



Revisiting Individual Exemption Under Turkish Competition Law: The Şişecam Decision

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I. Introduction

The Turkish Competition Authority (“*TCA*”) published the reasoned decision of the Turkish Competition Board (“*Board*”) concerning Şişecam dated December 4, 2025 and numbered 25-45/1129-633 (“*Decision*”), in which the Board evaluated the request for negative clearance or exemption regarding the authorized dealership agreement (“*Agreement*”) to be executed between Türkiye Şişe ve Cam Fabrikaları AŞ (“Şişecam”) and its nineteen authorized dealers for the distribution of flat glass products.

The Board determined that Şişecam operates actively in almost all sub-product groups in the market, such as basic/architectural glass (flat glass, patterned glass, mirror, laminated glass, coated glass, glass for architectural projects), automotive and other transport vehicle glass, solar glass, and home appliances glass. Pursuant to the Agreement, the nineteen dealers of Şişecam will be authorized to sell the flat glass produced by Şişecam to the wholesalers, retailers and glass processing companies and within this scope.

In terms of the relevant product market analysis, the Board determined that although flat glass is transformed into new products to serve different purposes after undergoing certain processes, since the Agreement covered all flat glass products and constitutes the basis for all glass applications, and in line with past Board decisions¹, the relevant product market is considered as the market for flat glass.

¹ The Board’s Trakya Cam-I decision dated 17.11.2011 and numbered 11-57/1477-533; *Trakya Cam/Düzcam Exemption* decision dated 24.01.2013 and numbered 13-07/73-42; *Trakya Cam/Düzcam Exemption-I* decision dated 02.12.2015 and numbered 15-42/704-258; *Trakya Cam/Düzcam Exemption-II* decision dated 21.12.2017 and numbered 17-42/670-298; *Trakya Cam/Düzcam Exemption-III* decision dated 25.06.2020 and numbered 20-31/382-171.

In its assessment of the scope and nature of the Agreement, the Board evaluated that the Agreement included a non-compete obligation, but did not include the allocation of an exclusive territory to authorized dealers, and accordingly, did not contain active and passive sales restrictions.

In light of the above, the Board decided that the Agreement to be concluded between Şişecam and its authorized dealers fell within the scope of Article 4 of Law No. 4054 on the Protection of Competition (“*Law No. 4054*”) and could not benefit from a negative clearance under Article 8 of the Law No. 4054.

The Board further found that the agreement did not satisfy the conditions for block exemption under the Communiqué No. 2002/2 on Vertical Agreements and ultimately refused to grant an individual exemption on the grounds that the agreement failed to fulfil the conditions set out under subparagraphs (b), (c) and (d) of Article 5(1) of Law No. 4054.

The decision therefore provides important insights into the Board’s evidence-based approach towards vertical restraints, efficiency justifications and exemption assessments under the Turkish competition law regime. The decision is especially notable since Şişecam supported its exemption application with its extensive economic and operational arguments, including claims relating to demand forecasting accuracy, inventory optimization, supply continuity, production planning, capacity utilization and distribution efficiencies. Nevertheless, the Board ultimately concluded that these arguments were insufficient to satisfy the conditions required for individual exemption.

This article examines the Board’s approach in the decision and discusses its potential implications for distribution systems, non-compete obligations and future exemption assessments under Turkish competition law.

II. Earlier Decisions Concerning Şişecam’s Distribution System

In terms of the Board’s decisional practice, there are several decisions where the Board evaluated the distribution system previously implemented by Trakya Cam Sanayii AŞ (“*Trakya Cam*”), a subsidiary of Şişecam. Before this Decision, the Board had already examined substantially similar dealership structures in 2015, 2017 and 2020.

The Board first examined Trakya Cam's dealership structure in its 2015 decision concerning the authorized dealership agreement for flat glass products.² In that decision, the Board acknowledged that the proposed distribution system could lead to certain operational and distribution-related efficiencies, including benefits relating to production planning, logistics optimization, inventory management and supply continuity. However, the Board ultimately refused to grant an individual exemption on the grounds that the restrictions imposed under the system, together with Trakya Cam's strong market position and the limited level of intra-brand competition in the market, could significantly restrict competition and strengthen foreclosure risks within the distribution structure.

Following that decision, Trakya Cam revised the structure of its dealership system and submitted a new exemption application in 2017.³ Under the revised structure, several restrictive elements previously identified by the Board were removed, including territorial exclusivity arrangements, recommended resale pricing practices, software-based monitoring mechanisms and certain organizational controls over dealerships. The revised system mainly preserved the non-compete obligation imposed on authorized dealerships. In light of these amendments, the Board granted an individual exemption for a period of two years.

Yet, in 2020, the Board once again refused to grant an individual exemption to a substantially similar dealership agreement.⁴ The 2020 decision is particularly important because it contains a significantly more detailed discussion regarding the evidentiary standard applicable to efficiency claims under Article 5 of Law No. 4054. In its assessment, the Board emphasized that efficiency claims should be objective, verifiable and supported by concrete data. The Board further noted that, since the dealership system had already been implemented in practice for a considerable period of time, any alleged efficiencies should be demonstrated through observable and measurable market outcomes rather than abstract or theoretical assumptions.

Against this background, this Decision reflects the continuation of the Board's close scrutiny over dealership systems involving non-compete obligations. At the same time, the overall line of decisions suggests that the Board's exemption analysis has become increasingly structured and evidence-oriented, particularly with respect to the substantiation of efficiency claims and consumer benefits.

² The Board's *Trakya Cam/Düzcam Exemption-I* decision dated 02.12.2015 and numbered 15-42/704-258.

³ The Board's *Trakya Cam/Düzcam Exemption-II* decision dated 21.12.2017 and numbered 17-42/670-298.

⁴ The Board's *Trakya Cam/Düzcam Exemption-III* decision dated 25.06.2020 and numbered 20-31/382-171.

III. The Distribution System and Non-Compete Obligation

Under the Agreement, authorized dealerships would purchase flat glass products from Şişecam and organize the resale and distribution of these products to downstream customers, including wholesalers, retailers and glass processors operating in the market.

The Agreement regulated a non-compete obligation that imposed restrictions on the authorized dealers to procure flat glass products exclusively from Şişecam or from Şişecam's authorized dealers and prohibited authorized dealerships from producing, importing, selling, distributing, stocking or promoting products competing with Şişecam's flat glass products.

In its exemption request, Şişecam relied on a broad range of operational and economic efficiency arguments aimed at justifying the non-compete obligations imposed under its authorized dealership system. *Firstly*, Şişecam argued that the purpose of the dealership model was to establish a more efficient and coordinated distribution structure for flat glass products. According to Şişecam, the proposed distribution model would improve demand forecasting, optimize inventory management, facilitate production planning and increase overall supply chain efficiency within the flat glass sector. The undertaking further associated these efficiencies with lower storage and distribution costs, reduced unmet demand and improved utilization of production capacity; and claimed that the system could reduce certain quality-related risks and improve product consistency within the distribution chain.

The Board proceeded to assess the agreement and the conditions for individual exemption under Article 5 of Law No. 4054. In this respect, the Board examined whether the agreement: (i) contributed to new developments, improvements, or economic and technical progress in the production or distribution of goods and services; (ii) allowed consumers to benefit from such efficiencies; (iii) eliminated competition in a significant part of the relevant market; and (iv) imposed restrictions that were more extensive than necessary to achieve the objectives set out under subparagraphs (a) and (b) of Article 5(1).

IV. The Board's Assessment of the Claimed Efficiencies

The Board did not reject the possibility that such efficiencies could, in principle, arise from a coordinated distribution system within the meaning of Article 5(1)(a) of Law No. 4054. However, the Board approached these claims through a considerably more structured and evidence-oriented analytical framework; and ultimately concluded that the conditions required for individual exemption under Article 5(1)(b), (c) and (d) of Law No. 4054 were not satisfied.

With respect to Article 5(1)(b), which concerns whether consumers would benefit from the efficiencies generated by the dealership system, the Board concluded that the alleged efficiencies were unlikely to be reflected at the consumer level. In particular, the Board noted that dealerships were required to maintain inventories based on past purchasing volumes, which could limit product variety at dealership warehouses. The Board further observed that, although the dealership system had previously benefited from an exemption during the 2018–2019 period, it had not generated sufficient competitive pressure to constrain price increases, and that flat glass prices had increased beyond the producer price index during that period. According to the Board, the relatively limited degree of competition in the flat glass market further reduced the likelihood that any efficiencies generated by the system would be passed on to consumers.

As regards Article 5(1)(c), which requires that competition not be eliminated in a significant part of the relevant market, the Board concluded that the dealership system could materially restrict competition across a significant part of the market. Although Şişecam argued that the investments made by Düzce Cam would create competitive pressure, the Board emphasized that Şişecam was simultaneously undertaking comparable investments, possessed a broader product portfolio than its competitors, and operated in a market characterised by high entry barriers and significant investment requirements for both production and distribution activities. The Board also underlined the stagnant structure of the flat glass market in recent years and found that the dealership system could foreclose a significant part of the market not only in the dealership channel, but also in the double-glazing producer and industrial customer channels.

Finally, in its assessment under Article 5(1)(d), concerning whether the restrictions imposed by the agreement were indispensable for achieving the efficiencies put forward by the parties, the Board concluded that the restrictions arising from the dealership system exceeded what was necessary to attain the claimed efficiencies. In this respect, the Board noted that, during the 2018–2019 exemption period, Düzce Cam had only been able to sell a limited portion of its production, that certain contractual obligations imposed on dealerships could produce effects extending beyond competing products, and that the dealership system could make it more difficult for Düzce Cam to reach customers located far from its production facilities.

The Board further considered that the restrictive effects of the system could deepen following the operation of Şişecam's new and renovated production facilities. It also emphasized that the system could restrict competition not only in the dealership channel, but also in two important downstream channels, given that many authorised dealerships were simultaneously active as

double-glazing producers and industrial customers, while Şişecam itself also carried out direct sales in those channels.

V. Conclusion

The Şişecam decision constitutes one of the most comprehensive recent examples of the Board's approach towards individual exemption assessments in the context of restrictive distribution systems. While the Board did not reject the possibility that authorized dealership structures may generate operational and distribution-related efficiencies, the decision clearly demonstrates that such efficiencies must be substantiated through concrete, measurable and consumer-oriented evidence to satisfy the exemption criteria under Article 5 of Law No. 4054.

In this respect, the line of decisions concerning Şişecam's distribution system reflects an increasingly structured and evidence-oriented approach towards the balancing of efficiency claims against potential foreclosure risks arising from non-compete obligations and concentrated distribution structures.

More broadly, the Decision signals that undertakings holding substantial market power may face heightened scrutiny when implementing single-brand distribution models or restrictive dealership systems. In this respect, the Decision is likely to constitute a significant reference point for future exemption assessments involving restrictive distribution systems and non-compete obligations under Turkish competition law.

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