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TURKISH COMPETITION BOARD FINES PACKAGED CHIPS PRODUCER FOR EXCLUSIVITY AT THE RETAIL LEVEL

The Turkish Competition Board (the "**Board**") recently imposed a significant administrative fine on Frito Lay Gıda Sanayi ve Ticaret Anonim Şirketi ("**Frito Lay**"), the Turkish subsidiary of PepsiCo, Inc., for violating Article 4 of Law No. 4054 on the Protection of Competition ("**Law No. 4054**") through exclusivity practices in the traditional retail channel within the packaged chips market.[1]

1. Key Findings in the Decision

Frito Lay sells well-known packaged chips brands, such as Lay's, Doritos, Ruffles, and Cheetos in Türkiye. In its decision, the Board found that Frito Lay has maintained its dominant position in the packaged chips market in Türkiye for over 25 years. According to the Board, Frito Lay used this position to implement a series of practices to restrict competitors' access to traditional retail sale points, such as small grocery stores and kiosks. These strategies included:

- Reducing or eliminating the visibility of competing products on display stands (e.g., removing competitors' stands, persuading retailers to terminate their agreements with competitors, placing competitor products in less visible locations, using large display stands to limit space for competitor products),
- Offering financial incentives to retail sales points in exchange for exclusivity,
- Sanctioning retailers that purchased rival products (e.g., refusing to provide incentives or disrupting product shipments),
- Providing individualized discounts and promotions contingent upon exclusivity.

[1] The Board's decision 13 February 2025 and numbered 25-06/152-78

According to the Board's assessment, these strategies aimed to ensure that retailers in the traditional channel exclusively sold Frito Lay products. This was particularly significant because packaged chips are considered "impulse purchase" products, and product visibility at retail points is crucial for competitors' viability in the market.

Although most of these conducts were carried out by independent distributors (who were not employed by Frito Lay), the Board determined that Frito Lay was responsible, as the distributors acted under Frito Lay's directives and policies.

The Board referred to its 2004 decision, which withdrew the exemption previously granted to Frito Lay's exclusive sales system at retail sales points.[2] Since no changes had occurred that would affect the Board's earlier assessment, the Board concluded that Frito Lay's recent exclusivity practices could not benefit from an exemption either. As a result, the Board imposed an administrative fine of approximately TRY 1,365,467,533.01 (approximately USD 36 million) on Frito Lay.

2. Obligations Imposed on Frito Lay

Apart from the administrative fine, the Board imposed certain obligations on Frito Lay to restore competition. Accordingly;

- Frito Lay and its distributors should cease offering financial benefits to traditional retail sales points, except for those provided within the context of standard commercial transactions.

- Frito Lay must revise its employee bonus system to ensure it does not incentivize conducts that limit the availability and visibility of competing products at retail sales points.

- In retail sale points smaller than 200 square meters, Frito Lay must adhere to specific obligations to guarantee the visibility and presence of competing products by **(i)** placing only one display stand at each retail sale point, **(ii)** reserving 30% of the display stand for competing products, **(iii)** separating and clearly labeling the designated section of display stands for competing products, **(iv)** refraining from placing its products on the designated section even if the competing products are unavailable or out of stock, and **(v)** not giving any suggestions or directives to retailers regarding product placement.

3. Rejection of Commitments

Following the early stages of the investigation, Frito Lay offered to propose commitments to address the competition concerns. However, the Board rejected Frito Lay's request, even though the infringements were not categorized as hardcore infringements, which would ordinarily make the case eligible for commitments. The Board justified its decision in this specific case by citing the duration of the conduct, which spanned over five years, and Frito

[2] The Board's decision dated 4 May 2004 and numbered 04-32/377-95

Lay's history of similar violations. Accordingly, the Board concluded that offering commitments would be insufficient to eliminate the anti-competitive effects effectively.

4. Conclusion

The Board's decision underscores that exclusivity arrangements at the retail level are considered anti-competitive, particularly when the supplier possesses significant market power. Notably, suppliers can be held liable for their distributors' conduct, making it critical to ensure that compliance efforts extend to distributor practices. The Board has also shown a willingness to impose behavioral obligations to prevent supplier practices that limit competitors' shelf space or involve category management strategies.

Another key takeaway from the Board's decision is that undertakings' requests to enter into commitment procedures are not automatically granted, even when the alleged infringements are not classified as hardcore violations. Instead, the Board conducts a comprehensive assessment of the case, considering the nature and duration of the conduct and any past instances of similar behavior, to determine whether competition can effectively be restored through commitment procedures.

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