

MEMORANDUM

Date: 7 July 2003

Re: Amendments to the Turkish Consumer Protection Law

This Memorandum analyzes the amendments to Consumer Law No. 4077¹, enacted in 1995 (the “Consumer Law”).

1. General

The Consumer Law is amended by Law No. 4822² (the “New Law”), primarily as a result of the efforts to harmonize Turkish Legislation with European Union (“EU”) law. The New Law has enlarged the definition of “goods” for the purpose of the Consumer Law to cover electronic products, and added distance-selling contracts (concluded through electronic means) into the scope of the Consumer Law. Pursuant to the New Law, the concept of goods also includes any intangible assets designed for use in an electronic environment, such as audiovisual products. In other words, all rights provided for consumers under the Consumer Law also applies to all online transactions effective from 14 June 2003.

2. The Scope of the Consumer Law has been Enlarged

The New Law extended the definition of defective goods and services. If the goods have an explicit defect, then it is enough for the consumer to notify the seller by any means within thirty days. If the defect arose while using the goods, then the period of liability for the defect is two years from the date of delivery of such good to the consumer. If the subject matter good is immovable property used as a domicile or for holiday purposes, then this period extends to five years. For defective goods, the Consumer Law gives the consumer the option to either (i) withdraw from the contract, (ii) request that the goods be exchanged with the one which is not defective, (iii) request a price decrease equal to the defect ratio, or (iv) request a free repair. The consumer may also request compensation in addition to the alternative rights stated above. The consumer’s right to demand compensation has been regulated in parallel with EU Directive No. 85/374.

A creditor who provided a loan to the purchaser of the good bearing the trademark of such affiliation that the creditor and the seller belong to, or sold such good under an exclusive purchase agreement, shall also be liable for any defect of the good in question. By this provision, which regulates the liability of the affiliated creditor, the chain of liability has been extended in favor of the consumer.

In addition, the rights of consumers receiving defective services have also been regulated. The consumer has the obligation to notify the service provider concerning the explicit defect in service within thirty days. In this case, the consumer has the right to either (i) terminate the contract, or (ii) request the service be re-performed, or (iii) request a decrease in price proportionate to the defect. The consumer may, in addition, request

¹ Law No. 4077 published in the Official Gazette No. 22221 dated 8 March 1995.

² Law No. 4822 published in the Official Gazette No. 25048 dated 14 March 2003.

compensation for damages arising from the defective service. If the consumer had the service performed with knowledge of the defect in question, then these rights may not be exercised.

3. Unfair Provisions in a Contract

The New Law states that unilateral contract provisions inserted in a contract without negotiation with the consumer and which distort the contractual balance against the consumer, and which violate the principle of good faith, are considered unfair and are not binding on a consumer. The New Law also expressly states that provisions of “form contracts”, such as credit card application forms, are assumed to be “non-negotiated contracts”. With this provision, consumers are protected against form contracts unilaterally prepared by sellers and imposed on consumers.

Additionally, in order to protect the consumer and in parallel with EU Directive No. 93/13, in case of a dispute concerning the unfairness of a standard term, the burden to prove that a particular provision is not unfair rests with the seller.

4. Purchases with Installment Payments

Pursuant to the New Law, consumer contracts stipulating the payment of the purchase price in installments must include (i) both the consumer’s and the seller’s full addresses, (ii) the price of the goods in Turkish Liras including the applicable customs, (iii) the total sales price, (iv) the amount of interest, (v) the annual rate of interest, (vi) the amount of the installment payments, and (vii) the legal consequences upon the default of the consumer. In the event that future installments are to be secured by a promissory note, then a separate promissory note must be drawn for each such installment and such promissory notes must be drawn in the name of the seller and not as a bearer instrument.

5. Distance Selling Contracts

The New Law defines a distance selling contract as any contract concerning the delivery of goods or performance of services concluded in a written, audiovisual, telephonic and electronic environment or by using other means of communication without physically meeting the customer. The New Law provides that before the conclusion of a distance selling contract, the consumer must be provided with certain information, and the contract may not be concluded before the consumer confirms in writing that she has received such information.

The New Law is similar in many respects to its counterpart in the EU, namely the Distance Selling Directive 97/7/EC. For instance, Article 9/A of the Consumer Law defines distance selling contracts in the same manner as Article 2 of the EU Distance Selling Directive. Furthermore, both the New Law and the EU Distance Selling Directive provide that before the conclusion of a distance selling contract, the consumer must be provided with certain information, and the contract may not be concluded before the consumer confirms in writing that she has received such information. Also, the seller must execute the order within a maximum of 30 days from the day following the day on which the consumer forwarded his order to the seller. However, under the Consumer Law, this duration may be extended for a maximum of ten days provided that the consumer is given advance written notification.

There are, however, a number of differences between the distance selling provisions of the New Law and the EU Distance Selling Directive. For example, pursuant to the New Law, the seller must prove that the goods or services were not defective when delivered. However, the question of defective goods is not separately regulated under the Distance Selling Directive. In EU law, this issue is governed by the Product Liability Directive 85/374/EEC, pursuant to which the injured person must prove the actual damage, the defect in the product as well as the causal relationship between damage and defect. In other words,

the distance selling provisions of the New Law regarding the burden of proof are more favorable to consumers compared to the EU Distance Selling and Product Liability Directives.

6. Consumer Loans

The New Law stipulates that consumer loan contracts must be concluded in writing and a copy of such contract must be given to the consumer. Also, the loan conditions may not be altered against the consumer during the contract term. Pursuant to the New Law, a consumer loan contract must include at least (i) the amount of the loan, (ii) the total amount of debt including the interest and other terms, (iii) the annual rate of interest, (iv) the payment dates, (v) the requested guaranties, (vi) the interest rate of default (not to exceed 30% annually), (vii) the consequences of the default of the debtor, (viii) the terms regarding the payment of the debt before the due dates, and (ix) the clarification regarding the applicable rate of foreign exchange in the event the loan is provided in foreign currency.

7. Credit Cards

Disputes between banks and consumers concerning credit card transactions have been added into the scope of the Consumer Law. Certain rights are provided under the New Law in favor of consumers in order to protect them in such transactions.

A loan transaction in which a consumer benefits through purchasing goods or services by a credit card or through withdrawing cash from an existing account is subject to certain provisions applicable to consumer loans. For example, a periodic statement of account sent to the consumer by the bank is considered equivalent to the payment plan of a consumer loan. If a consumer does not pay the minimum payment amount stated in the periodic statement, she shall only pay the default interest, no other obligation can be charged to her.

A creditor must notify the consumer thirty days before an increase in the rate of interest. Such interest rate shall not be applied retroactively. If the consumer pays all the debt at the latest within sixty days from the notification date and ceases benefiting from such loan, the increased rate of interest shall not be applicable to her. If goods or services are purchased by a credit card, the seller or provider cannot request any payment from the consumer as commission or other similar fees in addition to the purchase price.

8. Warranty Certificates

The New Law provides that the manufacturers or importers of certain products are required to provide a warranty certificate with their products, and that the warranty period must be at least two years from the delivery of the products to the purchaser. Such warranty period was previously one year.

Pursuant to the New Law, a warranty certificate covers the defects of a product during the warranty period. During such period, the seller is required to repair the product free of charge, even if certain parts of the product must be replaced. In addition to the right of the purchaser to request that the seller repair a defect in the product, the New Law allows a purchaser to (i) withdraw from the sales contract and demand the return of the purchase price, (ii) demand replacement of the product, or (iii) demand the refund of a portion of the purchase price in the event the purchaser cannot use the product regularly as a result of frequent defects, the seller exceeds the maximum time period allowed for the repair of the product, or it is impossible to repair the product in question.

If the purchaser has caused the defect in the product by not using the product in accordance with the “user instructions” that accompany the product, then the purchaser may not benefit from the rights described above.

9. After-Sales Services

The scope of after-sales services has been extended to include imported industrial goods whereas the previous provision of the Consumer Law provided such obligation only for industrial goods sold in Turkey. The New Law requires the seller to employ sufficient technical personnel and to store spare parts in an amount to be determined by the Ministry of Industry and Commerce (the “Ministry”).

An importer is also required to provide maintenance and repair services for the goods that have been imported by a previous importer, provided that the said goods are still within the utilization term. When determining the goods for which maintenance and repair services shall be supplied, the Ministry must obtain the opinion of the Turkish Standards Institute.

10. Consumer Complaints Arbitration Committee (the “Committee”)

The New Law makes it mandatory to submit disputes with a value lower than five hundred million TL (approximately US\$ 350 as of the date hereof) to the Committee. The decisions of the Committee become final upon review by the Consumer Court. In disputes with a value higher than five hundred million TL, the Committee’s decision may be used as evidence before the Consumer Court.

11. Miscellaneous

The New Law also provides that:

- Commercial advertising must be honest and accurate in consideration of moral and personal rights, and in accordance with the rules determined by the Advertisement Board.
- The marketing, importation and exportation of goods that appear like food products but are actually not is prohibited as they may endanger the health and security of consumers. For example, the production of a strawberry-shaped eraser with a strawberry flavor is prohibited as it may be dangerous for children.
- The New Law grants the Ministry the authority to supervise price stickers. It is now mandatory to indicate the country of production instead of the country of origin. For example, if a French wine is also produced in Turkey after obtaining the necessary licenses, Turkey must be indicated as the country of production while France must be identified as the country of origin. Goods priced by the Council of Ministers, or any other public entity or a professional organization, cannot be sold at a higher price. Furthermore, if the sticker price and the price at the register are different then the lower price shall be applied.
- The obligation to prepare an Instruction Manual in Turkish for industrial goods has been envisaged for imported industrial goods. The Ministry shall determine the minimum content of such instruction manuals and stickers by obtaining the opinion of the Turkish Standards Institute.

12. Conclusion

The New Law has made substantial amendments to the Consumer Law which is now more favorable to consumers in certain respects as compared to its counterpart under EU law, such as the burden of proof of the defect in distance selling contracts. The Ministry has already issued several regulations and communiqués, which are quite similar to their

counterparts in the EU, to regulate certain areas in detail. As a result of the efforts to harmonize Turkish legislation with EU law, it is likely that the subsequent regulations and communiqués will also closely follow their European counterparts. ⊕

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