

Turkey Updates Criteria and Scope of Competition Law Block Exemption Related to R&D Agreements

25 Apr 2016

Turkey has updated and amended its block exemption for R&D agreements. R&D agreements which meet the criteria are exempt from a general legislative prohibition on agreements, concerted practices and decisions which limit competition. Major changes apply to the market threshold, exemption period, joint exploitation of R&D results, as well as agreement clauses which disqualify R&D agreements from accessing the block exemption. The updated R&D block exemption represents a more compatible regulatory structure with EU standards than previously existed in Turkey.

The Communiqué on Block Exemption for Research and Development Agreements (**Communiqué No: 2016/5**) ("Communiqué") was published in Official Gazette number 29655 on 16 March 2016, entering into effect on the same date.

Significant changes introduced by the Communiqué include:

- The definition of R&D studies has expanded. Previously, specialization in research, development, production or distribution was required for a R&D study to benefit from the block exemption. The Communiqué now states that specialisation in the context of research and development or exploitation is enough.
- A new definition for paid R&D is introduced and these activities are included in the block exemption's scope. Accordingly, paid R&D refers to R&D which is carried out by one party, but financed by another.
- An agreement can benefit from the block exemption if it involves the joint use of results and meets market share thresholds. The Communiqué extends the scope of this concept by changing "joint use of results" to become "joint exploitation".
- A single market share threshold of 40% now applies, whether an R&D agreement relates to:
 - One of the parties.
 - An undertaking controlled by parties.
 - A third undertaking appointed by parties together.
- If the parties are not competing undertakings in the same market, the market share threshold assessment will not apply to their R&D agreement.
- Parties are prohibited from using technical information and R&D results independently of each other, if the agreement only addresses R&D. The Communiqué now excludes confidential business information and undisclosed information from the scope of the prohibition.
- An exemption period applies if the R&D results will be jointly used, beginning on the date the product is first launched in Turkey. The Communiqué increases the exemption period from five to seven years.
- Agreements cannot benefit from the block exemption if they involve joint determination of the product's sale amount, or limitations on a party independently determining the sale amount. An

exception is introduced to the effect that this prohibition will not apply if the R&D agreement involves joint exploitation of the results.

- Agreements which included certain obligations could not benefit from the block exemption. The block exemption is not applicable to, among others, the following obligations.
 - An obligation not to challenge the validity of intellectual property rights about and/or related to R&D results after completion of R&D or termination of the agreement.
 - An obligation not to grant licenses to third parties to manufacture the contract products, or to apply the contract technologies if the agreement does not provide for the joint exploitation of the results or the joint exploitation of the results.

If there is no joint exploitation clause, or in practice there is no de factor exploitation by the parties, there can be no restriction on third party licensing under the R&D agreement.

- Provision for assessing and applying the market share threshold are introduced, similar to the Block Exemption Communiqué on Vertical Agreements (Communiqué No. 2002/2)

Agreements signed before 16 March 2016 receive until 15 April 2016 to meet the Communiqué's revised conditions and benefit from the block exemption.

The Communiqué abolishes the existing Block Exemption for Research and Development Agreements (Communiqué No: 2003/2), published in Official Gazette number 25212 on 27 August 2003.

Please see this [link](#) for the full text of the Communiqué (only available in Turkish).

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