle distribution market can be characterized by a highly competitive and increasing demand structure and is therefore dynamic. It was stressed that currently, there is a multi-player market with 44 different brands selling in the sector and new ones being added day by day. In recent years, these brands have been focusing on the production of electric vehicles in Türkiye as well as in the rest of the world, but data for 2022 shows that electric vehicles have only a 1.3% share in total automotive production in Türkiye. On the other hand, considering that TOGG has only one model to be delivered in 2023, that approximately 593,000 vehicles were sold in the automotive market in 2022, and that TOGG's market share remains at very low levels. Therefore, the TCA concluded that TOGG's intention to establish a quantitative selective distribution system aiming to restrict the number of authorized services would not eliminate competition in a significant part of the relevant market.

Moreover, as the authorized service network that TOGG is trying to establish is still in its early stages, the primary effect of the contract will be to increase the number of service providers for TOGG-branded vehicles. Looking at the situation in electric vehicles in general, the TCA said that there is very limited know-how on electric vehicles due to the new introduction of these models to the market, and that there are a limited number of authorized services that can provide service for electric vehicles. With the Agreement to be planned to be concluded, it is assessed that the number of authorized services that can provide maintenance and repair services for electric vehicles will increase, and competition will increase in parallel by bringing together BOSCH's widespread and extensive chain service network throughout Türkiye and TOGG's technological knowledge and

know-how for electric vehicles.

The TCA mentioned that a similar situation exists in terms of spare parts sales. This is because independent services have not yet started to provide maintenance and repair services for TOGG brand vehicles and the number of vehicles entering the services with which TOGG has an agreement is limited. Therefore, the spare parts market is evaluated as in the process of formation. Furthermore, the services within the scope of the contract subject to the application ensure that spare parts are kept only on behalf of TOGG, and no independent sales transaction is possible. In this sense, no determination has been made that competition will be eliminated in a significant part of the relevant market due to the system to be implemented for the spare parts market under the agreement.

In terms of after-sales services, the TCA evaluated that both TOGG and BOSCH have the right to enter contracts with other providers and/or partners, including regional distributors, workshops, workshop providers and/or OEMs, and therefore no exclusivity or non-competition obligation is stipulated. On the other hand, it is stated that TOGG may conclude similar agreements with other third-party maintenance and repair chains, meaning that there is no non-competition or exclusivity obligation for the after sales services.

Within the framework of the Agreement, TOGG will reserve the lifts (the lifts that will be provided by BOSCH) in the services for TOGG vehicles and will pay the services for the lifts in standby status. Accordingly, TOGG may reserve the maximum number of lifts available in the shuttles for TOGG vehicles at a reasonable rate, and that there is no obstacle to use the lift for other vehicles in cases where there is no TOGG vehicle to come to the shuttle. Therefore, the TCA concluded that a *de facto exclusivity* risk will be minimal.

In conclusion, the TCA said that the motor vehicle market is dynamic, the electric vehicle market and therefore the after-sales maintenance/repair market is a newly developing market, the average age of the vehicle park has been increasing over the years and therefore the demand for after-sales services is increasing.

In addition, there is no exclusivity or non-competition obligation in the Agreement. The TCA assessed that the fact that TOGG, a new entrant in the electric vehicle market, will combine its technological knowledge and know-how with BOSCH's after-sales service network is likely to increase competition. In addition, although it can be said that there are *de facto* barriers to entry in terms of providing after-sales services due to the establishment and operation of services and the realization of certain investments in terms of having sufficient technical staff, related equipment, spare parts and products, it is considered that this entry barrier can be compensated considering that the investment cost is considered reasonable and the return on investments can be obtained in a short time.

Restricting Competition No More Than Necessary

Under this section, the TCA's main focus is information exchange. Both TOGG and BOSCH provide maintenance and repair services and are competitors in this market, resulting in a dual distribution system. TOGG will share with BOSCH certain information and documents, such as sales volume planning, vehicle development and production milestones, regional market launch timelines, vehicle delivery volumes, vehicle service histories, and TOGG diagnostic data, to be

used to the extent necessary for the provision of services, if necessary, and in no way for any other purpose pursuant to the Global Agreement. When all these explanations are evaluated, it is assessed that making vehicle service histories and diagnostic information accessible to the services is necessary for the services to provide maintenance and repair services, while sharing vehicle development and sales volume planning is necessary to meet TOGG's service needs. In addition, the fact that BOSCH does not have access to the transactions to be made through the software program named UEP will help to prevent the exchange of information beyond what is mandatory. Considering the confidentiality undertaking signed between TOGG and the services stating that all information and documents related to the service request provided by TOGG will be considered as confidential information and will not be disclosed under any circumstances, it is assessed that such information sharing will not create competitive concerns.

Conclusion

The TCA once again made a sector specific exemption analysis, pointing out the electric vehicles sector's unique dynamics. Accordingly, as this sector is still in its infancy, Article 5 of the Competition Law is considered in this manner and the Agreement's potential competitive benefits will be more than enough to address the minor anti-competitive outbreaks. Also, it is seen from this reasoned decision that the TCA may also take into account other regulatory embodiments as legal presumptions, such as in the case it analysed the consumer benefits arising from the Agreement's realization. The time limit for the notice of termination is considered as a factor at upmost importance and stressed by the TCA various times in the decision. And then TOGG and BOSCH consolidated the ground of their application by eliminating the probability of *de facto* exclusivity, besides the absence of any provision regulating potential contractual exclusivity, which probably assured the TCA against exclusivity concerns.

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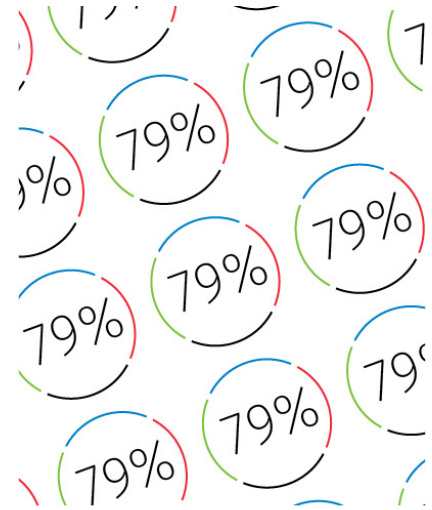
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