



The Turkish Competition Board accepts the Commitments of Tadım, which Abused its Dominant Position through *De Facto* Exclusivity

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1. Introduction

On August 12, 2021, the Turkish Competition Board (“**Board**”) initiated an investigation on whether Tadım Gıda Maddeleri San. ve Ticaret A.Ş. (“**Tadım**”), a supplier of packaged dried nuts, violated Articles 4 and 6 of the Law No. 4054 on the Protection of Competition (“**Law No. 4054**”)¹ through abusing its dominant position in the packaged dried nuts market with exclusionary practices, making it difficult for its competitors to operate in the market, and through resale price maintenance (“**RPM**”).

The investigation was finalized upon Tadım’s commitment application, as the Board decided that the commitments offered by Tadım were appropriate to eliminate the competition law concerns identified during the preliminary investigation and full-fledged investigation phases, and therefore no administrative monetary fine was imposed against Tadım (“**Decision**”)².

This article will (i) explain the Board’s theories of harm with respect to Tadım’s practices subject to the Decision, (ii) explain the Board’s assessment with respect to Tadım’s commitment application and (iii) provide a brief analysis on the Decision.

2. The Board’s Decision

2.1. The Board’s Theories of Harm with respect to Tadım’s Practices Subject to the Decision

¹ Article 4 of the Law No. 4054 prohibits agreements and concerted practices between different undertakings as well as the decisions of association of undertakings that have as their object or effect or potential effect of restricting competition; whereas Article 6 of Law No. 4054 prohibits abuse of dominance.

² The Board’s decision dated 07.07.2022 and numbered 22-32/505-202.

Tadım's practices, which are considered by the Board to give rise to competitive concerns, are listed below:

- (i) at the points of sale where competitors are present, ensuring that the competitor is first removed from the point of sale by means of various supports provided to said point of sale, such as setting up stands, free products, discounts and prepayments;
- (ii) entering the points of sales where Tadım is not present in a way to ensure that said sales of point works exclusively with Tadım;
- (iii) in cases where exclusivity cannot be achieved, not leaving enough space for the stands of the competitor products by placing stands at the sales point, and to try to reduce the visibility of the products of the competitor brands by displaying all product groups of Tadım together in their own stands;
- (iv) in order to maintain the loyalty of points of sale that carry Tadım as the only packaged dried nut brand in their stores by continuing its supports to said points of sale.

The Board determined from the documents obtained during its dawn raids on Tadım's premises and as a result of Tadım's practices listed above, that Tadım became the sole brand by excluding competitors at numerous points of sale. The Board concluded that Tadım's discount and stand set-up practices are likely to create *de facto* exclusivity at the final points of sale in the traditional channel, preventing the sale of competing products and excluding competitors from the packaged dried nut market in Turkey.

With respect to the allegation that Tadım determined the resale prices of its distributors, the Board found that Tadım communicated recommended resale prices to its dealers, however did not find any evidence that Tadım adopted any RPM practice. Moreover, the Board requested information from distributors of Tadım, conducted dawn-raids on said distributors' premises, and conducted a field study to determine whether RPM conduct is actually being adopted in practice. As a result of all these examinations, the Board concluded that Tadım did not engage in any RPM conduct.

2.2. The Board's Assessment with respect to Tadım's Commitment Application

After approximately three months as of the commencement of the full-fledged investigation, Tadım made a commitment application on October 30, 2021.

As the Communiqué on the Commitments to be Offered in Preliminary Inquiries and Investigations Concerning Agreements, Concerted Practices and Decisions Restricting Competition, and Abuse of Dominant Position No. 2021/2 (“*Communiqué No. 2021/2*”) does not deem abuse of dominance a “hard-core violation”, the Board decided that Tadı̇m’s commitment application can be accepted for Tadı̇m’s conducts that lead to the Board’s competitive concerns.

Following the commitment discussions, a summary version of the draft commitment text submitted by Tadı̇m to the Turkish Competition Authority (“*Authority*”) was sent to third parties for their opinions on the adequacy, applicability, effectiveness and continuity of the commitments in addressing the competitive concerns. The Authority’s assessments on the draft commitment text were communicated to Tadı̇m, taking into account the third party opinions. Thereupon, the revised final commitment text submitted by Tadı̇m is briefly as follows:

- (i) No verbal or written exclusivity relationship will be established with retail points of sale (this includes retail points of sale in the traditional channel such as grocery stores, off-trade sales points, kiosks, fuel station stores);
- (ii) Retail points of sale will not receive benefits that could lead to exclusivity;
- (iii) There will be no practice that will prevent the purchase quantities of packaged sunflower seeds, each packaged dried nut product and dried fruit and bar products from being determined independently from each other;
- (iv) It will be ensured that retail points of sale will sell at a fixed discount rate to be determined on a district basis, independent of Tadı̇m;
- (v) Employees of Tadı̇m and its retail points of sale will be trained on competition law.

The Board concluded that the commitments offered would prevent the creation of *de facto* or contractual exclusivity in the traditional channel; the possibility of having Tadı̇m’s competitors’ products at the end points of sale would increase and thus consumers would have access to more product options; the information to be provided by Tadı̇m to the end points of sale would increase awareness in terms of the commitment to be applied; and the competitive concerns arising from Tadı̇m’s product portfolio power would be eliminated by preventing tying practices. Therefore, the Board decided to terminate the investigation and not to impose any monetary administrative fine against Tadı̇m, on the grounds that the commitments offered

were proportionate to the competitive concerns, suitable to eliminate said concerns, could be fulfilled in a short time and could be effectively implemented.

3. Brief Analysis of the Board's Decision

The Board's *Tadım* Decision is noteworthy on two separate fronts:

- First, the Board once again demonstrated that contractual or *de facto* practices that may lead to exclusivity in resale points of an undertaking that is in dominant position are critical for the abuse of dominant position analysis.
- Second, parallel to the Board's previous abuse of dominance decisions that were held after the entry into force of the commitment mechanism on June 24, 2020³, the Board's *Tadım* Decision shows that conducts that lead to abuse of dominance are generally good candidates for the commitment mechanism to be applied, as they are not deemed "hard-core violations" under Turkish competition law.

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(First published by Mondaq on April 24, 2023)

³ For instance, *Mey İçki* (22-45/670-284; 06.10.2022), *Coca Cola* (2.09.2021; 21-41/610-297), *Çiçek Sepeti* (8.04.2021; 21-20/250-106).