

Antitrust/Competition

Frito Lay Decision: De Facto Exclusivity Through Discount Systems

On April 8, 2025, The Turkish Competition Authority ("Authority") published the Competition Board's ("Board") reasoned decision on its recently concluded investigation concerning exclusivity practices of Frito Lay Gıda San. ve Tic. A.Ş. ("Frito Lay"), a leading food company specialized in production, sales and distribution of packaged chips (13.02.2025, 25-06/152-78) ("Decision").

Within the scope of the investigation, the Authority evaluated the allegations related to (i) practices leading to exclusivity and foreclosing of rivals, and (ii) predatory pricing practice conducted over Frito Lay's digital application called "KazandıRio".

As a result of its investigation, the Board concluded that (i) Frito Lay violated Article 4 of the Law No. 4054 by applying exclusivity on sales points in the retail channel in the market for packaged chips and (ii) there is no need to change the assessments in the Board's decision of May 4, 2004 (04-32/377-95), where the Board reverted the individual exemption that had been previously granted to Frito Lay and required Frito Lay to carry out practices such as giving free products/gifts or applying discounts without the exclusivity requirements and without resulting in de facto exclusivity; therefore, the relevant conduct cannot benefit from individual exemption. As a result, the Board imposed an administrative fine of TRY 1,365,467,533.01 (approx. 35.9 million USD). In addition, The Board also decided to implement certain behavioural remedies, including (i) termination of conducts that provides financial benefits to sales points in the retail channel (such as discounts, additional discounts, incentives, bonuses), apart from the ones related to standard purchasing relationship, (ii) termination of target-based premiums provided for employees of Frito Lay and its' distributors, (iii) obligation to limit number of stand set-ups provided to sales points, (iv) allocation of 30% width of stands to competitors' products and (v) avoiding any action that would interfere in visibility and availability of competitors.

In relation to exclusivity practices, the Board decided that Frito Lay's and its distributors' employees took many actions to terminate competitors' activities at final sales points, to reduce their visibility, to remove all or certain part of their stands, to prevent their sales to sales points by piling up products and made plans and active efforts for this purpose. As a result, the Board decided that Frito Lay's conduct violated Article 4 of Law No.4054.

ELİĞ

GÜRKAYNAK

Attorneys at Law



Dr. Gönenç Gürkaynak
(Founding Partner)
gonenc.gurkaynak@elig.com



Harun Gündüz
(Partner)
harun.gunduz@elig.com



Can Yıldırım
(Counsel)
can.yildirim@elig.com

Additionally, the Board considered the digital application designed to provide benefits to retailers (i.e. gift cards based on the points collected on product purchase) as a loyalty inducing discount system, which is part of the exclusivity practices.

The Board also examined predatory pricing allegations concerning digital application "KazandıRio", which offers benefits to end customers, such as game points or internet data by scanning the codes embedded in packages. To assess predatory pricing, the Board applied "as efficient competitor test" and dismissed allegations, since the practice does not have the ability to foreclose the market.

Given the extensive behavioural remedies imposed on Frito Lay, the Decision stands as a significant example of assessment concerning de-facto exclusivity.



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