

From the Presidency of the Competition Authority,

DECISION OF THE COMPETITION BOARD

File number : 2023-2-059 (Investigation)

Decision Number : 25-06/152-78

Decision Date : 13.02.2025

A. MEMBERS IN ATTENDANCE

Chairman : Birol KÜLE

Members : Ahmet ALGAN (Deputy Chairman), Hasan Hüseyin ÜNLÜ,
Ayşe ERGEZEN, Cengiz ÇOLAK, Rıdvan DURAN

B. RAPPORTEURS: Osman Can AYDOĞDU, Mert SÖNMEZ, Merve GÖZÜKATI
KOLDEMİR, Ömer VATANSEVER, Ayşe CİRİT TEMEL,
Burcu AYKOL

C. APPLICANT : - There is a confidentiality request.

D. UNDER INVESTIGATION: Frito Lay Gıda San. ve Tic.

Representatives: Atty. Hakan ÖZGÖKÇEN, Atty. Esen
ERGÜL, Atty. Cem BURAN, Atty. Can Sarp ÖZCAN,
Atty. Bekir AKSARI

Esin Avukatlık Ortaklığı; Ebulula Mardin Cad. Gül Sok.
No. 2 Maya Park Tower 2, Akatlar, Beşiktaş/İSTANBUL

(1) **E. SUBJECT OF THE FILE:** **Determining whether Frito Lay Gıda San. Tic. AŞ (FRITO LAY) violated the Act no 4054 on the Protection of Competition by complicating its competitors' activities in retail points of sale.**

(2) **F. SUMMARY OF THE ALLEGATIONS:** The application made by (.....) requesting confidentiality and interim measures, which entered the Competition Authority records on 06.11.2023 with the number 44265, alleging that Frito Lay Gıda San. ve Tic. AŞ (FRITO LAY) prevented competition in the relevant market by abusing its dominant position in the packaged chips market and excluded its competitors with practices and behaviors leading to de facto exclusivity, in summary, the following are stated;

- There are a small number of players in the packaged chips market in Türkiye, therefore the market is an oligopoly market,
- Packaged chips are impulse products, the product should be offered for sale in a way to attract the attention of the consumer and being located at the final points of sale in the traditional sales channel¹ is one of the most effective ways to promote the product to the consumer,
- In the packaged chips market, sales are mainly made through three sales channels, namely the discount store channel, the traditional channel and the

¹ Unless otherwise stated, the terms "points of sale", "final points of sale" and "retail points of sale" in the text of the decision refer to the sales points where packaged chips are offered to consumers. In the application, it is seen that the "discount market channel" is differentiated from the "modern channel", and the term "modern channel" essentially refers to supermarkets and local chain markets.

modern/organized channel²; especially in the traditional channel, sales of packaged chips are almost never made outside of display stands and display stand-like tools; therefore, the display equipment (display stands and display stand-like tools) placed at the points of the traditional channel in the sales of packaged chips are equivalent to the refrigerated cabinets used in the sale of products like beer, industrial ice cream and carbonated beverage markets, this case differs from the Competition Board's (Board) decision on Tadım Gıda Maddeleri San. ve Tic. AŞ (TADIM), dated 07.07.2022 and numbered 22-32/505-202, as there is no display stand obligation for dried fruits,

- In the Board's decision dated 06.04.2006 and numbered 06-24/304-71 on FRITO LAY, the Board stated, *"In this context, it is important that the products sold at the display stand are seen in an orderly manner. Selling the products outside the sales points may damage the organized appearance of the products, and at the same time, it may result in dusting/contamination of the chips packages and/or exposure to sun rays that adversely affect the appearance of the packages."* and this supports the allegations that are the subject of the application, and in this respect, the inability to place main display stands and display stand-like tools at points of sale where packaged chips can be displayed constitutes a barrier to enter the market for the traditional channel,
- The possibility of stocking packaged chips is limited, their shelf life is limited to three or four months, it is not suitable to distribute them together with other products as they can be easily damaged due to their qualities, and for this reason, a separate distribution network dedicated to packaged chips is needed, in addition, since small retailers are important in terms of sales volume, the products should be delivered to almost every point of sale, and there is no other undertaking in Türkiye that has a separate distribution network for packaged chips other than FRITO LAY and Doğuş Çay ve Gıda Maddeleri Üretim Pazarlama İthalat İhracat Anonim Şirketi (DOĞUŞ)³,
- The evaluation in the Board's decision dated 04.05.2004 and numbered 04-32/377-95 on FRITO LAY that *"On the other hand, chips differ from other products due to their unique characteristics. That is, traditional retailers other than chains or supermarkets, such as buffets, grocery stores, and dried nuts shops, which can be characterized as small retailers, are very important in the sale of the product, of which the shelf life is limited to three or four months. (...) Therefore, in addition to being widespread, the distribution organization is required to be effective enough to regularly control the products at the points of sale, to ensure that they are presented effectively, and at the same time, if the product with a limited shelf life is spoiled, to ensure the rapid replacement of the product with a fresh one."* support the allegations that are the subject of the application and the

² The application addresses "discount market channels" apart from "modern channel" and modern channel refers to supermarkets and national supermarket chains.

³ Per the authorization granted with the Board decision dated 19.09.2002 and numbered 02-56/698-282, Kar Gıda Sanayi ve Ticaret AŞ (KAR GIDA) was acquired by Kraft Food International (KFI). Following the authorization with the Board decision dated 19.03.2013 and numbered 13-15/225-110, DOĞUŞ acquired, Kraft Gıda AŞ (KRAFT), the subsidiary of KFI in Türkiye, and started to operate in the packaged chips market in Türkiye.

need for a separate distribution network for the relevant products also constitutes a market entry barrier,

- In the discount store sales channel, FRITO LAY's market share has decreased in the last three years, whereas the market share of its close competitors has increased; in the supermarket sales channel, FRITO LAY's and its close competitors' market share have increased in the last three years; in the traditional sales channel, FRITO LAY's market share has increased in the last three years, whereas the total market shares of its close competitors have decreased in the same period,
- Contrary to the developments in other sales channels, the decreasing of market shares of the competitors in the traditional channel cannot be explained by market conditions and this situation is caused by the exclusionary actions of FRITO LAY in the traditional channel,
- These exclusionary acts consist of (i) reducing the visibility of the competitor or excluding the competitor from the display stand completely, (ii) providing promotions to the final consumer through campaigns such as “KazandıRio” and to the points of sales, through campaigns such as “Dükkan Senin”, and (iii) providing individualized discounts and concessions to the points of sales, such as free products, product contributions and cash contributions,
- Also, recently FRITO LAY has placed integrated display stands (PO1 display stands)⁴ in traditional channel points of sale, which occupy all of the displayable space for packaged chips, leading to the exclusion of competitors' display equipment from the point of sale,
- FRITO LAY has dominant position in the packaged chips market and this situation has been determined in previous Board decisions, FRITO LAY has caused de facto exclusivity by making additional payments to the sales points that reach certain criteria and by its actions to reduce the availability of its competitors, especially at traditional sales points, and thus abused its dominant position, FRITO LAY should be imposed an interim measure for “opening up 25% of FRITO LAY display stands at traditional channel points for chips products to competing products, whether or not integrated with the PEPSI cabinet”.

(15) **H. RAPPORTEUR OPINION:** The relevant report states that,

1. Frito Lay Gıda San. ve Tic. violated Article 4 of Act No. 4054 on the Protection of Competition (Act No. 4054) by restricting competition in the packaged chips market through exclusivity in traditional channel sales points,
2. Since it has been determined that the exclusive sales system applied by the undertaking in the final sales points in the market, either through written agreements or de facto, does not meet the conditions set forth in the Block Exemption Communiqué No. 2002/2 on Vertical Agreements and therefore in Article 5 of Act No. 4054, with the Competition Board decision dated 04.05.2004 and numbered 04-32/377-95, it was ruled that the exemption

⁴ It is also called PO1 display stand. *Pepsi Cola Servis ve Dağıtım AŞ* (PEPSI) and FRITO LAY legal entities are under the economic integrity of PepsiCo, Inc.(PEPSICO). PO1 display stands are display stands with cooler cabinets in the center and packaged chip display stands on the sides, in order to display both Pepsi Group beverage products and FRITO LAY Group chip products together.

granted to the undertaking pursuant to Article 6 of the Communiqué and Article 13 of the Act should be withdrawn, and that practices such as giving free products or various gifts, rebates or discounts within this context should be implemented without the condition of exclusivity and in a way that does not lead to de facto exclusivity, and that the provisions regarding exclusivity in written contracts should be amended; considering the relevant market and the effects of FRITO LAY's actions in terms of direct and indirect exclusivity practices in sales points, there is no development that can change the evaluation in the aforementioned decision, therefore, the said actions cannot benefit from the exemption regulated under Article 5 of the Act No. 4054,

3. FRITO LAY should be imposed an administrative fine pursuant to the third paragraph of Article 16 of the Act No. 4054 due to the aforementioned actions, and since the duration of the violation exceeded five years and the violation was repeated, the sub-paragraph b of the third paragraph of Article 5 and sub-paragraph a of the first paragraph of Article 6 of the "Regulation on Administrative Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition and Abuses of Dominant Position" should be applied accordingly,
4. Pursuant to the first paragraph of Article 9 of the Act No. 4054, behavioral measures should be taken in the following matters in order to end the violation and to establish effective competition in the packaged chips market,
 - 4.1. To be applied within one month following the notification of the reasoned decision and to be submitted to the Competition Board on the date stipulated for the information obligation numbered 3 below,
 - a. In terms of products sold by FRITO LAY and/or its distributors in the packaged chips market, except for standard purchase transactions in return for trade with retail sales points in the traditional channel, termination of all kinds of discounts, additional rebates, concessions and financial benefits called "Dükkan Senin" points and/or similar financial benefits provided to retail sales points; and
 - b. Adding a precondition to the employee premium system applied by FRITO LAY that no action will be taken in terms of the availability and visibility of competing products in retail sales points and that FRITO LAY's and/or distributors' employees can only make recommendations to retail sales point officials in terms of the products they sell, in this regard, the necessary information should be regularly provided to employees and necessary internal measures should be taken to monitor the precondition,
 - 4.2. The first one to be completed and submitted to the Board within five months following the notification of the reasoned decision, and the others to be completed every two years corresponding to the same month of the relevant year a total of five informative letters, which will be prepared after taking the consent of the relevant Department of the Competition Authority in order to increase the efficiency of the behavioral remedies stipulated above and to serve as a complement with regard to compliance with competition rules in the packaged chips market by considering the provisions in the decision of the Competition Board dated 04.05.2004 and

numbered 04-32/377-95 about FRITO LAY, shall be delivered physically to undertaking's consumers in the traditional channel.

5. However, since FRITO LAY's display stand exclusivity practice is not considered to be at a level that may create a barrier to entry into the market, considering the sales and display qualities of packaged chips products, there is no need to take a behavioral measure decision for the joint use of the display stands / opening the display stands to the access of competitors; and
6. FRITO LAY's other actions examined within the file did not violate Articles 4 and/or 6 of the Act No. 4054.

I. ANALYSIS, GROUNDS AND LEGAL BASIS

I.1. Undertaking under investigation FRITO LAY

- (16) The company was founded in 1986 with the trade name Uzay Gıda Sanayi ve Ticaret AŞ (UZAY GIDA), 50% of the shares of the company were acquired by PepsiCo Int. in 1988 and the remaining shares were acquired in 1993, and the trade name of the company was changed to Frito Lay Gıda San. ve Tic. AŞ in 1999. Information regarding the shareholding and management structures of FRITO LAY, which is currently indirectly controlled by PepsiCo, Inc. (PEPSICO), is provided below.

Table 1 - Shareholding Structure of FRITO LAY

Shareholder	Share Ratio (%)
Seven-Up Nederland BV	(.....)
PepsiCo Investments Europe 1 BV	(.....)
Total	100,000
Source: Response Letter	

Table 2- Management Structure of FRITO LAY

Legal Entity	Real Person Representative	Title
Seven-Up Nederland BV	(.....)	Chairman of the Board of Directors
Fruko Meşrubat Sanayi Ltd. Şti.	(.....)	Deputy Chairman of the Board of Directors
Pepsi Cola Servis ve Dğt. Ltd. Şti.	(.....)	Member of the Board of Directors
Source: Response Letter		

- (17) FRITO LAY is engaged in the production, sales, distribution and marketing of Lay's, Ruffles, Doritos, Cheetos and Çerezza branded products in the field of packaged chips and popcorn and Rocco branded products in the field of confectionery. In addition, the Company operates in the markets of cola drinks, iced tea and flavored soda products markets in Türkiye through its subsidiaries Pepsi Cola Servis ve Dağıtım Ltd. Şti. (PEPSI) and Fruko Meşrubat Sanayi Ltd. Şti.⁵ FRITO LAY manufactures its products in its three production facilities in Kocaeli, Mersin and Manisa and sells its products through traditional, organized and on premise consumption sales channels.

⁵ PEPSI; owner of the brands such as *Pepsi*, *Yedigün*, *Tropicana*, *Fruko*, *7 Up*, *Mountain Dew*.

I.2. Relevant Market

I.2.1. Relevant Product Market

- (18) As stated in the Guidelines on the Definition of Relevant Market, the relevant product market is determined by taking into account goods and services that are considered to be the same in terms of price, intended use and characteristics in the eyes of the consumer. In this context, the basis of the studies to be carried out in defining the relevant product market is not the presence of all similar products in the same market, but the search for products that can be considered close substitutes for each other.
- (19) Although the variety of packaged chips products has increased with new products entering the market in recent years, they are generally made from potatoes or corn, packaged in multi-colored packages to attract the attention of consumers, and offered for sale in the salty snack category. Packaged chips products, which are mostly preferred by children and young consumers, are basically impulse products, as they make the consumer want to buy them as soon as they are seen. In addition, since packaged chips have a shelf life of around 3-4 months from the date of production, it is of great importance for producers that the products are displayed in an orderly manner and can easily attract the attention of the consumer, that they are sold quickly and that the stocks at the points of sale are replenished. Therefore, it is essential that packaged chips are transferred efficiently and quickly from the producer to the consumer, that products at points of sale are regularly checked and presented effectively, and that these products, which have a limited shelf life, are replaced with fresh ones in a short time if they spoil. As a result, producers of packaged chips have to establish an effective nationwide distribution network.
- (20) The sale of packaged chips products is generally carried out through traditional and organized sales channels, but it is seen that there is also a very limited amount of sales through the on premise consumption channel. Producers prefer different distribution systems according to their sales channels. It is seen that sales points in the traditional channel often do not have their own product displays and can shape their sales areas according to the wishes of suppliers. In this channel, producers prefer to use their own display equipment (display stands and non-stand display tools) and to organize product placement on the display stands according to a specific plan. With this aim, and in order to operate in as many final points of sale as possible, suppliers establish wide distribution networks and work in close contact with their distributors. Activities carried out by distributors, such as the positioning of display tools at final sales points, the planned arrangement of products in display tools, frequent visits to final sales points, and the recall of deformed product packages and expired products, are regularly monitored by producers. In the organized channel, producers have less freedom in displaying products at points of sale than in the traditional channel and do not sell through distributors, but work directly with the final points of sale themselves.
- (21) There are a number of past Board decisions that have distinguished packaged chips from similar snacks by taking into account the unique characteristics of the packaged chips product. In the first Board decision examining FRITO LAY's conduct in 2004⁶,

⁶ Board decision dated 04.05.2004 and numbered 04-32/377-95. The relevant Board decision was partially annulled in terms of the allegation of abuse of dominant position, and the Board decision dated 06.04.2006 and numbered 06-24/304-71, which was taken in terms of the annulled part, included the same conclusions.

the Board evaluated the possibility of a broader market definition that would include similar snacks; discussed factors such as the cost items, production processes, price movements, consumer perceptions, etc. of the packaged chips products and similar snacks; listed the specific features of the packaged chips product; and also included the opinions of the leading undertakings in the sector. As a result, the decision defines the “packaged chips market” as a separate market. In another Board decision dated 2005⁷, referring to the findings in the 2004 decision, no new relevant product market assessment was made. The sector was the subject of two Board decisions in 2007⁸, two in 2013⁹ and one in 2015¹⁰, all of which defined the relevant product market as the “packaged chips market” by referring to the decisions of previous years. In the most recent Board decision on the sector in 2018¹¹, unlike the previous decisions, it was also examined whether the packaged popcorn product was a substitute for the packaged chips product, but it was concluded that there was no need for a separate market definition for the packaged popcorn product, and the packaged popcorn product and the packaged chips market were considered together in numerical data such as sector size and market share.

- (22) On the grounds that the market structure explained above and the fact that the determinations made in previous Board decisions remain valid, it is considered that it would be appropriate to determine the relevant product market as the “packaged chips market”, including packaged popcorn products. In addition, it is concluded that the relevant product market can be evaluated by sub-dividing the sales channels of the relevant product market into sales channels, taking into account issues such as consumption, price, distribution, display, product diversity and differences in competition dynamics between traditional, modern and on premise consumption sales channels that constitute the sales channels of the packaged chips market.

1.2.2. Relevant Geographic Market

- (23) In determining the relevant geographical market, factors such as the characteristics of the relevant goods and services and entry barriers in terms of consumer preferences, whether there is a significant difference between the relevant region and neighboring regions in terms of market shares of undertakings or prices of goods and services are taken into account.
- (24) Considering that there is no significant regional difference in terms of market entry, access to supply sources, production, distribution, marketing and sales conditions in terms of the packaged chips market determined as the relevant product market, it is considered that it would be appropriate to determine the relevant geographical market as “Türkiye”.

⁷ Board decision dated 15.09.2005 and numbered 05-58/859-234.

⁸ Board decisions dated 11.01.2007 and numbered 07-01/12-7, dated 20.06.2007 and numbered 07-53/573-189.

⁹ Board decisions dated 18.07.2013 and numbered 13-46/588-258, dated 29.08.2013 and numbered 13-49/711-300.

¹⁰ Board decision dated 07.07.2015 and numbered 15-28/345-115.

¹¹ Board decision dated 12.06.2018 and numbered 18-19/329-163.

I.3. Developments in the Packaged Chips Market and Related Board Decisions

- (25) Since the early years of the Authority's work, the market for packaged chips has frequently been the subject of competition violation investigations. In this context, in order to understand the rationale for the examinations, in the next sub-heading, firstly the historical process in terms of the developments in the packaged chips market will be mentioned and then the relevant Board decisions will be given.

I.3.1. Historical Process in terms of the Developments in the Packaged Chips Market

- (26) The production of chips, the raw materials of which are generally potato and corn, started in Türkiye in 1986 with UZAY GIDA's investment in this field, with a delay compared to other countries. UZAY GIDA, which operated as a monopoly in this sector for about seven years, lost its monopoly position with the entry of KAR GIDA into the market in 1994. Subsequently, in 1998, the Pringles brand owned by Procter & Gamble Co. (P&G) entered the Turkish market through imports. With the entry of Pringles into the chips market, both the market sales volume increased and the distribution of market shares of the players in the market changed. Although all three brands have continued to exist in the packaged chips market over the years, there have been some changes in the companies that own these brands.
- (27) Established under the name UZAY GIDA, 50% of the shares of the company were taken over by PEPSICO in 1988 and the remaining 50% in 1993, and the undertaking became PEPSICO's subsidiary in Türkiye. Renamed as Frito Lay Gıda San. ve Tic. AŞ in 1999, the undertaking owns the brands Lay's, Ruffles, Doritos, Cheetos and Çerezza in the packaged chips market.
- (28) Having entered the packaged chips market in 1994, KAR GIDA was incorporated into KFI in 2002 together with Pers Gıda Sanayi ve Ticaret AŞ (PERS GIDA), which operated in the distribution and marketing of chips produced and controlled by KAR GIDA. In 2012, DOĞUŞ started construction of a chips factory in Aksaray and in 2013, following the decision of KRAFT, the Turkish subsidiary of KFI, to exit the salty snacks segment, DOĞUŞ acquired KRAFT's factory in Pendik, Istanbul and the brand rights of Patos, Cipso and Çerezos.¹² On the other hand, in 2012, Kellogg Company took over the P&G registered Pringles brand.¹³ The information concerning the investigation indicates that the presence of the Pringles brand in the market has decreased considerably due to various import/supply problems. With the decline of the Pringles brand, another imported product, Master Potato branded boxed chips, which are sold in the domestic market through GOLD HARVEST, came to the forefront. The mentioned legal entity also produces and sells Master Nut branded packaged corn chips in Türkiye.
- (29) Besides the companies that have been operating in the sector since the first years of the development of the packaged chips market in Türkiye, it is also possible to mention local brands that have very low market shares, especially those that find a place in the traditional channel and local markets, and continue their activities on a small scale in a few provinces or regions. In addition, in recent years, there has been a rapid increase in the market share of private label products within chain supermarkets in terms of both

¹² Board decision dated 19.03.2013 and numbered 13-15/225-110.

¹³ Board decision dated 12.04.2012 and numbered 12-20/513-150

sales volume and sales amount. Yet, in the packaged chips market, only FRITOLAY and DOĞUŞ operate with an effective distribution system, especially in the traditional channel, and in this context, the market exhibits a duopoly structure in the traditional channel.

I.3.2. Previous Board Decisions Regarding FRITO LAY

- (30) It is considered that the previous decisions taken by the Board on FRITO LAY, which allegedly violated Act No. 4054 within the scope of the application, may be enlightening for the current file. The details of the mentioned decisions are given below in chronological order.

Board decision dated 29.02.2000 and numbered 00-9/89-44

- (31) In the application made by KAR GIDA and PERS GIDA, it was claimed that FRITO LAY had a dominant position in the relevant product market and that FRITO LAY applied predatory pricing by determining the wholesale and retail prices of mini size products below their cost.
- (32) Upon the allegation in the application, it was decided to conduct a preliminary inquiry on FRITO LAY. When the information and documents obtained within the scope of the file were evaluated as a whole, it was seen that even though the sales price of FRITO LAY's mini size products remained below the average cost; as a result of the earthquake dated 17.08.1999, FRITO LAY's factory in Kocaeli was significantly damaged and the products could not be supplied to the market for a period of up to three months, resulting in a significant decrease in its market share, and that the discounts were limited to a temporary period of 34 days, only for mini sizes among the four sizes of products, and that the discounts in question covered 11 provinces within the earthquake zone and the South and Southeastern Anatolia regions, and that the discounts subject to the preliminary inquiry were not intended to push the competitor out of the market or to make the activities of the competitor difficult. It was concluded that FRITO LAY's price reduction aimed at restoring FRITO LAY's market share, which fell well below the annual average, could not be considered as an abuse of dominant position and that there was no need to open an investigation against FRITO LAY within the scope of Article 6 of Act No. 4054. On the other hand, although FRITO LAY's distributorship agreement was within the scope of agreements that should have been notified to the Authority until 05.05.1998 pursuant to the provisional Article 2 of Act No. 4054, it was decided to impose an administrative fine on FRITO LAY due to the failure to fulfill this obligation and notify the Authority in due time. In addition, it was decided that this agreement could be evaluated within the scope of block exemption, on condition that Articles 2 and 14 of the distributorship agreement, which were about exclusivity and non-competition, respectively, were harmonized with the "Block Exemption Communiqué on Exclusive Distribution Agreements" numbered 1997/3.

Board decision dated 04.05.2004 and numbered 04-32/377-95

- (34) In the complaint filed by KAR GIDA, it was claimed that FRITO LAY was in a dominant position in the relevant product market, that it abused its dominant position by taking systematic deterrent and discouraging actions against KAR GIDA's distributors, it signed exclusive contracts with its sales points and thus prevented the sale of KAR GIDA's products, also it was in the same economic integrity with PEPSICO and that it distorted the conditions of competition in the Turkish markets by taking advantage of

the financial, technological and commercial advantages created by PEPSICO at the global level.

- (35) According to the examinations made within the scope of the file, it was stated that FRITO LAY was in a dominant position; the facts concerning the complaint, such as assault, threats, attacks and collection of sales display stands alleged to have been carried out by the distribution staff under the instruction of FRITO LAY, could only be examined under the title of acts that help to push the competitor out of the market and that there was no evidence or finding that these acts were carried out directly or indirectly through the instruction of FRITO LAY.
- (36) It was also stated that the allegation that FRITO LAY entered into an exclusive relationship with the points of sale through both written agreements and equally effective practices and in this way made KAR GIDA's activities difficult and pushed KAR GIDA out of the market should be handled under the heading of exclusionary acts. In this context, it was determined that through the "Buldozer" application, which was a project to increase the sales points where FRITO LAY's own products were sold, FRITO LAY salespersons earned 15 points for each new point they entered and 25 points for each point where they removed KAR GIDA, they got additional points as the activity of KAR GIDA decreased in the region, and as a result of the points they earned, they chose gifts through the catalog, and then this project was revised by removing the scoring system for the removal of KAR GIDA. Considering that this practice, which was stated to have anti-competitive consequences, was terminated within two and a half months and that the General Manager expressed his discomfort in an internal e-mail message, it was concluded that the said action of FRITO LAY was not an abuse of dominant position.
- (37) However, regarding the agreements made by FRITO LAY with the final points of sale in written or verbal form, it was determined that these agreements contain exclusivity, in other words, they prevented FRITO LAY's competitors from establishing a commercial relationship with the point of sale that was a party to the agreement. The Board decided to withdraw the exemption pursuant to Article 6 of the Agreements Block Exemption Communiqué No. 2002/2 on Vertical Agreements (Vertical Communiqué) and Article 13 of Act No. 4054 since the exclusivity at the final sales points had effects incompatible with the conditions set forth in Article 5 of Act No. 4054, and therefore did not meet the conditions required by the aforementioned Article of the Act. Furthermore, in this respect, it was decided that practices such as giving free products or various gifts, discounts or rebates should be applied without the condition of exclusivity and in a way that did not lead to de facto exclusivity and that the exclusivity provisions in written agreements should be revised.
- (38) The Board decision dated 04.05.2004 and numbered 04-32/377-95 was procedurally annulled by the decision of the 13th Chamber of the Council of State dated 01.11.2005 and numbered 2005/4525 E. 2005/5348 K. with respect to the part of the decision that FRITO LAY did not abuse its dominant position in the packaged chips market, on the grounds that it was not in compliance with the law for the Board member who conducted the investigation to attend and vote in the final decision meeting. As a result of the re-evaluation made upon the partial annulment decision regarding the non-abuse of dominant position; with the Board's decision dated 06.04.2006 and numbered 06-24/30471; it was decided that FRITO LAY was in a dominant position in the packaged

chips market, which was the relevant product market, but FRITO LAY's actions could not be considered as abuse of dominant position against other undertakings in the market, therefore FRITO LAY did not abused its dominant position.

Board decision dated 29.08.2013 and numbered 13-49/711-300

- (39) In the application filed by KRAFT, it was claimed that FRITO LAY abused its dominant position in the packaged chips market through de facto exclusivity and stock increase practices at sales points in the traditional channel, as well as applying predatory pricing and price squeeze through product tying, and that it violated Articles 4 and 6 of Act No. 4054 with the mentioned actions. Another applicant stated that he was a distributor of FRITO LAY, that his product demand was not met by FRITO LAY, and that the distribution of the products was not done correctly. Another applicant claimed that he sold only FRITO LAY products in his market for 4-5 months, that he was warned by FRITO LAY when he placed FRITO LAY's competitor's products in his display stands, that FRITO LAY stated that he would not be able to benefit from the campaigns if he did not remove competitors' products from the display stands, and that he was forced by FRITO LAY to become a sole seller with these actions.
- (40) When the information and documents obtained within the scope of the investigation conducted on the allegations were evaluated; it was concluded that FRITO LAY violated Article 4 of Act No. 4054 through the practices regarding the single sale of its products at the final sales points and that FRITO LAY's said practices could not be granted individual exemption pursuant to Article 5 of the same Act.
- (41) Regarding FRITO LAY's stock increase practices at the points of sale; it was determined that FRITO LAY had a policy to increase the number of display stands at the points of sale and/or to increase the stocks of the points of sale by giving additional displays or products; however, it was evaluated that there was no evidence that this policy was made for the purpose of creating exclusivity at the points of sale, that there was no closure of the storage area of the points as a result of this practice, and that the stock increase policy did not have actual exclusivity-creating effects in terms of its objectives and results.
- (42) Regarding the allegation that FRITO LAY applied predatory pricing through tying; it was evaluated that it was a general practice for companies operating in the fast-moving consumer goods sector to make package sales promotions during periods of decreased demand, that there was no evidence in the on-site examinations that the promotion in question was applied to exclude competitors, and that there was no significant change/decline in the market shares of competitors during the two-month promotion period in question.
- (43) Regarding the allegation that FRITO LAY imposed price squeeze; it was concluded that the action evaluated as price squeeze by the applicant did not coincide with the concept of price squeeze in the competition law literature, the fact that the dominant undertaking did not increase its prices could not be characterized as a violation on its own, but there was a possibility that the price applied by the undertaking might become destructive as a result of not increasing prices despite the cost increases in a certain period, and that such a destructive price scenario was not observed when the price changes of FRITO LAY and its competitors in the relevant period were examined.
- (44) As a result of all these evaluations, it was concluded that FRITO LAY violated Article 4 of Act No. 4054 through the practices regarding the exclusive sale of its products at

the final sales points, while there was no violation of Article 6 of Act No. 4054, and it was decided to impose an administrative fine on FRITO LAY.

Board decision dated 12.06.2018 and numbered 18-19/329-163

- (45) In brief, in the application made by the former Sales Chief of FRITO LAY İzmir Region; it was claimed that FRITO LAY prevented the display stands of its competitors, especially DOĞUŞ, from entering the sales points, made loyalty payments to the sales points under the name of price difference in return for removing DOĞUŞ display stands, removed the possibility of deferred payment of these points in case the points that stopped selling the products of the competitors started to sell the products of the competitors again, and in this way, took actions to establish de facto exclusivity.
- (46) As a result of the allegations in the application, it was decided to conduct a preliminary inquiry on FRITO LAY. When the information and documents obtained within the scope of the file were evaluated as a whole, it was concluded that there was no evidence that FRITO LAY implemented de facto exclusivity-discount systems, even if it had implemented such practices, FRITO LAY has lost market share throughout Türkiye, and considering that *Peyman Kuruyemiş Gıda Aktariye Kimyevi Maddeler Tarım Ürünleri Sanayi ve Ticaret AŞ* in the packaged popcorn category and *Nazlı Gıda İnş. Tem. and Koz. San. Tic. Ltd. Şti.* in the packaged chips category, entered the market and remained in the market; it was decided that there was no need to open an investigation against FRITO LAY within the scope of Article 6 of the Act No. 4054.
- (47) In addition, although some suspicions arose during the examinations conducted within the scope of the file that FRITO LAY interfered with the sales price of its distributors; considering that FRITO LAY worked exclusively with its distributors, the profit margins of the distributors were low and this situation reduced the motive of the distributors to apply discounts to the points, in the previous Board decisions regarding the packaged chips market, it was emphasized that the discount practice was not widespread in the traditional channel and the recommended sales price was adopted by the distributors, and the distributor who wanted to change the sales price could provide a discount to the point through the price difference bill, it was concluded that there was no need to open an investigation against FRITO LAY for acts aimed at interfering with the sales price of distributors.

Board decision dated 15.12.2022 numbered 22-55/863-357

- (48) During the COVID-19 pandemic, an investigation was conducted into the pricing behavior of chain supermarkets engaged in the retail trade of food and cleaning products, as well as the producers and wholesalers who are their suppliers.¹⁴ Some of the evidence obtained during this investigation revealed that certain suppliers, who were parties to or the subject of correspondence, were not parties to the investigation but were suspected of engaging in actions that could lead to violations, such as establishing distribution type cartel or the determination of resale prices, based on reasonable grounds. Therefore the Board decided to conduct an inquiry into FRITO LAY and certain other suppliers with its decision dated 17.03.2021 and numbered 21-14/177-M.

¹⁴ It was concluded with the Board decision dated 28.10.2021 and numbered 21-53/747-360.

- (49) The evidence and findings obtained as a result of the preliminary inquiry were deemed serious and sufficient, and therefore the Board decided to initiate an investigation into certain undertakings, including FRITO LAY, with its decision dated 26.04.2021 and numbered 21-23/271-M.
- (50) As part of the investigation, it was determined that some retailers acting as buyers of FRITO LAY exchanged competitively sensitive information, such as future shelf prices and price increase dates, through FRITO LAY, FRITO LAY facilitated the indirect sharing of sensitive information between A101, BİM, CARREFOURSA, MİGROS and ŞOK regarding future competition, enabling coordination in price transitions, the aforementioned retailers were aware of the coordination in question and used the information about competitors provided to them by FRITO LAY in their future pricing decisions, FRITO LAY, A101, BİM, CARREFOURSA, MİGROS and ŞOK violated Article 4 of Act No. 4054 through agreements or concerted practices constituting a hub and spoke cartel, and as a result of this violation, the aforementioned undertakings were jointly and equally liable for the cartel and that these behaviors, which are defined as hard core violations of competition under the relevant secondary legislation, could not meet the exemption conditions listed in Article 5 of Act No. 4054.
- (51) In addition, it was concluded that FRITO LAY regularly monitored retailers' shelf prices, intervened to raise prices that were not at the desired level, in cases where prices remained unchanged, contacted retailers again to ensure that prices were changed, in response to campaign requests from resellers, a condition was imposed on resellers to increase shelf prices, thereby exerting pressure on resellers to raise shelf prices, and consequently, FRITO LAY determined the resale prices of retailers, and that these actions, which constituted resale price maintenance and are defined as hard core violations under the relevant secondary legislation, could not fulfill the exemption conditions listed in Article 5 of Act No. 4054.
- (52) As a result of all these assessments, FRITO LAY was found to have violated article 4 of the Act No. 4054 by means of coordinating sales prices and price increases among retailers involved in the investigation with regard to its own products, and maintaining this coordination and within this context, by means of determining the resale prices of undertakings operating at the retail level through agreements or concerted practices of a hub and spoke cartel nature with the aim of determining retail sales prices by facilitating the sharing of competitively sensitive information such as future prices and price increase dates among retailers, and it was decided to impose an administrative fine on the undertaking.

I.4. Evaluation

(226) In summary, the application states that:

- The packaged chips market is an oligopoly market.
- Packaged potato chips are impulse products.
- Packaged potato chips are generally sold through traditional (grocery stores, kiosks, nut shops, etc.), modern (national and local markets), and discount stores.
- In particular, packaged potato chip products in the traditional channel are sold using display stands and non-display stand equipment (display equipment), and

the absence of display stands and non-display stand equipment at the point of sale also means that there is no direct product sale.

- In the traditional channel, FRITO LAY's market share based on turnover was (.....)% in 2021 and (.....)% in 2023, despite the growth of the packaged chips market, FRITO LAY's closest competitor lost market share, in other sales channels, however, the situation was reversed,
- FRITO LAY abuses its dominant position through its display stand structure and layout, promotional campaign (*KazandıRio*) and other exclusionary actions such as providing free products, cash contributions and other support in the form of individualized concessions at final sales points, stockpiling actions at sales points and the *Dükkan Senin* application, aimed at increasing the loyalty of final sales points.
- It is necessary to apply a temporary measure requiring that “*regardless of whether they are integrated with PEPSI cabinets, competitor products should be available at a rate of 25% at FRITO LAY display stands in traditional channel points for chips products.*”

(227) The conduct alleged against FRITO LAY in the application can generally be considered as exclusivity and predatory pricing. Based on the investigations and findings, the practices of FRITO LAY that will be examined in this file to determine whether they constitute restriction of competition and/or abuse can be divided into four subheadings: These are categorized as (i) practices related to working only with FRITO LAY at final/retail sales points, which are assessed within the scope of exclusivity-based actions, (ii) the digital application called *Dükkan Senin*, (iii) the establishment of PO1 display stands (integrated display stands) in the traditional channel and (iv) the digital application called *KazandıRio*, which is dealt with under predatory pricing. Section I.4.1 of the decision will refer to the theoretical framework on which the assessment of exclusivity-based actions is based, followed by Section I.4.2 of the decision, which will contain findings and assessments regarding the allegations mentioned.

I.4.1. Theoretical Framework and Relevant Legislation Regarding Exclusivity-based Claims in the File

I.4.1.1. Exclusivity

(228) Exclusivity or single-brand restrictions in competition law; can be defined as the obligation or tendency of an independent buyer to meet all or a significant portion of its demand for a specific product or product group from a single supplier within the framework of vertical “supplier-buyer” relationships formed between two or more undertakings operating at different levels of the production or distribution chain for the purpose of purchasing, selling, or reselling certain goods or services. The terms “obligation or tendency” referred do not cover situations which are entirely based on the buyer’s independent preferences, where there is no pressure or incentive which could lead to exclusivity, and where the buyer’s demand for other product groups is non-existent or negligible for certain rational economic and behavioral reasons. In such a case, it would not be possible to speak of a coordination of wills within the framework of a vertical relationship and therefore, of an anti-competitive agreement and/or concerted practice regarding exclusivity or an action aimed at achieving this.

- (229) Exclusive actions, which are examined under prevention of the actual or potential competitors of the provider from entering to and expanding in the market artificially, and the complication of the activities of competitors in the market due to market closure effects, and under the category of exclusionary practices, can occur as a non-price exclusionary behavior, whereby powerful suppliers impose single-brand sales on buyers, or as a price-based exclusionary behavior, whereby discounts are granted on the condition of exclusivity. Market closure, on the other hand, is defined in the Guidelines on Vertical Agreements (Vertical Guidelines) as "*commercial strategies that restrict the buyer's access to the supplier and/or the supplier's access to the buyer*¹⁵; in the Guidelines on the Assessment of Exclusionary Abusive Conduct by Dominant Undertakings (Dominant Position Guidelines), as "*obstruction or prevention of access to sources of supply or markets for actual or potential competitors as a result of the conduct of the dominant undertaking, to the detriment of the consumers.*¹⁶" In particular, the exclusive practices of a dominant undertaking aimed at eliminating existing competitors from the market or preventing potential competitors from accessing upstream or downstream markets may result in a significant restriction of competition.
- (230) Exclusive actions constituting a vertical agreement may also be assessed under the provisions of Article 4, paragraph 2, and subparagraph d of Act No. 4054, which states "*Complicating and restricting the activities of competing undertakings, or excluding undertakings operating in the market by boycotts or other behavior, or foreclosing the market to potential new entrants*¹⁷."
- (231) In addition to the concept of single brand restriction, the term "non-compete obligation" is also used to cover exclusivity. The non-compete obligation is defined in the Vertical Communiqué as "*any direct or indirect obligation that prevents the buyer from producing, purchasing, selling, or reselling goods or services that compete with the goods or services covered by the agreement.*" In addition, in Vertical Communiqué, it is stipulated that any obligation imposed directly or indirectly on the buyer to purchase more than 80% of the goods or services concerning the agreement in the relevant market, or goods or services that substitute them, from the supplier or another entity designated by the supplier, based on the buyer's purchases in the previous calendar year, shall also be deemed a non-compete obligation.
- (232) Although their effects and consequences on the market remain unchanged, exclusivity is divided into two types: direct exclusivity and indirect/de facto exclusivity. Direct exclusivity may take the form of an explicit provision in a written agreement between the parties (de jure exclusivity), or it may apply even if there is no written agreement between the parties, as long as there is any written or verbal agreement or understanding at the level of an agreement/concerted practice indicating exclusivity. As stated in the grounds for Article 4 of Act No. 4054, "*Since the purpose of this Act is the protection of competition, agreements and practices between undertakings which prevent, restrict or distort competition must be prohibited. For the purposes of the*

¹⁵ Vertical Guidelines, para. 84.

¹⁶ Vertical Guidelines para. 25

¹⁷ It is noted that this may also be assessed in accordance with subparagraph (a) of the second paragraph of Article 6 of the Act No 4054, which states, "*Preventing, directly or indirectly, another undertaking from entering into the area of commercial activity, or actions aimed at complicating the activities of competitors in the market.*"

article, the term agreement is used to refer to all kinds of compromise or accord to which the parties feel bound, even if these do not meet the conditions for validity as regards the Civil Law. It is not important whether the agreement is written or oral... .” and the concept of “agreement” has been broadly interpreted to include even verbal agreements.

- (233) Exclusivity may also arise as a result of the agreement or the policies implemented by the undertaking parties to the agreement. This can often be achieved through policies of undertakings that aim at discouraging sales points from switching to alternative suppliers. As an example of the situation mentioned, the supplier in the upstream market may make the discounts available to the buyer conditional on the exclusive distribution of its products, or the incentives available to the retail outlet (cash support, free products, discounts, etc.) depending on whether the sales potential of that point is entirely or largely allocated to the dominant undertaking.
- (234) Another method that the dominant supplier can use to create a de facto exclusivity is to use a system that structures the buyer's purchasing behavior in such a way as to prevent the buyer from obtaining the relevant product from other suppliers, or that makes it economically unbearable for the buyer to switch to another supplier¹⁸. In structuring the buyer's purchasing behavior, applications such as target discounts, market share discounts, and growth discounts, which are regarded evaluated within the concept of loyalty discounts under the scope of competition legislation, can be used. This discount system, in terms of its components, is based on personalized targets established by taking into account the purchaser's purchase volume during the reference period, which may result in de facto exclusivity by restricting the purchaser's freedom of action.
- (235) It is also accepted in doctrine that discount systems can harm consumer welfare by creating de facto exclusivity, having a predatory pricing effect, and leading to discrimination among players in submarkets. Usually, practices related to discount systems, which are considered in the context of abuse of dominant position, can also be examined under Article 4 of Act No. 4054 to detect the anticompetitive effects, taking into account the existence of market power, since they essentially arise within the framework of a vertical agreement between the supplier and the buyer.¹⁹
- (236) As a result, instead of being absolutely prohibited in many legal systems, exclusive agreements are assessed based on their practical and potential competitive effects. In fact, despite their dominant position, exemptions have been granted by the Board to numerous agreements containing exclusivity clauses concluded with distributors, in line with findings regarding the effectiveness of the distribution network and the reflection of this effectiveness on consumers, taking into account the relevant gains in effectiveness²⁰. However, in the decision to revoke the 2004 exemption, it was stated that, taking into account the competitive conditions of the market, FRITO LAY could not be granted an individual exemption for its direct or indirect exclusivity practices at

¹⁸ Due to high switching costs, it is considered economically and technically irrational for the buyer to purchase products from a competitor

¹⁹ KOCABAŞ B. (2008), “Discount Systems and Competition: “An Assessment from Unilateral Conduct Aspects” Competition Authority Expert Thesis Series, No:90. p. 3, 12 and 80.

²⁰ KOCABAŞ B. (2008), “Discount Systems and Competition: “An Assessment from Unilateral Conduct Aspects” Competition Authority Expert Thesis Series, No:90. p. 3, 12 and 80.

the final/retail sales points as a whole, and that the undertaking should also refrain from practices that create de facto exclusivity. Although exclusivity arrangements may have certain positive aspects, such as efficiency gains, particularly in distribution agreements, the assessments made in the 2004 decision to withdraw the exemption and in previous Board decisions on the withdrawal of exemptions in markets with similar characteristics concluded that the negative effects of exclusivity on competition outweigh the gains in efficiency in agreements between dominant undertakings and final sales points, and it was determined that individual exemptions could not be granted for exclusivity practices, including actions that could result in de facto exclusivity.

I.4.1.2. Discount Systems²¹

- (237) Discount or bonus-style pricing policies are important competitive tools frequently encountered in commercial life. In competition law, price discounts offered to customers in exchange for certain purchasing behavior are examined within the scope of discount systems. In other words, what distinguishes discount systems from ordinary discounts is that they are offered based on conditions such as duration, product, exclusivity, and target.
- (238) The anti-competitive effects of discount systems can be divided into two categories: exclusion and discrimination.²² However, both theory and practice, as well as the Board's decisions, focus on the exclusionary effects of the discount systems. The Dominant Position Guidelines state that discount systems may have effects that can increase efficiency and consumer welfare, such as “*ensuring price drops, increasing level of output and product variety, reducing transaction costs stemming from the separate sale of products, and preventing free-riding by ensuring that resellers focus on the products of the supplier.*” However, such discounts, especially when granted by a dominant firm, may also have a de facto or potential exclusionary effect similar to the effect of non-compete obligations.²³ Therefore, the dominant undertaking may foreclose relevant markets by creating de facto exclusivity through discount systems, thereby preventing existing or potential competitors from accessing the necessary channels, and thus limiting the possibilities for competitors to emerge as effective competitors to the dominant undertaking.
- (239) Discount system practices can take many different forms. Although there is no consensus in competition law doctrine regarding their classification, discount systems

²¹ This section was prepared by using ARITÜRK R.Ö. (2010) “Discount systems: Test Recommendations in Light of EU and US Practices and Recent Developments in EU Practice” Competition Journal, January 2011 and KOCABAŞ B. (2008), “Discount Systems and Competition: An Assessment from Unilateral Conduct Aspects”, Competition Authority Expert Thesis Series, No:90. Ankara and Competition Terms Dictionary, Sixth Revised Edition as a reference.

²² The first of the anti-competitive effects, the primary line injury/effect, refers to the exclusionary (horizontal) effects of the discount(s) applied by the dominant undertaking on its competitors in the same market; The secondary line injury refers to the discriminatory effects created by the discount(s) applied by the dominant undertaking in the market where buyers in a vertical relationship with this undertaking are located, as a result of imposing different conditions on buyers in the same situation.

²³ The first of the anti-competitive effects, the primary line injury/effect, refers to the exclusionary (horizontal) effects of the discount(s) applied by the dominant undertaking on its competitors in the same market; The secondary line injury refers to the discriminatory effects created by the discount(s) applied by the dominant undertaking in the market where buyers in a vertical relationship with this undertaking are located, as a result of imposing different conditions on buyers in the same situation

can be classified according to certain criteria. The most basic distinction in the classification of discount systems can be made based on the number of markets/products covered by the discount. If, in any discount system, the discount can only be obtained by purchasing a single product, such discounts are considered “single product discounts.” However, if the purchase condition in the discount system covers multiple products or markets, the discounts in question are classified as “package discounts.”²⁴

(240) Similarly, discount systems in the literature can also be classified according to discount tiers, purchase quantities to which discounts apply, and whether discounts are standard or not. In this context, some types of discounts and their explanations found in the literature are provided below.

- Fixed-rate Discounts and Increasing-Rate Discounts: While discounts with a single discount tier for buyers and a single discount rate applied based on the target are fixed-rate discounts; discounts with multiple targets and multiple discount tiers corresponding to these targets within the discount system are increasing-rate discounts. In increasing discount systems, different targets can be set for different reference periods, besides different discount rates corresponding to different quantities or market share targets within a single reference period can be implemented. Increasing discounts, when compared to fixed discounts, are capable of appealing to buyers with different demand sizes and flexibilities in the market, and therefore to a significant portion of the market.
- Upper Tier Discounts and Retroactive Discounts: In terms of the purchase quantities to which the discount applies, discount systems where buyers can only receive discounts on purchases above the discount target are referred to as upper-tier discounts. Some buyers may prefer to purchase their basic needs from one main supplier and the remaining quantity from other (secondary) suppliers, especially when there is core demand. In this case, dominant suppliers may implement a two-part pricing policy to ensure that buyers also purchase the products they obtain from secondary suppliers from them. The first tier consists of the amount currently being taken from them, and regular pricing continues to apply. Purchases exceeding this amount constitute the second tier, for which the buyer is offered a discount. Discount systems whereby buyers can obtain discounts on all past purchases below and above the target in the event that they exceed their specified purchase targets are referred to as retroactive discount systems. In a retroactive discount system, even buyers choose to meet a small portion of their demand during a certain period from competing suppliers, they risk losing all discounts on purchases made from the supplier offering the discount. In the upper-tier discount system, the buyer only loses discounts on potential purchases above the target. Therefore, retroactive discounts generally have significant potential to foreclose the market by making it less attractive for buyers to shift small portions of their demand to alternative suppliers²⁵.
- Standard Target and Personalized Discounts: Discounts that apply to all buyers under the same conditions, and that are indifferent to buyers' requests, generally

²⁴ Dominant Position Guidelines, para. 70

²⁵ Dominant Position Guidelines, para. 70

aimed at cost savings, and given for objective quantities are referred to as standard discounts. Discounts that are tailored to the characteristics of buyers, that include targets such as quantity, turnover, and spending share and that are sensitive to buyers' requests are referred to as personalized discounts. If a purchase target that applies to all customers has the same function as a personalized purchase target for specific customers, it can be considered that the target is personalized for those customers.²⁶ The personalization of a discount system leads to more potential anti-competitive effects.

- (241) The discount types listed above can be applied together in a discount system. For example, a discount system could consist of increasing, retroactive, and personalized single-product discounts at the same time. Therefore, the key factor in determining whether a discount system is anti-competitive is the impact of the discount system on buyers. As a result, when examining the effects on buyers, whether the discount system generally has a "loyalty-enhancing effect" is examined. The loyalty-enhancing effects of the discount types listed above can be summarized as follows:

Table 3- Classification of Discount Systems in Terms of Their Loyalty-Enhancing Effects

Discount System Type	Loyalty-Enhancing Effects High	Loyalty-Enhancing Effects Low
Upper Tier Discounts		✓
Retroactive Discounts	✓	
Fixed Rate Discounts		✓
Increasing Rate Discounts	✓	
Standard Target Discounts		✓
Personalized Discounts	✓	

- (242) This classification provides an indication of the potential for discount systems to have a low or high loyalty-enhancing effect and is not intended to be definitive. As mentioned before, since discount systems can be applied in different formats in commercial life, the following general definitions can be given regarding the evaluation of discount systems in terms of their effects on buyers: (i) Quantity discounts and (ii) loyalty discounts. Discounts given solely based on the purchased quantity are called quantity discounts. These discounts are objective and not based on the buyer's requests, as they are applied solely based on the quantity purchased, taking into account the overall savings buyers will make with their purchases.²⁷ Loyalty discounts are discounts given to customers in exchange for them meeting all or a significant portion of their needs during a certain period, or an increasing portion of their needs, from the provider offering the discount. Therefore, these discounts take into account the buyers' requests

²⁶ Dominant Position Guidelines, para. 70

²⁷ "Functional discounts", which are discounts generally given to resellers in exchange for specific sales activities and after-sales services, can also be included under the heading of quantity discounts. An example of this type of discount is the case when the supplier contributes to certain costs in exchange for the retailer keeping beverage or ice cream products cold and ready for sale

and are subjective. In this sense, “target discounts,” which essentially function as growth discounts and are given in exchange for the buyer achieving a target set by the supplier for a certain period, and “exclusivity discounts,” which are given in exchange for the buyer sourcing all of its needs from the discounting supplier and prohibiting it from purchasing from competing suppliers, can also be classified as loyalty discounts.

- (243) It would be appropriate to refer to the findings in the Board's decisions and the relevant legislation regarding classification based on the effect on the buyer and the distinction between quantity discounts and loyalty discounts. As for the mentioned distinction, the Board's *Ülker* decision says²⁸, “*A dominant undertaking can apply discounts based on efficiency gains. However, the use of discounts known as loyalty discounts, which encourage buyers to increase their loyalty, can be considered an abuse of a dominant position. Therefore, it must be determined whether the target discounts applied by Ülker can be classified as loyalty discounts, or not.*”
- (244) In addition, paragraph 30 of the Board's decision dated 09.07.2015 and numbered 15-29/427-123 contains the following statements regarding the European Union General Court decision dated 12.06.2014 on Intel:²⁹

“In its decision rejecting Intel's request for cancellation, the court emphasized the following points:

-When assessing whether a discount system applied by a dominant undertaking constitutes an infringement, a distinction must be made between three categories of discounts. Firstly, discounts linked solely to the quantity of goods/services purchased (quantity discounts) generally do not have an anti-competitive, market foreclosure effect. Since customers will be entitled to greater discounts due to purchasing more goods/services, it is assumed that end consumers will also benefit from these discounts, and therefore this is considered an effective application.

-Secondly, discounts that direct customers to purchase all or a significant portion of their purchases from the dominant undertaking (loyalty discounts) are considered an abuse of dominant position because they lead to exclusivity and are therefore incompatible with the objective of “undistorted competition.” Such discounts limit customers' freedom to choose their suppliers and make it difficult for other suppliers to enter the market.

-Thirdly, although not explicitly linked to exclusivity, discount systems that lead to exclusivity or exclusivity-like situations in terms of their effects should be analyzed thoroughly. This analysis should examine all conditions and, in particular, the rules and criteria of the discount system, whether the discount eliminates or restricts the buyers' freedom to choose their suppliers, whether it makes it more difficult for

²⁸ Board decision dated 02.06.2005 and numbered 05-38/487-116.

²⁹ In its decision dated 06.09.2017, the CJEU partially annulled the GC decision approving the European Commission's Intel decision dated 13.05.2009, on the grounds that it displayed a formalistic approach to the market foreclosure effects of the discounts applied and that the effects of the discounts on the market and Intel's arguments were not sufficiently assessed. Court of Justice of the European Union, Press Release No 90/17, 06.09.2017, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-09/cp170090en.pdf>. Afterwards the GM annulled the Commission's decision. The Commission established the existence of violation about Intel and ruled for administrative fines in its decision dated 22.09.2023.

competitors to enter the market, and whether it strengthens or reinforces a dominant position.

- (245) The main reason why loyalty discounts are investigated by competition authorities and courts is the possibility that these practices may significantly impede competition by foreclosing the market to competitors and excluding them. However, the effects of loyalty discounts on competition are not limited to these. Firstly, uncertainty regarding whether customers will be able to benefit from discounts until the end of the reference period in which the discount system is valid, or at least how much of a discount they will benefit from, can lead to uncertainty about the final prices of discounted products and prevent healthy comparison with the prices of competing products, thereby limiting inter-brand competition. Secondly, transition costs created through discounts can cause market prices to rise by reducing customer demand flexibility.³⁰
- (246) In summary, price reductions can be competitive when they increase consumer preferences and reduce the prices of goods or services, but they can be restrictive of competition when they result in de facto exclusivity in favor of a dominant supplier. At this point, it should be noted that it is difficult to distinguish between a competitive discount system and an anti-competitive discount system in practice. This situation strengthens the view in the literature that allegations of competition violations related to discount systems should be assessed by taking into account the impact created in the market. In fact, the Court of Justice of the European Union (CJEU) has stated that in such cases, all circumstances of the case must be assessed together, the criteria and rules applied to grant a discount must be taken into account, and the extent of the undertaking's dominant position and the extent of competition in the relevant market must be examined.³¹ However, in practice, with regard to discount systems, it is often stated that discounts granted by the dominant provider in exchange for exclusivity have a net restrictive effect on competition. In cases where there is no contractual provision for exclusivity, it is important to determine whether the provider has created de facto exclusivity through the system it has implemented and whether it has the intention to do so.
- (247) The theoretical framework in question shows that the dominant undertaking can foreclose the relevant market(s) by creating de facto exclusivity through discount systems that prevent existing and potential competitors from accessing the necessary channels, thereby limiting the possibilities for competitors to emerge as effective competitors to the dominant undertaking.
- (248) In this context, the subheading discusses the place of exclusivity practices indicated by the actions in question in the legislation and provides an assessment of the prevention, distortion, or restriction of competition within the meaning of Article 4 of Act No. 4054.

I.4.1.3. The Place of Exclusivity Practices in the Relevant Legislation

- (249) Article 2 of Act No. 4054, titled "Scope," states *"This Act covers all agreements, decisions and practices which prevent, distort or restrict competition between any undertakings operating in or affecting markets for goods and services within the borders of the Republic of Türkiye; abuse of dominance by dominant undertakings in*

³⁰ Board decision dated 30.03.2011 and numbered 11-18/341-103 (Doğan Publishing).

³¹ Intel v Commission, Case C-413/14 P, EU:C:2017:632.

the market; any kind of legal transactions and behavior having the nature of mergers and acquisitions which may significantly decrease competition; and transactions concerning the measures, observations, regulations and supervisions aimed at the protection of competition." Upon examination of the relevant article, it is understood that competition violations may arise from the multilateral or unilateral behavior of undertakings.

- (250) On the other hand, the acts of undertakings listed in the article on scope are stated as acts that are unlawful and prohibited by Act No. 4054 and are further regulated in Articles 4, 6, and 7 of the same Act. The provisions relating to agreements, practices, and decisions that prevent, distort, or restrict competition, as referred to in the scope article, are regulated in Article 4 of Act No. 4054, titled "Agreements, Concerted Practices, and Decisions Limiting Competition" while the provisions regarding the abuse of dominant market power by dominant undertakings are regulated in Article 6 of Act No. 4054, titled "Abuse of Dominant Position."³²
- (251) Article 4 of Act No. 4054 states "*Agreements and concerted practices between undertakings, and decisions and practices of associations of undertakings which have as their object or effect or likely effect the prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services are illegal and prohibited.*" while Article 6 of Act No. 4054 states "*The abuse, by one or more undertakings, of their dominant position in a market for goods or services within the whole or a part of the country on their own or through agreements with others or through concerted practices, is illegal and prohibited.*" In addition, the second paragraph of both articles provides examples of prohibited actions without being restrictive.
- (252) For a specific incident to be assessed under Article 4 of Act No. 4054, there must first be an agreement between multiple undertakings, or concerted practice, or a decision taken under the umbrella of an association of undertakings. Therefore, the actions examined in Article 4 of Act No. 4054 are classified as multilateral behavior. These actions include actions that restrict competition between competing undertakings (horizontal infringements) as well as actions that restrict competition between undertakings at different levels of the supply chain, such as suppliers and resellers (vertical infringements).
- (253) On the other hand, while the condition of dominant position is additionally required for the actions regulated in Article 6 of Act No. 4054, the phrase "*abuse of dominant position on their own or through agreements with others or through concerted practices*" within the text of the article implies that dominant position may be abused both through multilateral actions and unilateral actions.³³
- (254) The exclusivity-based practices addressed in the file are essentially vertical restrictions imposed by the producers and distributors on the final points of sale and can be

³² Any legal transactions and actions that constitute mergers and acquisitions that would significantly reduce competition are regulated in Article 7 of Act No. 4054, titled "Mergers or Acquisitions," and are not discussed further herein as they are not relevant to the case at hand. The most significant distinction between Articles 4 and 6, and Article 7 in competition infringement investigations is that Articles 4 and 6 adopt an ex-post intervention (post-action) approach, while Article 7 adopts an ex-ante intervention (pre-action) approach.

³³ For example, a dominant undertaking engaging in predatory pricing or refusal to deal.

examined under Article 4 of Act No. 4054 or under Article 6 when a dominant position exists. Although exclusivity practices have been assessed in terms of both articles in a small number of the Board's decisions³⁴, it is observed that the Board's decisions mostly choose between Article 4 and Article 6. Indeed, no distinction is made between Article 4 and Article 6 in the assessment of acts of this nature.³⁵ In fact, both Article 4 and Article 6 of Act No. 4054 are essentially intervention tools used to protect competition. Furthermore, both Article 4 and Article 6 of Act No. 4054 list “complicating the activities of competitors” as one of the forms of restriction or abuse of competition.

- (255) In European Union case law, it is stated that Articles 101 or 102 of the Treaty on the Functioning of the European Union (TFEU) may be applied to address competition concerns related to exclusivity. CJEU ruled in the *Compagnie Maritime Belge* decision³⁶ that the wording of Articles 101 and 102 of the TFEU allows both articles to be applied simultaneously to the same conduct, but that Article 102 is based on economic power. Based on this, it is also possible to interpret that it is more likely that exclusivity agreements involving undertakings found to be dominant positions would be assessed under Article 102.
- (256) In addition, Article 15, paragraph 1, titled “*Joinder*,” of the Misdemeanors Law No. 5326 stipulates that in cases where two separate misdemeanors subject to administrative fines are committed with a single act, the heavier administrative fine shall be imposed. However, actions that can be examined under both Articles 4 and 6 of Act No. 4054 fall under the category of “*other violations*” as defined in the Regulation On Administrative Fines To Apply In Cases Of Agreements, Concerted Practices And Decisions Limiting Competition And Abuses Of Dominant Position (Fines Regulation). Therefore, the choice of which article to examine does not result in different outcomes in terms of the determination of administrative fines.
- (257) However, Article 6 of the Fines Regulations lists “repeated violation” as one of the aggravating factors in determining administrative fines. In competition law, recurrence can be interpreted in its broadest sense as the repeated violation of Act No. 4054, and in its narrowest sense as the repeated violation of the same provision of the same Act through the same conduct. Although there are different views in doctrine, it can be stated that the Board's general practice in terms of recurrence is in the direction of the broadest application. In light of the 2013 and 2022 Board decisions regarding the imposition of administrative fines for violation of Article 4 of Act No. 4054 concerning FRITO LAY; findings and assessments regarding the existence of recurrence are presented under heading “Assessment Regarding the Administrative Fine” and depending on the fact that the relevant decisions detected a violation of Article 4 of Act No. 4054, on the possibility of applying the special recurrence rule instead of the general recurrence rule, as well as on the Board's decision dated 04.05.2004 and numbered 04-32/377-95 regarding the withdrawal of the exemption granted to FRITO LAY because of the exclusivity practices with its final sales points, an assessment will be made under Article 4 of Act No. 4054 in terms of actions based on exclusivity.

³⁴ Board decision dated 08.02.2010 and numbered 10-14/175-66 (*İzocam*); Board decision dated 05.03.2015 and numbered 15-10/148-65 (*Coca Cola*).

³⁵ See Board decision dated 12.06.2014 and numbered 14-21/410-178 (*Mey İçki*), para. 44.

³⁶ *Compagnie Maritime Belge Transports and Others v Commission*, C-395/96 P and C-396/96 P, CJEU, 16.03.2000, para. 33.

- (258) On this basis, the following section evaluates the exclusivity-based actions alleged against FRITO LAY in the context of Article 4 of Act No. 4054.

I.4.2. Evaluation of Allegations in the File

- (259) As stated in section I.3 of the reasoned decision, there is a significant amount of evidence pointing to practices by FRITO LAY officials and/or distributor employees for ensuring direct exclusivity at final points of sale. The evidence referred to indicates the existence of exclusivity/sole distribution practices by FRITO LAY officials and/or distributor field staff, particularly in the traditional channel and at final points of sale in the category of local supermarkets with a small sales area in terms of square meters. In addition, it is claimed that the integrated (PO1) display stand application resulted in working exclusively with FRITO LAY by not leaving space for competitors' display stands in the traditional channel. Furthermore, the application called *Dükkan Senin* can also be categorized as a discount system and evaluated under indirect exclusivity. However, in order to analyze the numerous documents obtained during the on-site inspection and to address the discount practices, it is important to first understand FRITO LAY's position in the relevant market and its working methods. In this regard, information on FRITO LAY's position in the relevant market, sales channels, distribution network, and discount and investment practices will be provided below. Subsequently, evaluations of the actions taken by FRITO LAY regarding the subject matter of the file will be conveyed.

I.4.2.1. FRITO LAY's Position in the Relevant Market

- (260) Before examining FRITO LAY's position in the packaged chips market, it would be useful to refer to the findings and assessments made in previous Board decisions regarding the undertaking.
- (261) In the Board's decision of 2000³⁷; it was stated that UZAY GIDA's³⁸ market share, which was 73% in 1997, dropped to 71% in 1998 with the entry of P&G's imported Pringles brand into the market, and despite the negative effects of the earthquake, UZAY GIDA maintained its dominance in the market with 62% market share in 1999 and as barriers to market entry, it was noted that per capita consumption of potato chips was relatively low due to the fact that potato chip products did not yet appeal to Turkish taste, that the production and distribution of packaged chips required significant investment costs, and that FRITO LAY was a large global company, and for all these reasons, it was determined that UZAY GIDA was dominant in the market.
- (262) In another Board decision in 2004³⁹, it was determined that the packaged chips market exhibited a duopoly structure with a nature of a tight oligopoly, with FRITO LAY, the market leader with over 60% market share, having twice the market share of its closest competitor KAR GIDA. Although the Pringles brand achieved a significant market share in a short period of time, it lost market share during the economic crisis due to its high price. The decision states that KAR GIDA's market activities remained passive in 2002 due to its acquisition by KFI, that FRITO LAY was the first undertaking to enter the market (as UZAY GIDA), and operating in the packaged chips market worldwide as a

³⁷ Assessment Regarding the Administrative Fine.

³⁸ At the time the decision was made, UZAY GIDA had just been taken over by FRITO LAY, and the name of the company had not changed yet.

³⁹ Board decision dated 05.05.2024 and numbered 04-32/377-95.

subsidiary of a global power like PEPSICO, created a strong advantage in the Turkish market, and KAR GIDA was merely a price follower.

- (263) In decisions dated 2004 and 2013, it was stated that there was no indication that FRITO LAY had lost its dominant position in the market, referring to previous Board decisions, as there had been no significant changes in the market structure between the relevant years. The 2013 Board decision⁴⁰ includes data showing that the packaged chips market grew by 60% compared to 2008. This data indicates that, contrary to previous Board decisions, packaged chips are more preferred by consumers in Türkiye, but that the oligopolistic structure of the market continues.
- (264) In the most recent decision examining the packaged chips market, dated 2018⁴¹, it was determined that the packaged chips market had a duopoly structure, that FRITO LAY's market share, which was 73% in 2015 in terms of volume, dropped to 67% in 2018, while its closest competitor, DOĞUŞ, saw its market share fluctuate between 15.3% and 15.6%. In addition, this decision also examined the numerical and weighted availability rates in the packaged potato chips market between 2015 and 2018 and stated that during this period, FRITO LAY had a numerical availability rate of 91-94%, DOĞUŞ had 48-52%, and Pringles had 22-28%, while the weighted market share ratios were as follows: FRITO LAY had 98-99%, DOĞUŞ had 59-62%, and Pringles had 29-50%. When comparing the availability rates of DOĞUŞ and FRITO LAY, the findings in the relevant decision indicate that the rates remained stable between 2015 and 2018.
- (265) Based on the aforementioned, it is determined that FRITO LAY, which has been the largest player in the market for over 25 years, was dominant or maintained its dominant position in all relevant Board decisions in the past. The data presented below also indicates that this situation remains valid⁴². In this context, FRITO LAY's and its competitors' market shares in the packaged chips market in Türkiye over the last five years are presented below:

Table 4- Market Shares of FRITO LAY and Its Competitors in the Packaged Chips Market (%)

Undertakings	2019		2020		2021		2022		2023	
	Volume (KG)	Turnover (TL)	Volume (KG)	Turnover (TL)	Volume (KG)	Turnover (TL)	Volume (KG)	Turnover (TL)	Volume (KG)	Turnover (TL)
FRITO LAY	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
DOĞUŞ	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
PRINGLES	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
PEYMAN ⁴³	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
AYDIN ⁴⁴	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
NAZLI ⁴⁵	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Other ⁴⁶	17,54	10,51	22,89	13,83	24,24	15,44	25,10	16,47	26,82	18,12
TOTAL	100,00	100,00	100,00	100,00	100,00	100,00	100,00	100,00	100,00	100,00
Source	FRITO LAY (NIELSEN)									

⁴⁰ Board decision dated 29.08.2013 and numbered 13-49/711-300.

⁴¹ Board decision dated 12.06.2018 and numbered 18-19/329-163.

⁴² Although the relevant market is defined as "packaged chips market" the data of *Nielsen Araştırma Hizmetleri Ltd. Şti.* (NIELSEN) is calculated by including popcorn products.

⁴³ *Peyman Kuruyemiş Gıda Aktariye Kimyevi Maddeler Tarım Ürünleri Sanayi ve Ticaret AŞ.*

⁴⁴ *Ay-POP Gıda San. ve Tic. Ltd. Şti*

⁴⁵ *Nazlı Gıda İnş. Tem. ve Koz. San. Tic. Ltd. Şti.*

⁴⁶ Data pertaining to relatively small producers and private label products in the discount market channel.

- (266) The table shows that in 2019, FRITO LAY was the market leader in terms of turnover with a (.....)% market share and volume with (.....)% market share followed by DOĞUŞ with a (.....)% turnover and volume with (.....)% market share while Pringles, the third largest player in the market, had (.....)% turnover and a (.....)% volume market share. All other players in the packaged chips market held less than 1% of the market share in terms of both volume and turnover, and this situation has remained unchanged to date. Between 2019 and 2023, it can be seen that FRITO LAY and DOĞUŞ's market shares decreased year by year, but DOĞUŞ's market share decline was more significant. However, when comparing 2019 to 2023, FRITO LAY's market share based on turnover did not show a significant change, decreasing from (.....)% to (.....)%, while DOĞUŞ's turnover decreased from (.....)% to (.....)%, losing approximately one-third of its market share. Looking at the market as a whole, it can be seen that the two largest undertakings account for 80% of the total market turnover and that the market structure is highly concentrated.
- (267) The table below shows the sales channels and number of sales points where packaged chips products are available to consumers:

Table 5- Sales Channels, Sub-Breakdowns, and Point of Sale Space

Sales Channel	2019	2020	2021	2022	2023
<i>Türkiye</i>	225.293	227.304	228.425	235.675	238.306
<i>Discount Stores Channel</i>	21.047	23.858	26.808	29.848	32.276
BİM	6.710	7.600	8.520	9.496	10.132
A101	8.100	9.052	10.150	11.234	12.076
ŞOK	6.237	7.206	8.138	9.118	10.068
<i>Modern Channel</i>	11.794	11.992	12.702	14.518	15.953
Hypermarkets (≥ 2500 m ²)	224	224	221	221	220
Supermarkets (1000-24999 m ²)	1.037	1.095	1.084	1.106	1.102
Small Supermarkets (400-999 m ²)	3.230	3.284	3.467	3.677	3.849
Self Service Small Supermarkets (< 400 m ²)	7.303	7.389	7.930	9.514	10.782
<i>Traditional Channel</i>	164.030	162.796	159.628	161.281	158.688
Traditional Points (≥ 50 m ²)	32.046	31.350	30.834	31.587	31.744
Traditional Points (< 50 m ²)	97.863	97.657	95.704	96.285	93.182
Nut sellers	9.837	9.465	8.869	8.437	7.819
Buffets	18.942	18.765	18.635	19.292	19.615
Gas Stations	5.342	5.559	5.586	5.680	6.328
<i>Other (Perfume Shop, Pharmacy etc.)</i>	28.422	28.658	29.287	30.028	31.389
Source: FRITO LAY (NIELSEN)					

- (268) Looking at the data in the table, it can be seen that the number of traditional channel sales points has decreased, while all other sales channels have increased significantly in number. In this context, there has been an approximate 50% numerical growth in the number of discount stores and modern channel sales points between 2019 and 2023.
- (269) The tables below show the value (TL) and volume (kg) of the packaged chips market by sales channel, as well as the market's growth rates in terms of volume, broken down by year.

Table 6- Value-Based Size of the Packaged Chips Market⁴⁷ (₺)

Sales Channel	2019	2020	2021	2022	2023
Traditional Channel	1.826.829.600	2.147.917.200	2.715.411.100	5.288.057.000	10.433.687.300
Discount stores	873.904.100	1.432.257.800	2.007.440.300	4.485.487.800	8.817.758.600
Modern Channel	625.624.800	869.677.200	1.124.760.500	2.443.616.000	4.934.040.600
TOTAL	3.326.358.600	4.449.852.400	5.847.612.500	12.217.160.900	24.185.486.500
Source: FRITO LAY (NIELSEN)					

Table 7- Volume-Based Size of Packaged Chips Market (kg)

Sales Channel	2019	2020	2021	2022	2023
Traditional Channel	47.345.900	48.415.100	52.334.000	52.617.900	58.831.000
Discount stores	32.295.100	45.688.100	53.043.100	61.710.800	68.142.600
Modern Channel	17.152.300	19.766.400	21.374.500	24.736.800	28.617.600
TOTAL	96.793.000	113.869.700	126.751.900	139.065.800	155.590.800
Source: FRITO LAY (NIELSEN)					

Table 8- Growth Rates of the Packaged Chips Market in Terms of Volume Compared to the Previous Year

Sales Channel	2020	2021	2022	2023
Traditional Channel	2,3	8,1	0,5	11,8
Discount stores	41,5	16,1	16,3	10,4
Modern Channel	15,2	8,1	15,7	15,7
TOTAL	17,6	11,3	9,7	11,9
Source: FRITO LAY (NIELSEN)				

- (270) As can be seen from the tables above, the value of the packaged chips market increased from 3,326,358,600 ₺ in 2019 to 24,185,486,500 ₺ in 2023, while the market size in terms of volume increased from 96,793,000 kg in 2019 to 155,590,800 kg in 2023. In terms of volume growth rates, the entire market grew by 17.6% in 2020, 11.3% in 2021, 9.7% in 2022, and 11.9% in 2023. The growth rates of sales channels in terms of volume vary considerably. In 2020, discount stores channel showed a significant growth rate of 41.5%, but the growth rate gradually decreased to 10.4% in 2023. The modern channel has shown an average growth rate of 15.5% in years other than 2021, when it grew by 8.1%. The traditional channel, on the other hand, has been relatively stagnant compared to other sales channels, with almost no growth in 2020 and 2022, followed by growth rates of 8.1% and 11.8% in 2021 and 2022, however, overall growth rates remain below those of other sales channels. In this context, it would be useful to mention the share of sales made by the relevant sales channels in the total packaged chips market. The relevant data is provided in the table below:

⁴⁷ NIELSEN's sales share data by sales channel does not include sales from the e-commerce channel.

Table 9- Sales Channel Shares in the Packaged Chips Market (%)

Undertakings	2019		2020		2021		2022		2023	
	Volume	Turnover	Volume	Turnover	Volume	Turnover	Volume	Turnover	Volume	Turnover
Traditional Channel	48,9	54,9	42,5	48,3	41,2	46,4	37,8	43,3	37,8	43,1
Discount stores	33,4	26,3	40,1	32,2	41,9	34,4	44,4	36,7	43,8	36,5
Modern Channel	17,7	18,8	17,4	19,5	16,9	19,2	17,8	20,0	18,4	20,4
TOTAL	100,0	100,0	100,0	100,0	100,0	100,0	100,0	100,0	100,0	100,0

Source: FRITO LAY (NIELSEN)

(271) As can be seen in the table above, sales made through traditional channels accounted for the largest share of packaged chip sales in terms of turnover over the last five years. In terms of volume, the traditional channel, which was the top-selling channel in 2019, lost its leading position to discount stores starting in 2021. As mentioned in previous Board decisions, the traditional channel has special importance in the packaged potato chips market due to the impulse nature of packaged potato chips and the existence of many sales points in the traditional channel. Furthermore, due to the concentration of exclusivity-based actions within the scope of the file on the traditional channel, it is considered appropriate to focus on data from the traditional channel breakdown when examining the market structure. In this context, data on the market share of FRITO LAY and its competitors in the traditional channel over the last five years is provided below:

Table 30- FRITO LAY and Competitors' Market Shares in the Traditional Channel of the Packaged Chips Market (%)

Undertakings	2019		2020		2021		2022		2023	
	Volume (KG)	Turnover (TL)	Volume (KG)	Turnover (TL)	Volume (KG)	Turnover (TL)	Volume (KG)	Turnover (TL)	Volume (KG)	Turnover (TL)
FRITO LAY	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
DOĞUŞ	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
PRINGLES	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
PEYMAN	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
AYDIN	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
NAZLI	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Other ⁴⁸	0,75	0,33	0,80	0,36	1,12	0,63	0,85	0,53	1,09	1,01
TOTAL	100,00	100,00	100,00	100,00	100,00	100,00	100,00	100,00	100,00	100,00

Source: FRITO LAY (NIELSEN)

(272) Examining the market shares of undertakings in traditional channels, it can be seen that concentration in the packaged chips market has deepened further in this channel. In this regard, the total market share of the two largest undertakings in the market during the period in question, in terms of turnover, was around (.....)% in the traditional channel. When looking at the data by undertaking, FRITO LAY's market shares, which were (.....)% in terms of turnover and (.....)% in terms of volume in 2019, increased to (.....)% and (.....)%, in 2023, while DOĞUŞ's market shares, which were (.....)% in terms of turnover and (.....)% in terms of volume in 2019, decreased to (.....)% and (.....)% in 2023. Considering that the total market share of other undertakings in the market has

⁴⁸ Data from relatively small producers.

remained almost stable over the last five years, it appears that the market share lost by DOĞUŞ has been gained by FRITO LAY.

- (273) The tables below show the numerical⁴⁹ and weighted⁵⁰ presence ratios of undertakings in the packaged chips market as well as their in-point⁵¹ market shares:

Table 41- FRITO LAY and its competitors' numerical availability rates in the packaged potato chips market in Türkiye overall (TR) and in the traditional channel (TC) (%)

Undertakings	2019		2020		2021		2022		2023	
	TR	TC	TR	TC	TR	TC	TR	TC	TR	TC
FRITO LAY	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
DOĞUŞ	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
PRINGLES	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
PEYMAN	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
AYDIN	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
NAZLI	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Other	22,00	10,58	26,17	13,42	44,18	32,49	47,21	34,80	56,21	44,27
Source: FRITO LAY (NIELSEN)										

- (274) The data in the table above shows that the numerical availability rates of FRITO LAY and DOĞUŞ have not undergone any significant change over the last five years. While FRITO LAY products accounted for (.....)% of packaged chip sales at final points of sale in 2019, this figure decreased to (.....)% in 2023. DOĞUŞ's numerical availability rate in 2019 increased from (.....)% to (.....)%. When examining numerical availability data through traditional channels, it can be seen that during the relevant period, FRITO LAY's numerical availability rate increased from (.....)% to (.....)%, while DOĞUŞ's numerical availability rate decreased from (.....)% to (.....)%.

Table 52- FRITO LAY and its competitors' weighted market share percentages in the packaged potato chips market in Türkiye overall (TR) and in the traditional channel (TC) (%)

Undertakings	2019		2020		2021		2022		2023	
	TR	TC	TR	TC	TR	TC	TR	TC	TR	TC
FRITO LAY	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
DOĞUŞ	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
PRINGLES	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
PEYMAN	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
AYDIN	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
NAZLI	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Other	42,67	13,00	51,00	15,83	66,66	37,98	70,27	38,95	78,88	54,25
Source: FRITO LAY (NIELSEN)										

- (275) The data in the table above shows that FRITO LAY's weighted availability rates have not undergone any significant change over the last five years. FRITO LAY's weighted market share in Türkiye was (.....)% in 2019, rising to (.....)% in 2023; DOĞUŞ's weighted market shares in Türkiye, meanwhile, increased sharply from (.....)% to

⁴⁹ The numerical distribution ratio indicates the ratio of the number of points where a particular undertaking's products are available among all points of sale selling the relevant product.

⁵⁰ The weighted distribution shows the ratio of the total sales volume of all sales points selling the relevant product to the total sales volume of the relevant product at all sales points where a particular undertaking sells its own products (the volume of all sales of the relevant product at the sales point).

⁵¹ In-point market share indicates the market share of a particular undertaking in the relevant market at the points of sale where its products are sold.

(.....)%. Looking at the weighted availability rates for traditional channels, FRITO LAY increased from (.....)% to (.....)%, while DOĞUŞ increased from (.....)% to (.....)%.

Table 63- FRITO LAY and its competitors' in-point market shares (%) in the packaged potato chips market in Türkiye overall (TR) and in the traditional channel (TC)

Undertakings	2019		2020		2021		2022		2023	
	TR	TC	TR	TC	TR	TC	TR	TC	TR	TC
FRITO LAY	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
DOĞUŞ	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
PRINGLES	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
PEYMAN	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
AYDIN	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
NAZLI	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Other	41,00	5,82	44,90	5,03	41,79	4,66	45,40	5,99	41,94	4,66
Source: FRITO LAY (NIELSEN)										

(276) The data in the table above shows that FRITO LAY's in-point market share in Türkiye decreased from (.....)% in 2019 to (.....)% in 2023, while DOĞUŞ's in-point market share decreased from (.....)% to (.....)%. Looking specifically at traditional channels, FRITO LAY's in-point market share increased from (.....)% to (.....)% during the period in question, while DOĞUŞ's share decreased from (.....)% to (.....)%. Considering that the market shares of other undertakings operating in the packaged chips market were very low compared to FRITO LAY and DOĞUŞ, and that there were no significant changes in point-of-sale market shares, it is understood that DOĞUŞ lost a significant market share to FRITO LAY in points where it was available simultaneously with FRITO LAY.

(277) The tables below show FRITO LAY's and DOĞUŞ's customer numbers and sales volumes (kg) in the traditional channel over the last five years:

Table 74- FRITO LAY and DOĞUŞ Customer Numbers in Traditional Channels

	2019	2020	2021	2022	2023
FRITO LAY	(.....)	(.....)	(.....)	(.....)	(.....)
DOĞUŞ	(.....)	(.....)	(.....)	(.....)	(.....)
Source: FRITO LAY and DOĞUŞ					

Table 15- FRITO LAY and DOĞUŞ Sales Volumes in Traditional Channels (kg)

	2019	2020	2021	2022	2023
FRITO LAY	(.....)	(.....)	(.....)	(.....)	(.....)
DOĞUŞ	(.....)	(.....)	(.....)	(.....)	(.....)
Source: FRITO LAY and DOĞUŞ					

(278) Based on the data in the tables above, over the last five years, due to the decrease in the number of traditional channel sales points, FRITO LAY's customer numbers decreased from (.....) to (.....) by (.....)%, while DOĞUŞ's customer numbers decreased from (.....) to (.....) by (.....)%. When examining sales volumes in the traditional channel, FRITO LAY showed a growth of (.....)% from 2019 to 2023, increasing from (.....) to (.....), while DOĞUŞ experienced a (.....)% decrease from (.....) to (.....). Both data show that DOĞUŞ's performance in terms of customer numbers and sales volume has been negatively affected compared to FRITO LAY over the last five years.

- (279) Below, information will be provided on FRITO LAY's working methods in the relevant market, distribution and sales systems, discounts and display stand practices, followed by assessments of the actions covered by the file.

I.4.2.2. FRITO LAY's Working Methods in the Relevant Market

Information on Sales Channels, and Distribution Network

- (280) FRITO LAY carries out its production activities in Türkiye at three production facilities located in Kocaeli İzmit, Mersin Tarsus and Manisa. The fundamental structure of the organization is divided into three parts: traditional sales channel⁵², organized sales channel⁵³, and on premise consumption sales channel^{54, 55}. FRITO LAY's on premise consumption activities are limited in terms of packaged chip products, (.....).⁵⁶
- (281) FRITO LAY's storage activities are carried out (.....)
- (282) In the traditional sales channel, products are shipped to warehouses and then delivered to points of sale via distributors. There are (.....) distributors distributing both food and beverage products on behalf of PEPSICO and (.....) distributors distributing food products exclusively on behalf of FRITO LAY. The distributors in question distribute to a total of approximately (.....) sales points. Distribution activities in the traditional channel are carried out by the sales manager (.....), regional manager (.....) and sales supervisor (.....), all PEPSICO salaried and also by distributor salaried sales representative (.....).
- (283) In the organized sales channel, products are mostly shipped from production facilities to FRITO LAY warehouses or customer warehouses, and are shipped to distributors' warehouses to a limited extent (.....). The organized sales channel sales team is divided into two groups as field and center, and all sales team members in the organized sales channel are PEPSICO salaried. (.....).
- (284) Under the aforementioned shipment structure, it is understood that FRITO LAY employees are primarily active in the organized sales channel, while distributor employees are more active in the traditional sales channel. Therefore, FRITO LAY generally enters into written agreements with its customers in the organized sales channel, and product requests from these customers are almost entirely managed on an order basis. In the traditional sales channel, commercial relations with final sales points are conducted by field personnel working as distributors on behalf of FRITO LAY through face-to-face meetings (verbal agreements) with final sales point representatives. The product supply method in the traditional sales channel is carried out on an order basis (cold sales) and through instant sales (hot sales) during route/point visits.⁵⁷ On this occasion, in order to monitor FRITO LAY's activities on traditional channels, FRITO LAY sales supervisors regularly inspect distributor employees, which means that distributor employees cannot act completely

⁵² Customers include grocery stores, buffets, nut shops, gas stations, and medium-sized markets.

⁵³ National and local supermarkets, discount markets and cash&carry markets.

⁵⁴ Customers such as restaurants, cafes and hotels

⁵⁵ In addition, undertakings such as *Getir* and *Yemeksepeti*, which operate on a shadow retail model, as well as online stores of chain supermarkets and online marketplaces, are also among FRITO LAY's customer groups.

⁵⁶ Therefore, detailed data on the on premise consumption channel is not provided.

⁵⁷ While FRITO LAY's traditional sales channel mostly uses a hot sales method, its closest competitor, DOĞUŞ, operates entirely through hot sales.

independently from FRITO LAY in the distribution and sale of FRITO LAY products. In conclusion, although FRITO LAY sales supervisors and distributor sales representatives work under different payrolls, it can be said that there is a hierarchical structure between them.

- (285) On the other hand, since the documents supporting the alleged infringement, which mostly involve FRITO LAY officials and distributor employees as the communication parties, point to exclusivity-based actions specific to the traditional sales channel, FRITO LAY's discount and investment practices will be discussed below, with a focus on the traditional channel.

Information on Discounts and Investment Practices

- (286) Examination of the process and operation of investments made by FRITO LAY shows that a channel-based distinction is made. In the organized sales channel, based on the size of the point of sale, shelf/refrigerator capacity, and customer portfolio of the point, shelf/refrigerator planograms and display recommendations are provided, and display stands, work for display stand in unused space, investment tools within the scope of the project, etc. are used. On this channel, the decision to make an investment or not is at the discretion of the sales point. In addition, (.....) may follow.
- (287) In the traditional channel, sales points are divided into four groups, ST1, ST2, ST2+, and ST3, based on their sales potential.⁵⁸ In the traditional sales channel, there are investments in different sizes of display stand types, drop & go,⁵⁹ display stand renewal, NPD display stands⁶⁰ used for displaying new products, display stand wheels, consumables, display stand development, and project investments.
- (288) FRITO LAY offers discounts under the name (.....), in the traditional sales channel. In the organized sales channel, it implements (.....).
- (289) It is stated (.....) by FRITO LAY.
- (290) FRITO LAY uses metal display stands with single compartments and 6-7 baskets which are easy to assemble and durable; wooden display stands that are heavy and long-lasting but mainly used for displaying non-refrigerated beverage products; plastic display stands used for displaying both food and beverage products, which have 3-6 tiers and are easy to transport; cardboard display stands that have 3-4 tiers and that are highly visual, not very durable, and generally used for promoting products that are new to the market and PO1 display stands, which began to be used in March 2023 and are designed for unused spaces, where both food and beverage products can be displayed.
- (291) In accordance with FRITO LAY's display stand policy, metal, wooden, plastic, and cardboard display stands are manufactured by supplier companies on behalf of FRITO LAY and stored in FRITO LAY's display stand storage area. Display stands are shipped to sales points as needed and set up by the sales team that receives them. No contract is signed with sales points for the delivery of the display stands in question (except for integrated display stands), and they are provided to sales points free of charge. Therefore, the cost is covered by FRITO LAY, and if the point of sale ceases operations

⁵⁸ Undertaking segmentation is carried out as follows: (.....).

⁵⁹ Non-display stand display equipment

⁶⁰ New Product Development.

or no longer wishes to use the display stand, it will be taken back by FRITO LAY. In addition, based on customer segmentation in the traditional sales channel, main equipment compatibility criteria have been adopted in terms of display stands placed at final points of sale. Within the scope of this criteria, the aim is for example to have (.....) display stand. Furthermore, the aforementioned display stands are subject to recycling over a period of approximately three years and are collected, refurbished, and returned to their final points of sale.

- (292) In the traditional channel, the *Pepsell* Mobile application is used by FRITO LAY to segment final points of sale, determine and monitor discounts given to these points, display stand compatibility, and other investment projects. With this application, the company can record many critical data from the final point of sale into its system and develop sales strategies based on this data.

I.4.2.3. Assessment on Exclusivity Actions of FRITO LAY

- (293) Below, FRITO LAY's exclusivity-based actions will be examined under two subheadings: "Direct Exclusivity" and "Indirect Exclusivity." Under the first subheading, the Board's case law on direct exclusivity in the packaged potato chips market and similar markets will be examined, along with some findings from the European Commission's *Intel* decision. This will be followed by an assessment of evidence classified as "*Evidence of the Restriction of Competitors' Activities*," and then a consideration of the attribution of independent distributors' actions to the suppliers. The second subheading, "Indirect Exclusivity," will provide information about the digital application called *Dükkan Senin* and examine it in the context of application discount systems.

I.4.2.3.1. Evaluation of Practices Related to Working Exclusively with FRITO LAY at Final/Retail Points of Sale

I.4.2.3.1.1. The Board's Approach and Standard of Proof Concerning

Exclusivity Practices at Final Sales Points in the Packaged Chips Market and Similar Markets

- (294) In competition law, the concept of a single brand agreement is broadly used to cover "non-compete obligations" and "quantity forcing agreements" that have similar effects on competition. The essence of single-brand agreements is to encourage the buyer to meet all or a significant part of their needs for a specific product or product group from a single supplier. Even if there is no written or verbal provision in the agreements that would lead to the sale of a single brand, if the supplier applies certain incentives such as loyalty discounts or target discounts, the agreement is still considered under this scope.
- (295) Single-brand agreements have four main negative effects: market foreclosure, coordination, prevention of in-store competition and price increases. On the other hand, single-brand agreements may also have positive effects such as solving the free-rider problem, the problem of reneging, and know-how transfer.⁶¹
- (296) In its decision dated 04.05.2004 and numbered 04-32/377-95, the Board examined FRITO LAY's agreements with final sales points, written or verbal, and analyzed

⁶¹ Vertical Guide, para. 118-121.

whether these agreements contained exclusivity, i.e., whether the agreements prevented the final sales points from establishing commercial relations with FRITO LAY's competitors and whether there was a need to revoke the exemption in the relevant market.

- (297) The following was concluded: FRITO LAY had sought to establish exclusive relationships with its sales points in writing and verbally since 1998. The agreements in question were not agreements made by FRITO LAY with distributors in its own distribution network. The agreements preventing the availability of competing products were made with final sales points such as grocery stores, kiosks, and markets. The only provision that could be considered a restriction on competition in both written and verbal agreements was the restriction referred to as a non-competition clause or exclusivity clause in the agreements. There were barriers to entry in the packaged chips market, and the market was characterized by a high concentration ratio of duopoly structure. In the relevant market with high concentration, FRITO LAY's aim to establish an exclusive system throughout Türkiye and its implementation carried the risk of further restricting the already limited conditions of competition. The availability ratio had changed in favor of FRITO LAY and the position of FRITO LAY's competitors in the market did not appear to create competitive pressure. Taking all these factors into consideration, it was concluded that inter-brand competition might be negatively affected due to FRITO LAY's market power and market share, the situation of its competitors, and barriers to market entry.
- (298) As a result, the Board decided that the exclusivity measures targeting final sales points were found to have effects inconsistent with the conditions set forth in Article 5 of Act No. 4054 and therefore not to meet the requirements of the aforementioned article. Consequently, it was ruled that the exemption should be withdrawn in accordance with Article 6 of the Vertical Communiqué and Article 13 of Act No. 4054. Furthermore, it was decided that, in this context, practices such as providing free products or various gifts to final points of sale, offering discounts or rebates should be regulated in a manner that was not dependent on exclusivity and did not lead to de facto exclusivity and that provisions relating to exclusivity in written agreements should be amended.
- (299) The exclusivity that the dominant undertaking achieves at the final points of sale through single-brand agreements reduces the availability of its competitors, reduces inter-brand competition, and thus leads to the anti-competitive foreclosure effect in the market. As mentioned above, the Board has withdrawn the exemption granted for exclusivity at final points of sale in the packaged chips market in order to ensure effective competition in the market. Therefore, the Board's case law to date does not indicate a lenient approach to exclusivity agreements concluded by a dominant player with final sales points. Indeed, the Board closely examined the beer market, the raki market, the carbonated beverage market, and the industrial ice cream market, which share a similar structure to the packaged chips market and based on similar assessments regarding exclusive agreements at final sales points involving dominant undertakings in these markets and decided to withdraw the exemption.
- (300) With regard to the beer market, in its decision dated 22.04.2005 and numbered 05-27/317-80 on the withdrawal of the exemption, the Board stated that *Efes Paz. ve Dağ.*

AŞ (EFPA) held a strong brand, whereas *Bimpaş Bira ve Meşrubat Pazarlama AŞ*⁶² (BİMPAŞ) was the second major player in the market, the non-compete obligations contained in the exclusive purchasing agreements concluded by EFPA and BİMPAŞ or their distributors with both on premise final sales points and off-premise final sales points, (exclusivity clause) and the obligations such as exclusive purchasing obligations, minimum purchase and sales obligations, loans and discounts and other contributions linked to the condition of selling a single brand, which caused this effect, constituted a significant obstacle to effective competition in the beer market.

- (301) Regarding the *rakı* market, in the Board's decision dated 10.09.2007 and numbered 07-70/863-326 on the withdrawal of the exemption; It was assessed that *Mey İçki San. ve Tic. AŞ (MEY İÇKİ)* held a dominant position in the *rakı* market, its exclusive distribution practices targeting final sales points exclude competitors and did not benefit consumers, they limited consumers' product choice, and the application of exclusivity with sales points by the dominant undertaking could lead to the closure of the market. The Board decided that the following practices that the undertaking resorted to in order to make the point of sale effectively exclusive or made in a way to create such results must also be terminated: changing the frequency of service and providing free products or discounts based on quotas linked to certain minimum purchase/sale conditions.
- (302) With regard to the carbonated beverage market, in its decision dated 10.09.2007 and numbered 07-70/864-327, the Board withdrew the exemption granted to *Coca-Cola İçecek AŞ (CCI)* on the following grounds: CCI holds a market share of over 60%. There are barriers to market entry such as brand awareness and advertising expenditures, portfolio strength and product differentiation, access to sales channels, and the ability of customers to act independently. A significant portion of CCI's exclusive practices in both the traditional channel and in-point consumption channel are not based on written agreements. Sales points are provided with advantages such as conditional discounts and free products. Sales points are allocated cabinets under lease agreements, and these cabinets play an important role due to their effects leading to de facto exclusivity. The effects of exclusivity are limited in retail point of sale locations larger than 100 m², and the main factor in the conversion of cabinet exclusivity into actual exclusivity is the size of the point of sale.
- (303) Regarding the industrial ice cream market, in the Board's decision dated 15.05.2008 and numbered 08-33/421147 on the withdrawal of the exemption, an investigation was conducted into whether the undertakings operating in the industrial ice cream market had entered into exclusive agreements with sales points or engaged in activities creating de facto exclusivity. It was stated that *Unilever San. ve Tic. AŞ (ALGIDA)* was in a dominant position in the industrial ice cream market and there were barriers to entry into the industrial ice cream market such as brand awareness, advertising expenditures, the cost of establishing a cold chain distribution network and access to sales channels; entrants into the market had a very limited impact on ALGIDA, the foreclosure rate was low in terms of exclusivity established by contract, but the foreclosure rates resulting from cabinet and other actual exclusivity practices reached significant levels in the market; therefore, the exclusivity conditions in the contracts signed by ALGIDA and its distributors with sales points and the practices that

⁶² BİMPAŞ's trade name was changed to *Tuborg Pazarlama AŞ* on 23.09.2013

effectively lead to exclusivity constituted an obstacle to effective competition in the relevant markets.

(304) It is understood that the following reasons were primarily considered by the Board in its decisions to revoke the aforementioned exemption;

- There are barriers to entry in the relevant markets,
- The relevant markets generally have a duopolistic structure,
- Competitors do not have the potential to create competitive pressure on the dominant undertaking,
- Brand awareness is important in the relevant markets, and
- Exclusive agreements, either direct or indirect, entered into by the dominant undertaking with final sales points constitute an obstacle to the emergence of effective competition in the relevant markets.

(305) Numerous inquiries and investigations were conducted to determine whether agreements that could lead to direct or indirect exclusivity with final sales points had been concluded following the decisions to withdraw the exemption in the markets in question. In this context, two decisions considered important in terms of the case file are given below.

Board decision dated 13.07.2011 and numbered 11-42/911-281 (Efes 2011)

(306) In its relevant decision, the Board evaluated the information and documents obtained within the scope of the investigation launched to examine the allegations that EFES and its distributors demanded that sales points sell only Efes-branded beers in order to supply them with products and/or that they made it difficult for sales points selling competing products to operate through various practices, as well as whether the discounts provided to sales points constituted exclusive practices. It was observed that EFES imposed a non-competition obligation on certain final sales points or entered into agreements with certain points that could have such an effect, that numerous agreements were signed with sales points under the name of “availability agreements,” and that some of these agreements contain handwritten provisions imposing quantity restrictions.

(307) Furthermore, it was stated in the decision, which withdrew the block exemption from all of EFES's vertical agreements containing exclusivity clauses or having that effect,⁶³ that contracts to be concluded with a number of points that would not create a market foreclosure effect were not allowed. Therefore, it was assessed that what was important in terms of availability agreements aimed at quantity restrictions was not only that these agreements contain an exclusivity clause, but also that they had a quality that could give rise to such an effect, and that a decrease in the number of agreements did not eliminate the existence of a violation as long as the provisions of the availability agreements had a negative effect on competition. Although the defense claimed that the purpose of availability agreements aimed at quantity restrictions was not generally to restrict competition, it was concluded that the existence of availability agreements with a restrictive effect on competition was sufficient to establish a violation within the meaning of Article 4 of Act No. 4054.

⁶³ Board decision dated 22.04.2005 and numbered 05-27/317-80

- (308) As a result of all these assessments, the Board decided that EFES engaged in practices that imposed an obligation not to compete with final sales points, which was prohibited by the Board's decision dated 22.04.2005 and numbered 05-27/317-80, and that an administrative fine should be imposed on the undertaking.

Board decision dated 29.08.2013 and numbered 13-49/711-300 (Frito Lay 2013)

- (309) In its decision, the Board assessed whether FRITO LAY's practices of de facto exclusivity in its sales channels and increasing point stock in the traditional channel resulted in the exclusion of competitors, based on all information and documents obtained during the investigation. FRITO LAY was found to attempt to secure exclusivity at final points of sale through practices aimed at the exclusive sale of their products such as providing free products, discounts or rebates, cash payments, budget allocations, or incentive payments to sales representatives, in exchange for the removal of competitors from points of sale. Another noteworthy aspect of the decision is that it stated that an increase in the market shares or availability rates of FRITO LAY's competitors could not be considered as proof that the dominant undertaking did not engage in the actions in question.
- (310) On the other hand, based on the Board's decision⁶⁴ to withdraw FRITO LAY's exemption, it was highlighted that FRITO LAY's providing certain advantages to sales points and/or practices that would result in de facto exclusivity aiming to establish an exclusive system should be prevented, considering that FRITO LAY was a dominant undertaking, FRITO LAY must refrain from such actions within the scope of its special responsibility, and the following findings and assessments were reiterated: The exemption granted to FRITO LAY's exclusive agreements with all types of final sales points (supermarkets, grocery stores, nut shops, buffets, beaches, hotels, etc.) where its products are sold, including school canteens, was withdrawn, the undertaking has been prohibited from engaging in any conduct within this scope or that could have the same effect in practice and that within this framework, practices such as providing free products or various gifts, offering discounts or reductions must be implemented without being subject to the exclusivity condition and in a manner that does not result in de facto exclusivity.
- (311) Based on all these assessments, it was determined that FRITO LAY engaged in practices aimed at ensuring the exclusive sale of its products at final points of sale, such practices were carried out by mid-level/senior managers or with their knowledge, these practices were not individual but are widely implemented, thus it was decided that exclusivity for final points of sale cannot be granted individual exemption and an administrative fine should be imposed on the undertaking.
- (312) In light of the abovementioned decisions, in the Board's case law regarding direct or indirect exclusivity practices in the packaged chips market and markets with a similar structure, where the exemption has been revoked, it is understood that:
- The negative effects of discounts provided by the dominant undertaking in the form of free products, cash payments, budget or credit facilities at the final point of sale for the exclusive sale of its products outweigh the positive effects on competition,

⁶⁴ Board decision dated 04.05.2004 and numbered 04-32/377-95

- Under normal circumstances, it is generally accepted that exclusivity-based practices in distribution systems create efficiency in the market, however, practices that result in exclusivity at the final points of sale may prevent competitors from entering the market, thereby reducing the availability and visibility of competitors, decreasing inter-brand competition, and limiting consumer choice,
- The discount and concession practices in question have no effect on the sales prices of the products and therefore do not provide any direct or indirect benefit to the final consumer in the form of price advantages, but rather aim to secure exclusivity at the final points of sale and
- If they are made with the knowledge of the undertaking officials in a strategic manner, exclusivity agreements with final points of sale constitute a violation of the decision to withdraw the exemption and therefore they must be penalized.

- (313) When examining the source practice, it is useful to refer to the Commission's decision on Intel. The Commission has ruled that Intel Corp. Inc (INTEL)'s decision to impose conditions such as postponing or canceling orders in order to restrict its distributors from marketing AMD products, which is its competitor, and to make payments to its distributors only if they comply with these conditions, cannot be considered a normal competitive practice, but rather constitutes an obvious restriction and therefore an abuse of the dominant position.⁶⁵
- (314) The Commission stated that INTEL's conduct harmed the legitimate competitive environment that would have existed in the absence of such conduct and restricted the choices of end consumers. It emphasized that this conduct resulted in the final consumer demand for AMD products not being met, either completely or to a significant extent, because AMD products were not provided to the market at all and/or on time⁶⁶. Furthermore, the Commission stated that such conduct of the dominant undertaking was not carried out within the scope of economic activity and therefore it did not meet the criteria for rule of reason.⁶⁷ Therefore, the Commission ruled that such conduct constituted a naked restriction and although discount systems were not explicitly subject to exclusivity conditions, they must be subject to detailed analysis insofar as their effects were such as to give rise to this situation and in its decision, the Commission distinguished the legal standards for determining infringements in relation to these two types of conduct.⁶⁸ The Commission also noted that these two conducts were carried out as part of a single ongoing strategy aimed at foreclosing the market⁶⁹.
- (315) The Commission's 2009 Intel decision was annulled in respect of other claims, particularly those relating to the application of the equally efficient competitor test, and accordingly, the Commission adopted a new decision in 2023 merely reiterating the

⁶⁵ Intel, Case COMP/AT.37990, EU Commission, 13.05.2009, para. 1681

⁶⁶ The aforementioned decision, para. 1679.

⁶⁷ The aforementioned decision, para. 1680

⁶⁸ This approach is consistent with the second sentence of paragraph 22 of the Guidelines, which state, *"There may be cases where it is not necessary to make a detailed assessment of whether the behavior under review has caused consumer detriment. If the behavior under review only prevents competition and does not create any efficiency, then it can be said to have anti-competitive effects. Such a situation would arise, for example, where the dominant undertaking prevents its customers from trying out competitors' products, provides financial incentives to its customers on condition that they do not try out such products, or pays a distributor or customer to delay the promotion/launch of a competitor's product."*

⁶⁹ The aforementioned decision para. 1737-1748

detection of hard core restrictions in relation to Intel.⁷⁰ The 2023 decision emphasized that the initial ruling, which stated that hard core restrictions could not be considered legitimate competitive actions, they pursue an anti-competitive purpose, and they are inherently restrictive of competition, was also upheld by the courts.⁷¹

I.4.2.3.1.2. Evaluation Regarding Evidence Obtained During On-site Inspections

- (316) Within the scope of the file, on-site inspections were conducted at FRITO LAY's headquarters and regional offices in Istanbul, Ankara, Izmir, Bursa, Antalya, Muğla, and Samsun, as well as at its distributors' premises. Communication with final sales points was largely carried out verbally by sales representatives. Written agreements were not made in the traditional channel. These facts together with FRITO LAY's extensive experience and awareness of competition law may make it difficult to identify behavior aimed at establishing sole distribution/exclusivity at final sales points. The evidence includes statements such as *"No, you didn't remove it; the customer removed it because they didn't like it, right?"*, *"We didn't remove it, the customer must have removed it themselves"*, *"There's the Competition Authority, don't."* *"These statements could be problematic for the Competition,"* *"Let's eliminate this text; SNX is very problematic in terms of competition,"* *"Don't write these down, my friend,"* *"I'm telling you this face to face,"* and other similar statements indicate the situation in question.
- (317) However, on-site inspections conducted between December 2018 and January 2024⁷² revealed substantial evidence in almost every region inspected that FRITO LAY had made it difficult for its competitors to operate in the packaged chips market at the final points of sale⁷³ in the traditional channel. For example, in Evidence 1, Sales Representative (.....) said to FRITO LAY Sales Manager (.....) *"...We removed the Patos shelf; we're the only ones left,"* to which the FRITO LAY Sales Manager (.....) responded, *"No, you didn't remove it; the customer removed it because they didn't like it, right?"* and the Sales Representative (.....) replied, *"I removed it, boss."* In Evidence 23, Sales Representative (.....) tells FRITO LAY Sales Manager (.....), *"Patos record is gone, boss 😊"* and the FRITO LAY Sales Manager (.....) responded, *"Good job 🙌🙌🙌🙌."*
- (318) When the aforementioned evidence is examined in general, it was observed that FRITO LAY officials and distributor employees completely terminated the activities of competitors at final points of sale, reduced the visibility of competitors' products at final points of sale, removed all or part of competitors' display stands from final points of sale, stockpiled products at sales points in order to prevent competitors from supplying goods to their final sales points and took numerous actions to plan or actively strive to remove the competitor from the point of sale. Some of the evidence indicates that, under agreements with final sales points, the final sales point agreed not to source products from competitors but attempted to sell or return any remaining stocks of competitor products. In fact, some evidence suggests that the remaining competitor

⁷⁰ Intel, Case COMP/AT.37990, EU Commission, 22.09.2023.

⁷¹ The aforementioned decision, para. 10, 44

⁷² The closest evidence to the first piece of evidence dated 21.09.2016 points to December 2018. Taking into account the gap between the two pieces of evidence, the date of the first piece of evidence has not been included in the specified date range. The dates of the last two pieces of evidence could not be determined.

⁷³ Similar actions have also been observed in some small local markets. In the classification of the undertaking's sales channels, it is understood that markets of this nature are included in the traditional channel.

products were temporarily placed in the lower sections of the FRITO LAY display stands.

- (319) In this context, it is considered that FRITO LAY's relevant activities are carried out with a view to establishing direct exclusivity at the final points of sale. It appears that the relevant actions are largely carried out by distributor employees (sales representatives) who are field personnel. In addition, distributor sales representatives report to FRITO LAY sales managers and/or regional managers on their activities at the final points of sale via WhatsApp groups and/or one-to-one correspondence. Furthermore, in most of the relevant correspondences, statements expressing satisfaction with the situation by FRITO LAY officials can be found in response to reports made by sales representatives regarding the establishment of exclusivity. In addition, it was proven with evidence that FRITO LAY officials also communicated among themselves regarding the actions in question. Additionally, some evidence directly reflects FRITO LAY officials' strategy of establishing exclusivity at final points of sale.
- (320) Some evidence indicates that sales representatives requested budgets from FRITO LAY officials in order to remove competitors from the final points of sale while reporting on their status; in some cases, FRITO LAY officials reminded sales representatives that budgets could be used for this purpose.
- (321) As shown in the evidence, FRITO LAY has identified four basic headings for budgets to be used at final points of sale. These are listed as (.....) in the relevant evidence. In this regard, some evidence shows that the undertaking was able to allocate additional budgets to final points of sale through the *Dükkan Senin* application. Moreover, based on numerous pieces of evidence obtained during on-site inspections, it appears that payments were made in exchange for terminating agreements with competitors at final points of sale, reducing competitor visibility, and reducing availability by removing competitor display stands either completely or partially. In addition, it was observed that the budget could also be used to buy competitor products at the final point of sale in order to prevent the display of competitor products. It is understood from some pieces of evidence that FRITO LAY purchased products belonging to a competing undertaking in order to remove those products from traditional points of sale. For instance, it is inferred from the text in Evidence 74 "*We removed patos by buying the products in the display stand 🐷🐷🐷*" sent by the Sales Representative, saved as (.....), to the WhatsApp group including FRITO LAY and distributor sales team called "*ALANYA FRITO LAY team*" that FRITO LAY bought competing products to remove them from the traditional points of sale.
- (322) In a small number of cases, it was observed that the competitor resumed operations at its final point of sale after the exclusivity was established. However, there is also evidence that, despite the competitor's actions such as providing free products, the process still resulted in the removal of the competitor from the final points of sale.
- (323) Finally, some evidence suggests that sanctions were imposed, such as not providing budgets to final sales points that sourced products from competitors and disrupting the shipment of goods. For instance in Evidence 89, it is seen that Sales Chief (.....) said to FRITO LAY Sales Manger, "*I'm going nuts dude, how can they operate a store with those brains let's not load money to (.....) from now on he bought patos I forgot to tell you*" and FRITO LAY Sales Manager responded "*OK I'll cancel it.*" Also, some evidence shows that there are statements in the final point of sale representatives'

communication with FRITO LAY sales managers, indicating that they worked on an exclusive basis.

- (324) Taking into account all information and documents, legislation and case law, and with respect to examining the establishment of direct exclusivity through verbal agreements, it was concluded that there was a large amount of evidence obtained from every region where on-site inspections were conducted, pointing to actions by FRITO LAY and/or its distributors aimed at hindering the competitive activities of its competitors in the packaged chips market, and FRITO LAY's mid-level and senior management were involved in, aware of, and approved of the practices in question, and that the actions aimed at direct exclusivity were of a strategic nature. As a result, it has been concluded that FRITO LAY's actions aimed at exclusivity in traditional channel final sales points violate Article 4 of Act No. 4054.
- (325) Finally, in the decision of the Board dated 04.05.2004 and numbered 04-32/377-95, it was concluded that the exclusive sales system implemented by the undertaking at its final sales points in the market, either through written contracts or in practice, did not meet the conditions set forth in the 2002/2 numbered Communiqué and, consequently, in Article 5 of Act No. 4054, therefore, in accordance with Article 6 of the Communiqué and Article 13 of the Act, it was ruled that the exemption granted to the undertaking shall be withdrawn and, in this context, that practices such as giving away free products or various gifts, offering discounts or rebates should be applied without being subject to exclusivity conditions and in a manner that would not lead to de facto exclusivity, and that provisions relating to exclusivity in written contracts should be amended. Considering the relevant market and the effects of the action in terms of FRITO LAY's direct and indirect exclusivity practices at its points of sale, it is found that there is no development that could change the assessment in the aforementioned decision and, therefore, the actions in question cannot benefit from the exemption under Article 5 of Act No. 4054.

I.4.2.3.1.3. Assessment on the Attributability of Distributor Actions to FRITO LAY

- (326) FRITO LAY has a hierarchical structure in the traditional sales channel, in which the traditional channel leader, sales managers, regional managers, and finally sales directors are positioned in order. FRITO LAY's distributors are independent undertakings, and the distributors' sales representatives are not directly part of this hierarchy. On the other hand, most of the evidence obtained in the file indicates that the exclusive actions were mostly carried out by distributor salaried field personnel who are not working within FRITO LAY. In this context, the question arises as to whether a provider undertaking can be held liable for actions carried out by independent distributors in competition law.⁷⁴
- (327) In 2017, the Italian Competition Authority⁷⁵ decided to impose an administrative fine on Unilever Italia Mkt Operations Srl (Unilever Italia) for abuse of its dominant position.⁷⁶ In the relevant decision, the Authority emphasized that the conduct found to be a violation was carried out by distributors, but ruled that Unilever Italia prevented its distributors from acting independently by controlling their commercial policies, and

⁷⁴ This does not refer to actions that restrict competition under a direct agreement between the supplier and the buyer.

⁷⁵ *The Autorità Garante della Concorrenza e del Mercato* (AGCM).

⁷⁶ AGCM v. Unilever Italia, No. 26822, A484, 31.10.2017.

therefore that the distributors and Unilever Italia should be considered a single economic entity and that Unilever Italia was solely responsible for the actions of its distributors.

(328) With regard to this decision, which is still pending before the courts, the Italian Council of State⁷⁷ sought the opinion of the CJEU on whether an undertaking in a dominant position is liable under Article 102 of the TFEU for actions carried out by independent distributors forming part of the distribution network for its products, pursuant to Article 267 of the TFEU. In its preliminary ruling of 2023⁷⁸, the CJEU essentially stated that the Italian Council of State demanded an assessment on whether the existence of a distribution agreement between a supplier and its distributors is sufficient on its own to attribute liability to the supplier, and if not, under what circumstances the supplier may go beyond the distribution agreement to exert a decisive influence over the commercial decisions of independent distributors, thereby making the actions of the independent distributors attributable to the supplier. The CJEU ruled that

- Other implied actions that may arise within the context of the main distribution agreement between the parties may, in principle, not be considered unilateral actions, but rather accepted as part of the agreement and therefore, in principle, Article 101 of the TFEU may apply to such behavior,
- However, this comment does not mean that the dominant undertaking cannot be held liable under Article 102 for the actions of its distributors with whom it has only distribution agreements, and therefore its liability under Article 102 may be subject to separate assessment, indeed the dominant undertaking has a special responsibility to ensure that its conduct does not restrict competition in the market,
- This special responsibility covers not only actions carried out by the dominant undertaking itself, but also actions carried out by independent legal entities that are bound by the instructions of the dominant undertaking,
- Therefore, when the conduct is carried out by an independent intermediate business that is part of the distribution network rather than by the dominant undertaking, if it is determined that the conduct was adopted in accordance with instructions that the business in question was required to comply with, the dominant undertaking shall be identified as the main actor responsible for the conduct, and responsibility for the conduct shall be attributed to the dominant undertaking,
- This situation would apply in particular where the dominant undertaking requires distributors to conclude standard contracts containing exclusivity clauses in favor of its own products with final sales points, and it would not be reasonable for the dominant undertaking to claim that it was unaware that its commercial policy would be applicable in such a situation, given its legal and economic relationship with its distributors,
- When attributing responsibility to a dominant undertaking pursuant to Article 102 of the TFEU for conduct engaged in by distributors, it is not necessary to

⁷⁷ *Consiglio di Stato*.

⁷⁸ Case C-680/20, *Unilever Italia v AGCM*, ECLI:EU:C:2023:33, 19.01.2023, para. 23-33.

demonstrate that the distributors concerned are part of the dominant undertaking.

- (329) In conclusion, in the preliminary ruling, the CJEU stated that if it is determined that the actions of independent distributors responsible for the distribution of goods and services of a dominant producer are part of a policy determined by the dominant undertaking, the responsibility for the actions carried out by the distributors can be attributed to the dominant undertaking.
- (330) The evidence obtained during the on-site inspection shows that the exclusivity behaviors carried out by the field personnel, who are distributor sales representatives, took place with the knowledge and approval of FRITO LAY sales managers and regional managers in particular. The WhatsApp groups mentioned in many pieces of evidence obtained for the file are work-related groups that include both FRITO LAY sales teams and distributor sales teams. Furthermore, on-site inspections revealed that some distributors allocated workrooms to sales managers and regional managers working under FRITO LAY payroll at their addresses.
- (331) On the other hand, the bonus/incentive system applied by FRITO LAY in addition to employee wages essentially has a pyramid structure. In the premium system applied, FRITO LAY employees, including sales managers, regional managers, and sales supervisors, are given new sales targets based on the previous year's sales data within the company, and bonuses are paid according to the percentage of the target achieved. FRITO LAY has also included sales representatives, who are distributor employees, in this system; the performance of sales representatives affects sales managers, the performance of sales managers affects regional managers, and the performance of regional managers affects sales directors. Therefore, it is clear that, in terms of the current file, the premium system⁷⁹ encourages sales representatives to sell more of their own products by trying to remove competing products from the final points of sale, and that the increase in sales in turn affects the performance and bonuses of the sales representative, sales manager, regional manager, and sales director. Indeed, some evidence obtained during the on-site inspection points to examples of payments being made to final sales points in exchange for the removal of competitors' display stands from sales points and the non-purchase of competitors' products and sales representatives who are distributors' employees provide for such budgetary needs with the approval of FRITO LAY officials. In light of all this, it is considered that the distributors' exclusive practices are not independent of FRITO LAY's commercial policies and that actions aimed at hindering the activities of competitors can therefore be attributed to FRITO LAY.

⁷⁹ In competition law, whether bonus/incentive systems give rise to anti-competitive effects has been examined particularly in relation to actions concerning common agents that sell airline tickets on behalf of competing undertakings, see *Virgin/British Airways* OJ [2000] L30/1, *South African Competition Commission v. South African Airways (Pty) Ltd.* 18/CR, [2005].

I.4.2.3.2. *Dükkan Senin* App and Evaluation Thereof

I.4.2.3.2.1. How *Dükkan Senin* App Works

- (332) Whether *Dükkan Senin* app used by FRITO LAY causes indirect/ de facto exclusivity is examined within the scope of the allegations. In this context, information about *Dükkan Senin* will first be provided under this heading, and the following heading will contain assessments on whether competition is restricted by the app.
- (333) *Dükkan Senin*, which has been in operation since May 2018, is a platform that is open to traditional channel final sales points as well as a relatively small number of local supermarkets and on premise consumption customers, and is currently used by approximately (.....) final sales points.⁸⁰ Final sales point managers can log in to the system using their tax identification numbers or phone numbers, and they can also download and install the app on their mobile devices. In the following cases, points are credited to the accounts of the final sales points defined in the system via the *Dükkan Senin* application:⁸¹
1. Customers receive 1 point in their account for every 1 ₺ worth of purchases made from PEPSICO (FRITO LAY and PEPSI products) without being tied to any campaign or target.
 2. The Coefficient Campaign: Made monthly and open to all users, coefficient campaigns are a type of campaign in which points are multiplied by “2” and credited to customers' accounts when they achieve both their minimum beverage target (₺) and total target (₺)⁸². The total target assigned to users in monthly coefficient campaigns throughout the year can be fulfilled either by purchasing beverages alone or by purchasing a combination of beverages and packaged chips. A minimum precondition has been set for beverage products in coefficient campaigns.
 3. Product Campaign: In product campaigns that are also monthly but not open to all customers, various groups are created based on customers' purchasing potential, and therefore campaigns tailored to customers with similar profiles and targeted at purchasing a single product are prepared. If the targets of these campaigns (₺) are met, customers will receive the number of points specified in the campaign. It is up to customers to decide whether or not to participate in these campaigns. In this context, product-based campaigns generally target a specific brand or product type.

⁸⁰ The platform, which essentially manages periodic campaigns, also tracks investments such as sales support budgets and cooler installation support. Although the system also offers the option of ordering online, the percentage of online orders is only (.....) of the total orders. At the same time, the statements in Evidence 147 also indicate that the system has not yet been brought to a sufficient level in terms of e-orders.

⁸¹ The value of 1,000 points in ₺ is approximately (.....) ₺.

⁸² For the majority of customers, the coefficient is 2; however, in order to expand the customer base and allow new customers to adapt to the system, it can be applied as 3 or 4 to a limited number of customers. On *Dükkan Senin* platform, users who have logged into the application at least once in the past three months are defined as *active customers* while users who have recently started using the app are defined as *new users*. The platform aims to expand the customer base by offering more advantageous campaigns to new customers.

4. Additionally, points can be earned through activities such as participating in surveys, watching videos, playing games, and logging into the system daily, regardless of purchasing behavior.

- (334) The first type of points mentioned above is offered without any target conditions, and the last type is offered without being tied to any purchase behavior. Both of these practices are considered to be standard and open to all customers of *Dükkan Senin*, and it is thought that these types of points only provide a financial benefit. On the other hand, FRITO LAY/PEPSICO also organizes coefficient campaigns and product campaigns through the *Dükkan Senin* application based on purchase conditions such as time and target, and final sales points can also earn points through these campaigns if they meet the necessary conditions.⁸³
- (335) Users/customers can spend the points they earn on a wide range of products, such as shopping gift vouchers, internet packages, fuel points, and beverage gift vouchers, from the *Dükkan Senin* reward catalog by purchasing coupons through the app. Packaged chips are not given as gifts in exchange for points earned through *Dükkan Senin*. Points that must be used within one year are used to select products from the above-mentioned reward catalog, and no cash payments are made to the final points of sale in any way.

I.4.2.3.2.2. Evaluation Regarding the *Dükkan Senin* App

- (336) With the Board decision dated 2004, the exemption granted to FRITO LAY was revoked, and the decision also ruled that practices such as giving away free products or various gifts, offering discounts or rebates should be applied without being subject to exclusivity conditions and in a manner that does not lead to de facto exclusivity. It is observed that the advantages offered to final points of sale through *Dükkan Senin* app are not subject to conditions that could create direct exclusivity, such as not selling or displaying competing products. In this regard, it should be considered whether the discounts (loyalty discounts) offered by *Dükkan Senin* encourage its final sales points to purchase all or a significant portion of their purchases from FRITO LAY. For this purpose, the *Dükkan Senin* app will be evaluated under this heading, firstly in light of the information presented in the theoretical section on discount systems.
- (337) Firstly, it should be noted that the advantages provided to final sales points through coefficient and product campaigns carried out via the *Dükkan Senin* app are subject to certain conditions such as target and duration. In this context, it is clear that coefficient and product campaigns constitute a discount system, as they can influence the purchasing behavior of final sales points.
- (338) As mentioned, the first distinction in a discount system can be made between single-product discounts and package product discounts, depending on the number of markets/products covered by the discount. When considering product campaigns, there is no campaign type that is designed to sell beverages and packaged chips together and that set a common target for them. It is found that product campaigns are implemented either for beverages alone or for packaged chips alone. Therefore, it is not possible to talk about package sales in product campaigns. When considering coefficient campaigns, it is observed that the targets are both for beverages and total

⁸³ Therefore, the evaluation of the *Dükkan Senin* application focused on coefficients and product campaigns.

sales, final sales points must achieve both to earn points, there is a clear target for beverage products but no clear target for packaged chips, the campaign can be used by purchasing both products, but it can also be used by purchasing beverages alone. Therefore, it is not possible to make a clear distinction between single product/package product discounts in terms of coefficient campaigns.

- (339) Another distinction in the discount system can be made between fixed-rate and increasing rate discounts, taking into account the layers of the discount. When examining the campaign for the purpose of addressing the topic in terms of product campaigns, it was observed that the undertaking carried out a “2-3 TL (Small Size)” campaign in August 2020, six different groups/stages were organized within the campaign, and the final sales points could switch between groups according to their purchases. In this context, increasing discounts can be organized in proportion to increasing targets in product campaigns. In addition, it can be seen that product campaigns can also be organized in a single tier. Product campaigns can include both fixed and increasing rate discounts. On the other hand, in coefficient campaigns, it is observed that only a single tier is established to qualify for the coefficient, and fixed-rate discounts are applied in coefficient campaigns.
- (340) Another distinction in the discount system can be made between upper-tier discounts and retroactive discounts, depending on the purchase quantities to which the discounts are applied. In this context, it is understood that discounts are applied retroactively, since the final sales points are eligible for points covering all purchases made up to that point if the target set in the coefficient and product campaigns is exceeded.
- (341) Another distinction that can be made in the discount system is between standard and personalized discounts, depending on whether the discount is standard or not. Firstly, it is notable that product campaigns that can be viewed and participated in through the app can be differentiated for each customer. In addition, although FRITO LAY states that certain scales are established based on the overall purchasing potential of its customers, then they are grouped and a single scale is assigned for each group, this indicates a personalized target discount rather than a standard target discount.⁸⁴ When considering coefficient campaigns, although the relevant campaign appears to be open to all customers, evidence obtained from on-site inspections shows that different targets can be set, particularly in terms of total targets, even within the same customer group (T1, T2, T2+, T3) at the final points of sale, and therefore that targets may vary depending on the final point of sale. It is observed that the relevant targets are designed by taking into account the past and current purchase data of the final sales points. In fact, although only to a small extent, different coefficients can be defined for sales points that have achieved their purchase targets, and the points earned can be multiplied by the coefficients and credited to the accounts of the final sales points. Therefore, the discount system has been regarded as personalized targeted in terms of both product and coefficient campaigns.
- (342) Based on the above, the discount system implemented through *Dükkan Senin* is classified as retroactive, fixed/increasing rate and personalized targeted single-product

⁸⁴ In addition to all this, FRITO LAY was found to be able to track many critical data points related to final sales points through *Pepsell* Mobile; sales managers and sales representatives can instantly monitor which sales points are included in which campaigns, how much purchase has been made under that campaign, how many points can be earned, etc.

discount system. Based on this, the following findings and assessments have been made regarding whether such a discount system with high loyalty enhancement potential leads to anti-competitive exclusion.

- (343) The market foreclosure effects of exclusivity-based actions taken by an undertaking in a dominant position in the relevant market are examined separately for each concrete case; the scope of the exclusivity-based actions examined in the market, the level of trade carried out by the buyers exposed to the actions in question, the barriers to entry in the market where the actions took place, the importance of the dominant undertaking in terms of customers, and the duration of the exclusivity actions are among the main issues examined.
- (344) It is established that FRITO LAY, which has been the largest player in the market for over 25 years, has been dominant in all past Board decisions. In addition, considering FRITO LAY has more than five times the market share of its closest competitor in terms of both volume and turnover over the last five years, and the market shares of the third and fourth largest undertakings operating in the market are considerably lower than that of FRITO LAY, the market exhibits characteristics of an oligopoly close to a duopoly structure, and that there is a similar distribution in market shares in the traditional channel, where exclusive actions are concentrated, FRITO LAY's market share in the traditional channel has increased over the past five years while its closest competitor has lost market share in the aforementioned market, it is concluded that FRITO LAY is in a very strong position compared to its competitors.
- (345) On the other hand, considering that the number of customers in FRITO LAY's traditional channel changed between 2019 and 2023 as (.....), while the number of registered customers in *Dükkan Senin*, which was launched in 2018, was (.....), (.....), (.....), (.....), and (.....) between 2018 and 2023, approximately 54.5% of these customers are active customers⁸⁵ based on current internal data, it is estimated that the actions taken by FRITO LAY through the *Dükkan Senin* application are quite extensive and that their scope is increasing.
- (346) The imposition of exclusivity arrangements by a dominant supplier on a retail-level buyer may create a greater anti-competitive market foreclosure effect than if the buyer were operating at the wholesale level. In other words, the closer the level of trade at which exclusivity is applied is to the end user is, the greater the likelihood that the relevant market will be closed to existing or potential competitors will be. Based on this, considering that FRITO LAY's actions under "*Dükkan Senin*" program are directed at final sales points, it is concluded that such actions have a market foreclosure effect.
- (347) The more difficult it is for competing suppliers to reach alternative buyers and/or create new buyer channels, the greater the foreclosure effect that the dominant undertaking's exclusivity arrangements will have on the market. Due to the packaging format of packaged chip products, there is a risk of package tearing, bursting, or product breakage/crushing inside the package and it is understood that eliminating these risks requires the product to be transported only with similarly packaged products and the aforementioned requirement hinders the efficient performance of distribution activities. Based on this, the requirement for an undertaking operating in the packaged potato chip production sector to have an appropriate distribution network constitutes a barrier

⁸⁵ Users who have logged into the application at least once in the past three months.

to market entry. Indeed, considering that only FRITO LAY, which holds a dominant position in the market, and FRITO LAY's closest competitor possess distribution networks, it is thought that this factor significantly contributes to the market's near-duopoly structure.

- (348) Additionally, FRITO LAY's over 25 years of experience in the packaged chips market, its high brand recognition, and the short shelf life of packaged chips products (limited to approximately four months) prevent sales points from opting for other branded packaged chips products. This situation, when considered together with the fact that packaged chips are impulse products and therefore it is very important for them to reach the final consumer through display stands or other display equipment, makes it difficult for new players to enter the market. In light of all these explanations, it is concluded that the packaged chips market is a market with high entry barriers and that the exclusivity-based actions carried out by the dominant FRITO LAY create a market closure effect.
- (349) When considering both the sales volume and sales area of traditional sales points, many fast-moving consumer goods cannot be sold in these points compared to organized channel sales points. For similar reasons, the variety of brands available in fast-moving consumer goods sold in traditional sales points is also lower compared to organized channel sales points. For this reason, it is natural that products with high sales rates and profit margins are preferred in traditional sales points. Within the scope of the current decision, FRITO LAY's high availability and weighted availability rates in traditional channel sales points are also in line with the explanations. In summary, FRITO LAY's packaged potato chip products are indispensable products in traditional sales points. This indispensable status at the points of sale makes the exclusivity-based actions taken by FRITO LAY even more problematic.
- (350) The length of the reference period in which the retroactive discount system agreed upon by customers and the dominant undertaking was applied, has a significant impact on the switching costs faced by competitors. Relatively long reference periods can lead to the dominant undertaking capturing the marginal portion of buyers' demand by gradually increasing switching costs as the end of the period approaches. Relatively short reference periods, on the other hand, may mitigate the cumulative transition cost effect by enabling competitors to submit new price offers for each purchase.⁸⁶ In this context, while differences may arise depending on the specific case and market structure under competition law, it is generally considered that discount systems with periods shorter than one year have a low potential to restrict competition.
- (351) In order to reveal the comprehensiveness of the discount systems examined in this context in detail, all product campaigns specific to packaged chips and all coefficient campaigns carried out in the *Dükkan Senin* application between January 2022 and December 2023 were examined in terms of the name, date, duration, content, rewards, number of participants, and number of winners of the campaign. As a result of this analysis, it was determined that FRITO LAY organized a total of 75 campaigns during the relevant period, 23 of which were coefficient campaigns and 52 were product campaigns. It is understood that, although the current file covers only one-month time periods for both product and coefficient campaigns, and the reference period for final

⁸⁶ Board decision dated 30.03.2011 and numbered 11-18/341-103 (*Doğan Publishing*), para 2550

sales points to obtain advantages is one month, the campaigns continue under different names and characteristics.

- (352) Within the scope of the file, it is important to examine issues such as the cost of *Dükkan Senin* application for the undertaking and the discount/financial benefit ratios provided to customers through the app, in order to assess the extent to which it can respond to competitive pressure. The first point to note in this context is that the undertaking does not offer a discount on packaged chip products in exchange for *Dükkan Senin* points. Furthermore, it should be noted that the financial benefits provided through *Dükkan Senin* are rewards such as shopping vouchers, internet packages, and fuel points, which do not have a direct cash value. The only difference in this context is that *Dükkan Senin* points can be used for beverage products. The following graph is provided regarding the use of *Dükkan Senin* points:

Graph 1 - Distribution of *Dükkan Senin* Points Usage between January 2022 and December 2023

(.....COMMERCIAL SECRET.....)

- (353) The relevant graph shows that as of December 2023, (.....)% of *Dükkan Senin* points were used for beverage products. These usages are put into accounting by applying a total invoice discount for beverage products. On the other hand, it is understood that shopping gift vouchers and fuel rewards are also in high demand. Although not all *Dükkan Senin* points earned are subject to spending, the fact that the proportion of points not spent is low indicates that participants in the campaign are highly motivated to use their points.
- (354) As a fifth point, the market's demand structure was taken into account when evaluating discount systems. In general, in markets where demand is growing/expanding, discount systems may also have a market-expanding effect; in saturated markets where demand is stagnant or declining, however, competitors' access to the competitive segment of demand may be significantly limited.
- (355) According to the results of the address-based population registration system of the Turkish Statistical Institute (TÜİK) for the years 2019 and 2023, per capita consumption of packaged chips in Türkiye was calculated as 1.16 kg and 1.82 kg, respectively, for the relevant years. Therefore, although there has been an increase in the total output in the packaged chips market, this increase has not been significant when a long period such as five years is considered. In addition, while it is possible to note that the sales point space has expanded across Türkiye, it can be seen that the expansion in terms of customer numbers has occurred in discount store channels and modern sales channels. In other words, in the traditional sales channel, where exclusivity-based actions are currently being implemented in terms of the current decision, the number of customers continues to decline. Based on this, it is concluded that the actions taken by FRITO LAY have prevented competitors from accessing the competitive segment of consumer demand, particularly in the traditional channel.
- (356) The transparency of discount systems is important in terms of enabling customers to predict the amount of discount they are entitled to at every stage from the beginning to the end of the reference period and ensuring the comparability of competitive elements in the relevant market, such as the ability to compare the prices of competing products

with the prices of the dominant firm. In this context, it can be stated that the duration and purchase conditions of product and coefficient campaigns created through *Dükkan Senin*, as well as the number of points that can be earned, are clearly specified. On the other hand, the inability to obtain a rebate for packaged chip products, although not directly affecting the comparability of FRITO LAY's prices with those of its competitors at the points of sale, creates uncertainty as to the total benefit in Turkish lira that the points of sale will obtain in exchange for purchasing packaged chip products, as financial benefits are offered in different forms, in other words, it makes it difficult to calculate the extent to which the financial benefits provided through *Dükkan Senin* alter the actual price of FRITO LAY's packaged potato chip products.

- (357) Furthermore, in Evidence 64, it is seen that FRITO LAY Sales Manager told FRITO LAY employees *"IMPORTANT ANNOUNCEMENT We'll give those budgets over dükkân senin So you must make the points you informed me about a member of dükkân senin."* In Evidence 149, it is seen that FRITO LAY Sales Representative said to FRITO LAY Sales Manager *"boss, I am at zafer I installed that cube and made a planogram I'll bring çıtırık hüplet (kind of a chips) but he doesn't want drop he insists on and boss I'm waiting for 1.20 minutes for him to count the goods"* and FRITO LAY Sales Manager replied *"Why are they so sluggish offer dükkân senin points for non-display stand"*. It is found in Evidence 152 that the Final Sales Point Official said *"OK, boss, I asked you before you were going to send me lots of points I'll buy trousers from Mavi"* and FRITO LAY Sales Manager answered to the Final Sales Point Official first *"Alright, my friend"* and then *"Şahin I sent you 500 TL over dükkân senin, just letting you know."* The Sales Representative answered *"Thanks bro, I really appreciate it."*
- (358) Based on the evidence, it is understood that the process of assigning points to final sales points can also be done manually in the system; budget and point requests can be made by sales managers and sales representatives through the system based on the business development opportunities they see at the final sales point, and the points are added to the *Dükkan Senin* account of the final sales points with the approval of the regional manager or sales manager depending on the amount of the request. In this context, it is concluded that the system is not organic, in other words, it is open to external intervention. As a result, it is concluded that the points that are largely loaded manually into the accounts of the final sales points, independently of any purchasing behavior, damage the transparency of the system. The relevant situation indicates that the system is open to abuse in terms of the use of additional point offers made to final points of sale for the purpose of creating exclusivity in the market. Indeed, although FRITO LAY claims that the number of customers entered manually represents (.....)% of FRITO LAY's customer base ((.....) customers), the customer not working with competitors or the point being filled to such an extent with FRITO LAY products that there is no room left to work with competitors, and establishing exclusivity over these customers in this way, has the potential to result in the exclusion of competitors from the market. Within this framework it is seen in Evidence 121 that sales point employee said *"Hello (.....), you promised to give a few free boxes if I work exclusively I wanted to remind it"* and FRITO LAY answered *"No brother, not for working exclusively it is for working regularly I'll load 1000 tl through dükkân senin you can use it for discount in pepsi."* This indicates that, from time to time, FRITO LAY allows money to be loaded into the system via the *Dükkan Senin* app in exchange for not working with competitors. In addition, in the text shown in Evidence 124 sent by FRITO LAY sales manager to

sales representative “(.....) *sağlık market uses dükkân senin remind them we'll load points and we'll make drop in return for points try to install your display stand instead of the rival's narrow display stand we talked they are also willing.*” This text suggests that the points loaded through *Dükkan Senin* were intended to ensure that the competitor's display stand would be replaced by the FRITO LAY display stand over time.

- (359) Considering all of the above points together, it is determined that the *Dükkan Senin* app falls under a discount system category that is risky in competitive terms due to its structure, and that it is part of direct exclusivity practices, as identified in the evaluation of the documents obtained during the on-site inspection. Based on the evaluation of all concrete information and documents in the file, it is concluded that FRITO LAY uses the *Dükkan Senin* application as a tool for exclusivity practices in the current situation.

I.4.2.3.3. Integrated (PO1) Display stand Application on Traditional Channel

- (360) PepsiCo, which operates in both the beverage (PEPSI) and snack food (FRITO LAY) sectors, has launched integrated display stand applications in the traditional channel as of 2023, an example of which is shown on the side. The middle section of the integrated display stands features refrigerated cabinets for cold beverage consumption, while the side sections include display stands for displaying packaged chip products.



Figure 1 - Integrated Display Stand

- (361) The installation process for integrated display stands begins upon acceptance of requests from final points of sale and/or FRITO LAY's display stand installation proposals. Afterwards, the relevant personnel of the undertaking takes charge of the measurement processes at the final point of sale, and a proposal is obtained from an independent manufacturer, also known as an agency in the market, for the construction of an integrated display stand according to the measurements taken. The approximate production cost for the 7-basket wide display stand, which is one of the conventional display equipment in the packaged chips market, is below (.....) ₺ as of 2023; while the cost for integrated display stands is approximately (.....) ₺ as of 2023. Production costs are fully covered by PEPSICO for both other display equipment and integrated display stands. Following this process, an integrated display stand is set up and a standard contract, as provided below, is signed with the point of sale.

“Integrated Display Stand Agreement

PO1 DISPLAY STAND AGREEMENT

...

1. *Pepsi will have a custom display stand built for the Customer within the scope of this agreement, based on measurements taken of the agreed-upon area, and it will be installed at the Customer's point of sale as sales support equipment.*
2. *The term of the agreement is (.....) months from the start date.*

3. *The Customer will make payments for general product purchases by credit card or in cash.*
 4. *The display stand/cooler and all materials provided for the customer's use shall be used for their intended purpose.*
 5. *The customer is responsible for the maintenance and protection of the display stand allocated for use at the point of sale.*
 6. *If the customer decides not to use these display stands, which were custom-made and delivered for their use, the display stands will be wasted as they were produced specifically for the customer and the area. In this case, the customer agrees to immediately pay Pepsi the penalty fee of (.....) for the production and installation costs of the display stand in advance.*
 7. *Pepsi will cover the cost of repairs for any wear and tear that may occur at the display stand due to natural disasters (such as floods, earthquakes, etc.).*
 8. *If the Customer closes the point of sale, ceases trading, or transfers it to a second party, all materials delivered to the point of sale shall be returned to Pepsi immediately.*
 9. *In the event of non-compliance with the terms of the Agreement, the Customer shall compensate Pepsi for any damages incurred as a result.*
 10. *In the event of non-compliance with the terms of the agreement and failure to deliver the display stand to Pepsi in the condition shown in the attached image and in working condition at the time of delivery, this shall be considered a breach of this Agreement, and the customer shall immediately pay Pepsi the display stand cost of (.....) in advance. An image of the delivered display stand is attached.*
- ... ”

(362) As can be understood from the evidence obtained during on-site inspections, given that integrated display stands are more expensive than regular display stands and are subject to custom production based on the size measurements at the final points of sale, PEPSICO signs the standard agreement mentioned above with the final points of sale in order to recoup its investment. In light of the stated reasons, it is seen that PEPSICO has stipulated provisions in the contract regarding the display stand being kept in the sales point area for (.....) months and, in the event of a breach of contract, a penalty clause equivalent to the production cost of the integrated display stand being imposed. However, the standard contracts signed do not contain any direct provisions prohibiting the presence of a display stand belonging to a different undertaking at the point of sale and/or the sale of a product belonging to a different undertaking.

(363) The integrated display stand investment made by PEPSICO has an impact on both the commercial non-alcoholic beverage market and the packaged chips market in which PEPSICO operates. In fact, evidence obtained during on-site inspections indicates that in the markets for “carbonated beverages” and its sub-segments “cola drinks” and “flavored carbonated beverages”, *Coca Cola Satış ve Dağıtım AŞ* (CCSD), which is a direct competitor of PEPSICO and holds a dominant position in these markets, has also begun implementing a similar investment in integrated display stands at some of its final points of sale. Based on this, while it is thought that the integrated display stand investment could create competitive pressure on players in the commercial non-alcoholic beverage market, the claim included in the application that integrated display stands placed at final points of sale close off the already limited space available for display stand placement, leaving no space for competitor display stands, and that this

situation leads to anti-competitive effects is considered worthy of examination within the framework of the current decision.

- (364) Within this scope, an examination was conducted at traditional sales points starting from the date when integrated display stands began to be placed at these locations, and it was determined that integrated display stands were installed at (.....) final sales points in 2023 and a total of (.....) final sales points as of August 2024. It is understood that these display stands currently account for approximately 0-5% (1.02%) of the traditional channel, but it is observed that investment in this area is steadily increasing. Additionally, it is acknowledged that after installing integrated display stands, the space available for display stands and even refrigerated cabinets at points of sale decreases.
- (365) In the written responses provided by FRITO LAY, it is stated that integrated display stands typically consist of two chips shelves positioned on the right and left, each measuring 85 cm in width, in terms of the coolers, single-door cabinets are usually 80 cm, and double-door cabinets are 120 cm wide, thus the total width of the integrated display stands can be considered to be between 250 and 290 cm on average. Additionally, it is emphasized that the height of integrated display stands is generally 225 cm and the depth is 50 cm. An example containing these measurements is shared in the screenshot below.

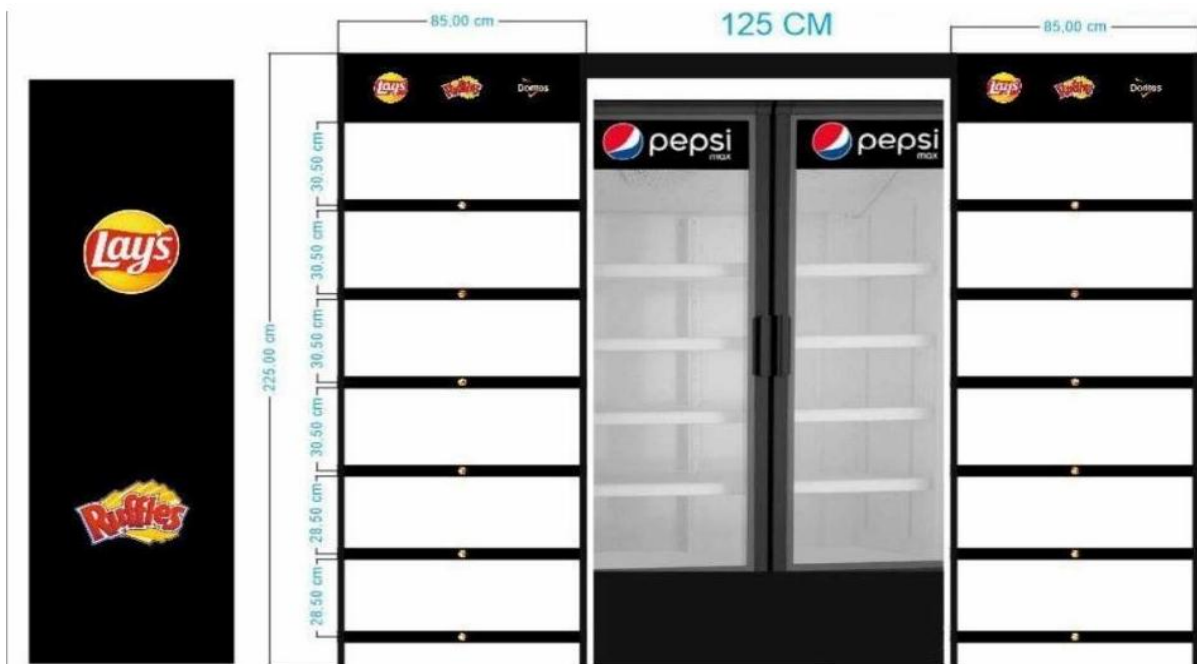


Figure 2 - Integrated Display Stand Measurements

- (366) The image in the screenshot above shows that the base length of an integrated display stand for a double-door refrigerator is approximately three meters; when only chip display stands are considered, this length is approximately two meters. The image in the screenshot above shows that the base length of an integrated display stand for a double-door refrigerator is approximately three meters; when only chip display stands are considered, this length is approximately two meters. To put it more clearly, when calculating the space occupied by an integrated display stand at any point of sale, it is not sufficient to consider only the size of the display stand itself. This is because there must be sufficient space in front of, to the right and/or to the left of the display stand to allow consumers to see and examine the products and even to touch them directly in

order to make a purchase. Considering that packaged chip products are impulse products and that shopping in traditional sales channels differs from other sales channels in that it depends on the active movement of the end consumer, it is deemed essential to provide consumers with sufficient space for the purchase of packaged chip products.

- (367) Furthermore, considering that these display stands are custom-made to the point and relatively large, and that sales points in the traditional channel have limited sales space, it is seen that these display stands result in a reduction in the space available for competitors to display their products. Also, the significant cost of these display stands means that not every competitor undertaking can afford to invest in them financially, resulting in integrated display stands creating a barrier to market entry.
- (368) Finally, although there is no explicit provision regarding exclusivity in the standard contracts for the installation of integrated display stands, on-site inspections conducted within the scope of the case file have revealed actions aimed at imposing a condition of exclusive sales of packaged chips at certain final points of sale with this display stand investment.
- (369) In this context, although the contract stipulates that the display stand must be kept in the sales point area for a period of (.....) months, and that in the event of a breach of contract, a penalty clause equivalent to the production cost of the integrated display stand will be imposed, in practice, it is understood that the restrictions on the point go beyond this, and pressure is exerted on the point to work exclusively with FRITO LAY, regardless of the 24-month usage period, and that investments made in sales points through the PO1 display stand application can be used as a means of exclusivity.
- (370) The complainant's request for measures to be taken regarding the presence of competing products at FRITO LAY's display stands also covers integrated display stands and this situation will be addressed again in section I.4.4.

I.4.2.4. Evaluation of *KazandıRio* Digital App Based on the Allegation of Predatory Pricing

- (371) The application also alleges that the *KazandıRio* app promises gifts to every consumer in exchange for purchasing packaged chips from FRITO LAY, and that the undertaking uses its recognition and power in the packaged chips market to exclude its competitors. *KazandıRio* digital app is essentially a promotional application that hosts campaigns targeting the end consumer.
- (372) Essentially, *KazandıRio* app, launched in February 2019, is a mobile application that allows end consumers to scan codes found on PEPSICO beverage and food products they have purchased using the camera on their mobile device and integrate them into their online accounts and in return receive gifts such as computer game or mobile game in-game items and internet packages.
- (373) In the past, many undertakings have carried out promotional campaigns of this kind using various methods, such as requiring end consumers to physically collect caps or coupons after making a purchase and then delivering them to the relevant points of sale to receive their gifts. Today, however, the impact of digitalization on everyday life

has made it possible to carry out promotional campaigns of this nature in a digital environment.⁸⁷

- (374) In competition law, the unilateral pricing behavior of dominant undertakings is also examined. Pricing behaviors that could hinder competitors' activities in the market are considered exclusionary actions and are examined under headings such as predatory pricing, discount systems, and margin squeeze; if these behaviors indicate the use of market power derived from a dominant position and pricing above competitive levels, they are considered exploitative actions and examined under the heading of excessive pricing. *KazandıRio* application will be evaluated under predatory pricing based on its characteristics in this file.
- (375) Predatory pricing is an anti-competitive pricing strategy whereby a dominant undertaking, in order to maintain or increase its market power, sets a sales price below its cost in the short term, thereby incurring losses ("waivers"), with the aim of driving one or more existing or potential competitors out of the market, disciplining them, or preventing their competitive behavior in other ways. However, since it causes the dominant undertaking to sacrifice its profits through below-cost sales in the short term, it is not a common practice despite being highly effective⁸⁸. In this context, studies in the economics of competition literature have focused on whether behaviors that are largely non-pricing exclusionary behaviors—such as increasing competitors' costs, cheap exclusion, open exclusion, and pure exclusion—can lead to the same exclusionary effect as pricing behaviors, even though they are sometimes pricing behaviors, but are less costly than predatory pricing.⁸⁹
- (376) The presumption in the exclusionary conduct of dominant undertakings through pricing is that this situation is generally beneficial for final consumers in the short term, but in the long term, it may negatively affect consumer welfare by distorting the competitive environment in the market as a result of anti-competitive market foreclosure. Therefore, this understanding necessitates that the standard of proof required for exclusionary conduct through pricing for being considered anti-competitive should be kept high and, that such pricing behavior should not always be considered directly anti-competitive particularly if price reductions, campaigns, and promotional practices reflected to end consumers exist. In this context, the main criterion for determining whether an exclusionary behavior is anti-competitive is to examine whether a hypothetical competitor with the same level of efficiency as the dominant undertaking would be likely to be excluded from the market as a result of that behavior. For this reason, the existence of below-cost sales is analyzed as the basis for determining whether predatory pricing constitutes an abuse.⁹⁰

⁸⁷ Other digital applications with similar structures, such as "*Daha Daha*," "*Algida ile Kazan*," "*Mutlu Kutu*," and "*Nescafe App*," can also be cited as examples.

⁸⁸ Board decision dated 01.10.2012 and numbered 12-47/1413-474.

⁸⁹ KRATTENMAKER, T. G. ve S. C. SALOP (1986), Anticompetitive Exclusion: Raising Rivals' Costs to Achieve Power over Price, 96 Yale Law Journal 209; CREIGHTON, S. A., D. B. HOFFMAN, T. G. KRATTENMAKER ve E. A. NAGATA (2005), Cheap Exclusion, 72 Antitrust Law Journal 975-995; RASMUSEN, E. B., J. M. RAMSEYER, J. S. WILEY (1991), The American Economic Review, Vol. 81, Issue 5, 1137-1145; BAKER, J. B. (2013), Exclusion as a Core Competitive Concern, Antitrust Law Journal, Vol. 78.

⁹⁰ Guidelines on Abusive Exclusionary Conduct by Dominant Undertakings, para. 27-28. In addition, there are analyses of exclusion through above-cost pricing in European Union law and in

- (377) Although it was alleged in the application that competitors' activities were hindered through *KazandıRio*, no mention was made of the existence of predatory pricing practices. Furthermore, no information or document indicating that the undertaking had such a strategy was obtained during the on-site inspections conducted as part of the case. In this context, it will be discussed whether *KazandıRio* has the potential to close the market under the current conditions.
- (378) Firstly, in 2023, the number of participants in *KazandıRio* digital application campaigns reached (.....) million. Based on IPSOS Household Panel data, the consumer space for packaged chips in Türkiye is estimated to be approximately (.....) million people. In this context, it can be said that FRITO LAY covers approximately %(.....) (10-20%) of the consumer space through its *KazandıRio* application. Secondly, it is seen that the company invested approximately (.....) ₺ in the creation of *KazandıRio* in 2018-2019, that this investment covered only 05% ((.....) %) of the 2018 turnover, and that the cost incurred to ensure the continuity of the application (technical cost) is as shown in the table below:

Table 16- Share of Technical Costs Incurred due to the *KazandıRio* Application in Turnover

Years	Technical Cost	Share in Turnover (%)
2020	(.....)	0,2
2021	(.....)	0,3
2022	(.....)	0,3
2023	(.....)	0,2

- (379) In light of this information, it can be said that the technical cost of the application is quite low. Also, the cost amount shown in the table reflects all costs incurred by both FRITO LAY and PEPSI, and these costs are borne jointly by the two legal entities.
- (380) The benefits distributed through the application in question cannot be regarded significant. In fact, in 2023, a total of (.....) ₺ was spent on the *KazandıRio* app rewards, with %(.....) allocated to FRITO LAY products and %(.....) to PEPSI products. It can be said that this expenditure accounted for approximately 1.8% of FRITO LAY's turnover in the relevant year.
- (381) On the other hand, the number of products for which rewards were earned by scanning codes via *KazandıRio* during the 2020-2023 period was as follows: (.....), (.....), (.....), and (.....). As stated in the undertaking's first written plea, the product sales that are most eligible for rewards through the system are for "Large" packages, and the average sales price of these chips in 2023 is (.....) ₺. In this context, even assuming that all products eligible for rewards through *KazandıRio* are "Large," multiplying the sales amount awarded in 2023 by the average price ((.....)) will yield an approximate value of (.....) ₺ for the product subject to the reward. Considering FRITO LAY's traditional channel turnover and total turnover, the share of the revenue subject to the award within these figures is seen to be 10-20% ((.....)%) and 0-10% ((.....)%), respectively.

Türkiye that demonstrate anti-competitive behavior. The rationale behind these tests, which are mostly used for pricing behaviors that do not directly target the end consumer, is to investigate whether equally efficient competitors are being excluded from the market by means of loyalty-enhancing effects. These tests, which are largely applied when analyzing behaviors such as discount systems, consider additional criteria such as effective price, core demand, and the competitive portion of demand when analyzing exclusion through above-cost pricing.

On the other hand, as shown in Table 17 in the next paragraph, when considering FRITO LAY's net revenue generated through *KazandıRio* in 2023, the calculated ratios decrease by half.

- (382) In addition, when comparing the revenues generated through the app with the budget allocated for campaigns conducted by the undertaking via *KazandıRio* and the gifts awarded in return for these campaigns, it is understood that profitability is maintained in terms of sales on the *KazandıRio* app. In this context, the following table is presented.

Table 17- *KazandıRio* Income & Expense Table

Undertaking	2019	2020	2021	2022	2023
Incremental Net Revenue ⁹¹	(.....)	(.....)	(.....)	(.....)	(.....)
Incremental Contribution Margin ⁹²	(.....)	(.....)	(.....)	(.....)	(.....)
Total Promotion Cost ⁹³	(.....)	(.....)	(.....)	(.....)	(.....)
Source: FRITO LAY					

- (383) It is established that products continue to be sold profitably through the *KazandıRio*, meaning that the revenue generated from the additional sales created by these campaigns exceeds the level of expenditure/investment made to ensure these additional sales occur.
- (384) Additionally, *KazandıRio* campaigns are not valid for the entire FRITO LAY product portfolio, but only cover XL, L, and S size Lays, Ruffles, Doritos, Cheetos, and Çerezza brands sold through traditional channels. In this regard, it can be said that the sales channel and product portfolio included in *KazandıRio* account for (.....)% of FRITO LAY's total chip sales. Likewise, it is considered that the campaign's focus on traditional channels has a compensatory effect on consumer welfare, due to the low rate at which the financial benefits provided to sales points in traditional channels are reflected to the end consumer.
- (385) Finally, the table below shows the profit margins of FRITO LAY and DOĞUŞ in the packaged chips market. The table shows that both FRITO LAY and its closest actual competitor have maintained their profitability over the years.

Table 18 - Profit Margins (%) of FRITO LAY and DOĞUŞ in the Packaged Chips Market

Undertaking	Profit Margin	2020	2021	2022	2023
FRITO LAY	Gross Profit Margin	(.....)	(.....)	(.....)	(.....)
	Net Profit Margin	(.....)	(.....)	(.....)	(.....)
DOĞUŞ	Gross Profit Margin	(.....)	(.....)	(.....)	(.....)
	Net Profit Margin	(.....)	(.....)	(.....)	(.....)
Source: FRITO LAY and DOĞUŞ					

⁹¹ *Incremental Net Revenue*, it refers to the additional income a company earns by offering a new product or service or by operating in a new market.

⁹² *Incremental Contribution Margin* refers to the amount obtained by excluding the variable costs incurred in relation to the increasing net income.

⁹³ *Total Promo Cost*, refers to the costs that have to be incurred in order to generate increased net income.

- (386) Furthermore, the table below shows the gross profit margins of both undertakings in the traditional channel, revealing that gross profit margins are even higher in the traditional channel.

Table 19- FRITO LAY and DOĞUŞ's Gross Profit Margins (%) in the Packaged Chips Market through Traditional Channels

Undertaking	Margin	2020	2021	2022	2023
FRITO LAY	Gross Profit Margin	(.....)	(.....)	(.....)	(.....)
DOĞUŞ	Gross Profit Margin	(.....)	(.....)	(.....)	(.....)
Source: FRITO LAY and DOĞUŞ					

- (387) In conclusion, based on the available data, it is concluded that the *KazandıRio* digital app, which includes consumer promotions by FRITO LAY, does not have the ability to close the market and therefore does not violate Act No. 4054.

I.4.3. Conclusion of the Section

- (388) Up to this point, FRITO LAY's actions in the relevant market have been examined in four categories: establishing direct exclusivity through verbal agreements, *Dükkan Senin* digital application, integrated (PO1) display stand installation, and *KazandıRio* digital app. In this context, it is concluded that FRITO LAY's *KazandıRio* digital app does not violate Act No. 4054.
- (389) In terms of examining the establishment of direct exclusivity through verbal agreements, it is concluded that there was substantial evidence indicating actions by FRITO LAY and/or its distributors aimed at hindering competitors' activities in the packaged chips market, evidence was obtained from every region where on-site inspections were conducted, FRITO LAY's mid-level and senior management were involved in, aware of, and approved of the aforementioned practices, and such actions directly aimed at exclusivity were of a strategic nature.
- (390) On the other hand, it is concluded that the digital app titled *Dükkan Senin*, which is addressed in the file, possesses a discount system that is retrospective, personalized, loyalty-enhancing, non-transparent, and susceptible to external interference and abuse, and manual entries made into this app are used as a tool to directly ensure exclusivity, thereby limiting competition in the market through the use of this app and violating Article 4 of Act No. 4054.
- (391) Similarly, considering that, integrated (PO1) display stands cannot move, can be designed according to the size of the point, and prevent any idle space at the point due to their nature, and thus prevent competitors from entering the traditional channel, which is the aim of FRITO LAY, and these issues are supported with the documents obtained within the scope of the file. When these facts are evaluated together, it is concluded that Article 4 of Act No. 4054 has been violated by FRITO LAY.
- (392) As previously stated, in light of the legislation, the Board's case law, and the referred enforcement, it is concluded that FRITO LAY's actions regarding exclusivity in traditional channel final sales points violate Article 4 of the Act No. 4054 and that the aforementioned actions cannot be exempted under Article 5 of the Act No. 4054.

I.4.3.1. FRITOLAY's Commitment Application

- (393) As previously stated, FRITO LAY submitted a request to the Authority on 02.07.2024, with the file no. 53424, to offer commitments to resolve the competition issues in question. The Information Note dated 12.07.2024 and numbered 2023-2-059/BN-02, prepared in response to the relevant request, was discussed at the Board's meeting on 18.07.2024, and pursuant to the first paragraph of Article 6 of the Commitment Communiqué, it was decided to reject the request for submission of a commitment and to terminate the commitment process with reference number 24-30/709-M. Pursuant to the third paragraph of Article 13 of the relevant Communiqué, if a decision is made to reject the commitment, the grounds for this decision will be included in the final decision.
- (394) Even if the allegations in the case are not “naked and hard core” violations, the Board has the discretion to decide whether or not to proceed with the commitment process in accordance with the Commitment Communiqué. It is understood that it is not appropriate to address the act of “direct exclusivity,” which forms the basis of the investigation and is indicated by numerous documents in the file, with the commitment process, considering the similarity of the allegations under investigation⁹⁴, the commitment process would not provide any procedural benefit in addressing only a partial violation of the allegations.
- (395) Furthermore, the first file on FRITO LAY, which was frequently investigated since the early years of the Authority, was completed in 2000, and the last file was completed in 2022. During this period, allegations that FRITO LAY abused its dominant position and, in particular, its exclusivity-based actions were intensively discussed on the Authority's agenda.⁹⁵
- (396) Moreover, during the examination of the request for an injunction, over 100 pieces of evidence were obtained within the context of the current case file under the claim of direct exclusivity, and a strong suspicion of infringement exceeding a five-year time frame was observed. Therefore, considering that the cases were brought to the Board's attention many times throughout a long period of time, which were sometimes found to restrict competition, sometimes found not to constitute a practice restricting competition, and also the possible harm to competition caused by the exclusivity practice in this case, primarily to competitors and consumers, it is concluded that it is not possible to offer a commitment that is proportionate to the competition problems, able to solve these, quickly realizable, and effectively applicable.

⁹⁴ Integrated display stand and *Dükkan Senin* practices can essentially be considered on the basis of exclusivity, while *KazandıRio* can be considered in the context of predatory pricing. On the other hand, the issue of whether display stands should be opened for shared use will be considered in the context of reducing the impact of exclusivity-based practices.

⁹⁵ In the Board decision dated 04.05.2004 and numbered 04-32/377-95, it was determined that FRITO LAY had concluded exclusivity agreements with final sales points, either in writing or verbally, and had hindered the activities of its competitors, and it was ruled that its exemption should be revoked. In the Board decision dated 29.08.2013 and numbered 13-49/711-300, FRITO LAY's exclusivity-based actions were examined, and it was determined that the undertaking violated Article 4 of Act No. 4054 through practices related to the exclusive sale of its products at final sales points, and an administrative fine was imposed. In the Board decision dated 15.12.2022 and numbered 22-55/863-357, it was concluded that FRITO LAY had violated Article 4 of the Act, and it was decided to impose an administrative fine on the undertaking.

- (397) Considering all these matters, the party's commitment application was rejected on the grounds that the subject matter of the file was not appropriate in the context of the commitment process.
- (398) Based on the violation found and the Board's findings in its previous decisions on similar competition violations concerning the undertaking and the relevant market, the assessments made within the framework of Article 9 of Act No. 4054 with regard to establishing effective competition in the market are given below.

I.4.4. Assessment Regarding Article 9 of Act No. 4054

- (399) The first paragraph of Article 9 of Act No. 4054, titled "Termination of Infringement" which regulates behavioral and structural measures states;

"If, in response to a denouncement, a complaint or the request of the Ministry or on its own initiative, the Board determines that there is an infringement of Article 4, 6 or 7 of this Act, then it shall notify in its final decision the behaviors that the relevant undertaking or associations of undertakings must carry out or refrain from in order to re- establish competition, and any structural remedies in the form of undertakings transferring certain businesses, partnership shares or assets. Behavioral and structural remedies must be proportionate to the infringement and necessary to bring the infringement effectively to an end. Structural remedies shall only apply where previous behavioral remedies imposed have been ineffective. In case the final decision finds that behavioral remedies have been unsuccessful, relevant undertaking or associations of undertakings shall be given at least 6 months to comply with the structural remedy."

and the fourth paragraph of the same article, which regulates provisional measures, states;

"Where the occurrence of serious and irreparable damages is likely until the final decision is taken, the Board may take interim measures in order to maintain the situation before the infringement, without exceeding the scope of the final decision."

- (400) Within the scope of the file, the applicant's request for an interim measure regarding "Opening up 25% of all display stands to the use of competing products, whether integrated with Pepsi or not," was rejected by the Board's decision dated 21.03.2024 and numbered 24-14/291-122 on the grounds that the existence of the conditions specified in Article 9, paragraph 4 of Act No. 4054 was not established. In addition to the reasons underlying the rejection decision, the Investigation Notification also mentions that the Board has issued decisions regarding the opening of cooler cabinets for shared use in order to establish effective competition in similar markets, the decisions evaluating the shared use of display stands/shelves are also included, each of the decisions taken by the Board regarding shared use is final, the Board is not limited to/bound by the application of the interim measure as requested, and this issue may also be addressed as a behavioral measure.
- (401) During the investigation phase, a request was made to apply measures to open the display stands for shared use or to replace the wide and narrow display stands with 7 baskets (usually 6-9 front-facing⁹⁶) commonly used by FRITO LAY in final sales points

⁹⁶ The front face indicates how many product packages can be placed on the visible/front part of each display stand basket, from left to right or right to left. For example, the 6BN (6-basket narrow display

below a certain square area with display stands that are narrower and take up less space.

- (402) Considering the nature and duration of the violations detailed above and the competition record of the undertaking subject to the decision, the following section will evaluate whether the most common type of display equipment for packaged chips, namely display stands, should be shared or not, in order to ensure the restoration of competition. The following section will address the termination of the infringement of exclusivity established through verbal agreements within the scope of the investigation, the prevention of recurrence of the infringement, and other appropriate behavioral measures to restore competition in the relevant market.

I.4.4.1. Assessment Regarding Whether Display Stands Should Be Shared or Not

- (403) Packaged chip products are classified as impulse products because they trigger a desire to purchase in consumers the moment they are seen and they are offered for sale in colorful packaging designed to attract consumer attention. For this reason, product display is of great importance. It is known that most sales points in the traditional channel do not have their own product display tools and can shape their sales spaces upon the requests of suppliers. Producers prefer to use their own display equipment (display stands and non-display stand tools) in this channel and arrange product placements in display stands according to a specific plan.
- (404) Although producers' priority is to use their own display equipment, particularly due to sales space constraints in traditional channels, and considering the Board's past decisions in similar markets and the requests within the scope of the file, it is necessary to discuss the issue of opening display stands for shared use.⁹⁷ In this regard, this section will first present the views of producers operating in the packaged chips market regarding the shared use of display stands, followed by the views of FRITO LAY and then the findings made by the Board in its similar decisions as well as the views and assessments within the scope of the decision will be conveyed, taking all matters into consideration.
- (405) A meeting was held with (.....) regarding whether there was a requirement for the shared use of display stands, and the meeting was recorded with the minutes. In this context, the following points were stated by the (.....) authorities;

- The first issue to be evaluated is the integrated display stand issue. FRITO LAY positioned these display stands at locations with very good chip sales, and contacted the sales point verbally, stating that (.....) should not be present at that location. Additionally, when an integrated display stand is placed at a given location, no space remains for another display stand to be placed at that location, and therefore (.....) cannot exist at these locations. Furthermore, “*Dükkan Senin*” application reinforces the exclusivity effect of integrated display stands. As a

stand) used by FRITO LAY has 6 front faces and 6 baskets, giving a total front face count of 36. The 7BW (7-basket wide display stand) has 9 front faces and a total front face count of 63. Display stands referred to as slim have 3 front faces per basket.

⁹⁷ Although it is acknowledged that there may be aspects that could lead to differences in assessments regarding integrated display stands, given the current state of the market, the integrated display stand application; is still a new application, is minimal in scope, and similar assessments are already included under heading I.4.2.3.3. of the Decision, there is no need for a new assessment under this heading regarding the shared use of integrated display stands.

result of the aforementioned application and the beverage targets specified therein, beverage purchases at the integrated display stand in question have increased, leading to an increase in demand for the chips sold there, therefore, as a precautionary measure, a certain portion of the integrated display stands owned by FRITO LAY could be opened for use by competitors, thereby allowing (.....) to place its products in the integrated display stands. At least 30% of such use must be ensured and display stands must be opened in such a way as to grant vertical usage rights that will prevent products from remaining on the lower shelves. Furthermore, it is extremely important in terms of consumer perception that the areas where their own products will be placed are entirely at their own discretion. There are two areas in the display stands that attract customers: one of these is the side near the door of the sales point, which is the entrance to the sales point, and the other one is the side near the beverage cooler section of the display stand. The impulse product feature becomes active in these areas, therefore (.....) prefers to be located closer to the sales point entrance in integrated display stands opened for use, otherwise, even if the display stand is opened, if (.....) products are placed at the bottom of the display stand, the shared use of the display stands will be meaningless. Additionally, if integrated display stands are shared, sales points should be informed about this matter, and if this request is deemed unfeasible, integrated display stands should be prohibited.

- The second issue to be evaluated is essentially the situation with the non-fixed metal display stands, which have seven baskets. FRITO LAY placed large display stands in high-potential locations, and after these display stands were positioned in sales points with a small square area, there was no room left for the (.....) display stand, and these display stands had the effect of closing the sales point. Therefore, as a precautionary measure, instead of placing single, larger display stands (e.g., 8-9 front-facing display stands) in sales points under 200 m², a maximum of 4 front-facing display stands could be placed. If this decision is made, the cost of converting the display stands cannot be estimated; however, the display stands are already renewed annually by FRITO LAY. For this reason, changing the display stands to four-sided ones would not be excessively costly for FRITO LAY; however, FRITO LAY might have to make two rounds instead of one and visit the sales point more frequently. In any case, the measure imposing 30% usage right, as in the case of integrated display stands, could also apply to these display stands.
- (.....) has a total of (.....) customers in the traditional channel and, excluding private-label products, (.....) is a company that relies heavily on the traditional channel. In fact the traditional channel accounts for (.....)% of (.....)'s turnover, as physical sales spaces at final sales points decreased, (.....)'s presence at the points of sale also decreased. Sales points under 200 m² allocate a maximum of 10 m² for chip products, and when FRITO LAY installs a 7-sided or integrated display stand, competitors naturally cannot occupy space at that point, hence, (.....) wants to be present alongside FRITO LAY at 30,000 sales points with high potential, if not all 150,000 traditional channel sales points mentioned in the proposed measures, and to compete at these points.

(406) Additionally, a meeting was held with (.....) to gather information about the packaged chips market and to collect ideas regarding the shared use of display stands. During

the aforementioned meeting, (.....) stated the following regarding the shared use of display stands:

- FRITO LAY dominates and shapes the packaged chips market with a market share of nearly 90%, is at the fore in the market with different promotional structures. They have no problem with promotions, but closing sales points to competitors in exchange for advantages such as fuel vouchers through verbal agreements poses a problem for them,
- FRITO LAY implements loyalty discounts at its traditional channel sales points and has the power to remove competing products /have them removed from the point of sale with benefits such as return/discounts for hot sales, and sales points wishing to continue benefiting from these advantages will not be willing to purchase competing products,
- Tobacco and snack products are prioritized in grocery stores, but FRITO LAY intervenes in such a way as to reduce the visibility of competitors' products where they are positioned in grocery stores,
- (.....), however, due to FRITO LAY's actions, there were problems in reaching consumers, (.....)'s main objective was to expand the market by introducing new products, but FRITO LAY's objective in the market was to keep the market under its control,
- FRITO LAY employees have damaged the packaging of (.....) products, causing the packages to lose air, this situation has been observed at (.....) locations where the products are sold and, in rare cases, in chain stores, the return of burst products has resulted in significant costs due to transportation,
- The use of FRITO LAY display stands by competitors could have a positive impact on the market.

(407) In the response letter and written defense submitted by FRITO LAY, it is stated that the display stands or other display equipment placed at points of sale for packaged potato chip products are suitable for shared use with competitors and that there is no technical obstacle in this regard. However, in the party's written defense, concerns were raised regarding the shared use of the display stands. In this regard, FRITO LAY has stated the following in summary:

- FRITO LAY and other undertakings in the packaged chips market use their display stands not only to sell products but also to carry out advertising/promotional activities, and the display stands are subject to advertising-related dressing, therefore, the inclusion of competing brands' products at the FRITO LAY display stand could cause confusion among consumers who are not particularly knowledgeable about which brand belongs to which producer. In this regard, if a consumer experiences a negative situation with a competing brand, they may attribute this situation to FRITO LAY, or conversely, because they trust the FRITO LAY name, they may purchase the competing brand of chips at the display stand, and this situation could also create a free-riding problem whereby competing producers take advantage of FRITO LAY's brand image,
- The fact that having/not having a display stand does not constitute a barrier to entry into the packaged chips market at a significant level, and the 'existence of

a barrier to entry' is clearly highlighted as a common harm theory in the Board's interim measure decisions regarding the opening of display tools belonging to the dominant undertaking to competitors' use. For instance, in the industrial ice cream market, having a refrigerator is a necessity, or in the beer and cola beverage market, selling products cold has become a commercial requirement in line with consumer preferences. In traditional retail points with limited sales space, there is no room for multiple producers' cooling cabinets, so the exclusivity of the cooler leads to the exclusivity of the retail point, but these are not valid in the context of the packaged chips market,

- It is possible and even common to sell packaged chips without display stands. According to the complainant, cooler cabinets and display stands are considered equivalent, but the Board's recent *Tadım* decision determined that products in the dry nut market, which can be considered adjacent to the packaged chip market, do not have specific storage and sales conditions. The absence of a commitment regarding the requirement to maintain a display stand as it is not considered a barrier to market entry is not a deficiency, so the same applies to the packaged chips market, as packaged chips do not require special storage conditions such as refrigeration, protection from direct sunlight, or storage at a specific height. Packaged chips can be displayed not only on display stands, but also on shelves, inside or outside the point of sale, behind doors, on the sides of cabinets, using hanging devices and cardboard boxes, among many other methods.
- The growth rate over the years at sales points where FRITO LAY has a display stand is the same as at those where it does not, therefore, there is no data indicating further growth at points with display stands. FRITO LAY is not pursuing a strategy of closing points that use its display stand to competitors. During the 2019-2023 period, an average of 15-25% of FRITO LAY's sales based on turnover in the traditional channel were made at points without a FRITO LAY display stand,
- Even if the requirement to have a display stand were accepted, it would not prevent market entry, as display stands do not occupy a significant amount of space, can be placed in many locations within the point of sale, and have low production costs. There are different types of display stands, including metal, wood, plastic, and cardboard. Their setup is easy and their costs are low, with metal display stands being the most commonly used, the cost of display stands is between (.....)% and (.....)% of FRITO LAY's sales and distribution expenses in the period 2020-2023, and the cost of display stands could easily be covered by an effective competitor,
- It is possible for competing products to be offered for sale on display stands or shelves of sales points, and it is not a requirement to be present on FRITO LAY display stands in order to operate in the market. There is a significant number of display stands and shelves belonging to sales points across the market, in this context, at least approximately 22% of sales points have their own display equipment,
- Sales points are entirely free to remove FRITO LAY display stands and use multiple display stands or display equipment belonging to multiple brands. No contracts have been concluded with points of sale, except regarding integrated

display stands which are not widespread, whereas in other similar markets, fixed-term and tacitly renewable lease agreements may be concluded for coolers.

The following comparison table is provided by FRITO LAY for the packaged chips market and the industrial ice cream, non-alcoholic beverages, and beer markets.

Table 80 - Comparisons of Product Display Equipment in Traditional Channels in Similar Markets

Items	Industrial Ice Cream	Non-Alcoholic Beverages	Beer	Packaged Chips
Is the display equipment expensive?	Yes. Both the fixed cost is relatively high and there is a significant variable cost such as electricity.			No
Is maintenance required?	Yes. The high maintenance costs are among the main reasons why points do not have their own cabinets.			No Periodic maintenance is not required.
Is the display tool affected by possible space issues?	Yes			No
Can the relevant product be sold outside of the display tool?	No	Yes. However, the consumer mostly prefers what is sold in the fridge.		Yes.
Source: First Written Plea				

- (408) Packaged chip producers are obliged to establish an effective nationwide distribution network in order to operate in the traditional channel due to the requirement to visit points of sale regularly. This requirement also results in a small number of undertakings operating in the traditional channel. As seen above, the other two undertakings operating in the traditional channel stated that opening up the use of display stands belonging to the dominant FRITO LAY could have a positive impact on the market.
- (409) The Board has past decisions of behavioral remedies requiring dominant undertakings to open their cooling cabinets to competitors. For example, a behavioral measure was issued against EFPA and BİMPAŞ, which operate in the beer market, on the grounds that their actions to prevent competing products from being placed in the cooling cabinets they provided to final sales points constituted a significant barrier to competition in the market and should therefore be discontinued.⁹⁸ Another example is the Board decision dated 10.09.2007 and numbered 07-70/864-327, which includes behavioral measure regarding the opening of cooling cabinets of CCI in the carbonated beverage market to the use of competing products under certain conditions. Furthermore, the commitments submitted by the CCI regarding the extension of this behavioral measure were also accepted in the commitment decision dated 02.09.2021 and numbered 21-41/610-297.⁹⁹ Again, in the Board's final decision dated 18.03.2021 and numbered 21-15/19080, a measure was imposed regarding the opening of 30% of the ice cream cabinets owned by ALGİDA for the use of competing products under certain conditions.

⁹⁸ Board decision dated 22.04.2005 and numbered 05-27/317-80.

⁹⁹ Under current conditions, in certain circumstances, cooling cabinets owned by CCI at final sales points in the traditional channel below 100 m² and in the on-site consumption channel are available for use by competitors up to a total volume of 25% of the total volume.

- (410) On the other hand, there are also Board decisions that regulate the shared use of shelves or display stands other than cooler cabinets. For example, in the Board's decision dated 16.02.2017 and numbered 17-07/84-34, a behavioral measure was imposed on MEY İÇKİ that arrangement recommendations should be made for only 70% of the visible part of the shelf and other in-point *rakı* display spaces (such as modules, display stands, etc.) in terms of the shelves with *rakı* at the sales points in the traditional channel, its recommendations should be only for MEY İÇKİ *rakı* products and it would not make recommendations to the final sales points regarding the placement of competitor products on the shelves. In the Board's commitment decision dated 07.07.2022 and numbered 22-32/505-202, the following evaluations were made in paragraph 33 regarding the absence of a provision on the use of common display stands in TADİM's commitments, and the differences between display stands and cooler cabinets were mentioned:

“... Display stands differ from cabinets in that they can be made according to the desired design on order and they do not require electrical connection. In addition, unlike coke, beer, and ice cream, which need to be kept cold due to their nature, dried nuts do not have a special storage condition and therefore do not have to be sold on a display stand at the point of sale. Sellers can position the dried nuts in the point in any way they want, the dried nuts can be sold on any shelf or in the so-called add-on displays, etc., which is an alternative to the display stand. Therefore, there is no display stand requirement for the sale of dried nuts. On the other hand, during the preliminary inquiry phase and the interviews with the final points of sale, many points working with more than one brand were identified, and none of the points in question made statements that TADİM interfered with the visibility of competing products. In addition, none of the points working with a single brand stated that they could not sell competing products due to lack of space. As a result of the structure of the market, the available data and the interviews with the final points of sale, the obligation to have a display stand is not considered as a barrier to market entry, and therefore, it was not deemed necessary to make a regulation in this regard in the commitment.”

- (411) As a result of the aforementioned evaluation, it can be considered that the display stands in the packaged dried nuts market and the display stands in the packaged chips market show similar characteristics. However, the structure of each market, the position of the competitors in the relevant market, the strategies of the competitors against each other and their buyers, and the market dynamics in each market should be handled independently of each other. As a matter of fact, although all packaged dried nuts are considered as a single market in the aforementioned decision, the purpose of consumption of each packaged dried nut differs from each other. This is not the case for the packaged chips market. This is because all packaged chips products are impulse products under the snack category.
- (412) Moreover, in the packaged chips market, the display stand perception diverges from the classical display stand perception and converges to cooler cabinets through the integrated display stand applications of FRITO LAY, the dominant undertaking. Of course, regardless of being classic wire display stand or an integrated display stand referred to as PO1, chips display stands differ from cooling cabinets in terms of electricity consumption and refrigeration features. However, PO1 display stands are considered to converge to cooler cabinets in the sense that they are positioned as a fixed structure on the spot, far from mobility. In addition, although traditional sales

points where PO1 display stands have not been installed still have wire display stands, which can be described as classical, FRITO LAY prefers display stands based on the width of the relevant point in such a way that there is no idle space at the point in order to prevent competing products from entering the relevant sales points. Considering that this situation is also confirmed by the documents obtained during the on-site inspection and that FRITO LAY's behavior excluding competitors has been examined by the Board many times, it is concluded that packaged chips display stands should be treated separately from packaged dried nuts display stands.

- (413) On the other hand, data on sales points with their own display equipment in the traditional channel is presented below.

Table 91 - Number of Points with Their Own Chip Display Equipment in the Traditional Channel

Display stand Type	Number of Points	Share within Total (%)
1-35 Front-facing	5.757	4
36-60 Front-facing	9.055	6
61+ Front-facing	15.076	10
Sub Total	29.888	20
Total TC	150.000	100
Source: FRITO LAY		

- (414) Considering the table, which is prepared by taking into account only FRITO LAY's data for its customers and the traditional channel final point of sale space, it is clear that the points with their own display equipment constitute a low proportion of the market, amounting to approximately 20%.
- (415) Considering the fact that packaged chips products have the risk of package rupture/explosion or breakage/fragmentation of the products due to their nature, that the way they are displayed is of great importance in eliminating these risks, that the product has a short shelf life of 4 months and that they are impulse products due to their nature, it is understood that the display of these products at the display stands is of utmost importance for the producer undertakings. Based on this importance, it has been concluded that FRITO LAY, the undertaking in the dominant position, has taken many actions to prevent competitors' products from taking place at the display stands, that these actions are fixed with many evidences obtained during the on-site inspections and that these actions are widespread in all regions where on-site inspections were conducted.
- (416) In line with this information, it is evaluated that the presence and size of the display stands in terms of the positioning of the product, visual presentation, and the ability to attract the attention of the consumer in the packaged chips market have a critical role in terms of the ability of a player operating in this field to survive and compete. As reflected in the numerous documents obtained during the on-site inspection, it is assessed that the strategies by FRITO LAY to prevent/restrict the sales of competitors through the expansion strategy with its display stands at the points, as well as the strategic actions through any display tools such as the competitor's display stand at the point, the display stand/shelf belonging to the point, etc., as a whole, constitute an obstacle for competitors to enter the market and/or to hold on in the market.
- (417) In addition, the following are assessed;
- FRITO LAY has been dominant in the packaged chips market for more than 25 years and has maintained its dominant position,

- It has experienced continuous market share growth over the last five years in the traditional sales channel, where exclusivity-based actions are concentrated,
- Has a market share more than five times the market share of its closest competitor in terms of both turnover and quantity,
- FRITO LAY's anti-competitive actions in the packaged chips market have become an ordinary behavior of the undertaking, and the competition record of the undertaking in question also shows this situation, as a matter of fact, there are two Board decisions of different periods to be taken as a basis for repetition in terms of the current decision,
- The opening of the display stands to competitors, as stated by FRITO LAY, is not of a nature that may cause a free-riding problem due to the low display stand costs, as a matter of fact, FRITO LAY's own display tools are not costly, and that the display stand costs correspond to a ratio between (.....)-(.....) % in FRITO LAY's sales and distribution expenses in 2020-2023, Also, in the scenario where competitor brands are included in FRITO LAY display stands, where the space reserved for competitors is highlighted, where competitor products and FRITO LAY products are separated with the help of a separator, where the space for competitor products is dressed with images of competitor products and the space where FRITO LAY products are exhibited is dressed with images of FRITO LAY products, there will be no perception confusion in terms of brand in the eyes of the consumer,
- In fact, it is considered that a label could be placed on the display stand to indicate that the relevant section is reserved for competing chips products and that this practice would not create a significant cost and would easily ensure that the consumer is informed about FRITO LAY's products and display stand as well as the product they purchase.

(418) According to the above explanations, it is assessed that the problem of free-riding will not be an issue in this market.

(419) On the other hand, the fact that there has not been a previous Board decision regarding the removal of display stand exclusivity in the packaged chips market will not be taken as a valid assessment in terms of the decision, considering that the investigations under competition law are carried out by taking into account the specific circumstances of the case and the market. However, in the Board's 2018 decision on FRITO LAY, although the Board did not find an infringement due to the lack of documents and the absence of an effect indicating an infringement, it was concluded that FRITO LAY's targeted discount systems might narrow the areas where competitors can sell, FRITO LAY might close the market at a higher rate than its market share in a growing market, and that this may have an anti-competitive effect¹⁰⁰. On the other hand, the investigations carried out in the context of the allegations in this case reveal a violation that spans a period of more than five years, including the period of investigation subject to the 2018 decision. In line with this violation, it is observed that although FRITO LAY's market share has increased over the years, the market share of its closest competitor has decreased, the change in question is obvious in the traditional sales channel,

¹⁰⁰ Board decision dated 12.06.2018 and numbered 18-19/329-163, para. 120

FRITO LAY's second closest competitor lost a significant market share in 2023, while the market share of the following competitor remained negligibly low.

I.4.4.2. Assessment Regarding Other Behavioral Measures

- (420) The basis for the Board's decisions to date regarding the opening of cooling cabinets for shared use is that the exclusivity of cooling cabinets also leads to the exclusivity of sales points, that this situation artificially creates a barrier to market entry, and that shared use is necessary for the establishment of effective competition. The assessments made within the scope of the file regarding whether display stands should be shared or not are essentially shaped on the view that the current practice of display stand exclusivity in the packaged chips market does not lead to point-of-sale exclusivity. Likewise, in a situation where point exclusivity exists through different methods, the priority and necessity of a measure to remove display stand exclusivity will also be open to debate. In other words, if the point is exclusive, it will not be possible to argue that a measure to remove display stand exclusivity alone is sufficient. In this regard, it is considered that with the aim of ending the infringement, preventing its recurrence, and re-establishing competition in the relevant market, implementing necessary behavioral measures taking into account the ongoing structure of the relevant market and the undertaking's competition law record, regarding elimination and/or minimization of the effects of actions aimed at point exclusivity, through verbal agreements, would be consistent with the wording and spirit of Article 9 of Act No. 4054.
- (421) In this context, it should be noted that it is extremely difficult to implement a behavioral measure that would fully serve the intended purpose of completely ending the aforementioned exclusivity actions, given the fragmented structure of sales points in the traditional channel, the differing distribution methods resulting from this structure, and the fact that trade is largely conducted through verbal communication. As mentioned earlier, distribution in the traditional channel is carried out by distributor employees, and distribution is largely conducted through a hot sales¹⁰¹ system by making regular sales point visits (routes). In this context, verbal communications take place between distributor employees (sales representatives) and final sales point representatives, and written agreements are not common in the traditional channel.
- (422) Based on evidence 65 obtained during on-site inspections, it appears that FRITO LAY has made expenditures under four main headings under the name of business development budget/sales support budget. These are referred to in the relevant evidence as: (i) (.....), (ii) (.....), (iii) (.....), (iv) (.....) Although these budget usage processes, which are subject to various approval procedures, may appear standard at first glance; it is seen that budgets can only be applied to specific customers according to classification and can also be used for purposes such as terminating agreements with competitors, reducing the visibility of competitors, removing competitor display stands, and even purchasing competitor products under the heading of hindering competitor activities. It can also be said that, as of February 2023, the relevant budget usage practice has begun to be carried out more in the form of manual point loading

¹⁰¹ For example, placing instant orders and making instant deliveries based on negotiations at the final sales point, without being tied to a previously placed order.

via *Dükkan Senin*.¹⁰² In addition, the budget usage of the undertaking is not only carried out at the initiative of the sales representative, but it also involves processes that are subject to hierarchical approval.

- (423) In light of these facts, it is evident that budget usage is not subject to a standard set of rules and that activities aimed at establishing exclusivity in point are related to budget usage. In this context, it is considered necessary to restrict FRITO LAY's behavior of providing free/unconditional sales support to final sales points in order to minimize the impact of exclusivity actions through verbal agreements. To this end, it is considered that any budget usage that is not in exchange for a standard purchase transaction, which is "not personalized for specific customer types and is subject to a specific set of rules", should be discontinued at final sales points. With these implementations, it is intended that FRITO LAY's entire budget usage will resemble the category of quantity discounts that are far from designing customer demand, as stated in the theory and evaluation sections of the discount systems decision. Thus, considering the traditional channel market shares in 2023, the aim is to ensure that FRITO LAY, which has a market share of approximately (.....)%, implements its practices aimed at providing all kinds of financial benefits to its sales points, such as discounts, concessions, and manual *Dükkan Senin* points, in a controlled manner; except for investments made in relation to standard display stands and other display equipment, and budget expenditures equivalent only to the cost of this equipment.
- (424) Another issue to be considered within the scope of the file is the finding that distributor employees are indirectly encouraged to engage in exclusivity practices through verbal agreements at the final sales point due to the additional payments incorporated into their salaries. In other words, it is concluded that the system designed to provide bonuses to distributor employees, -referred to as sales representatives, who take orders from the final sales point, have regular routes, track products, display products, explain sales campaigns to point managers, and take measures to increase sales, indirectly affects exclusivity-based actions. Although the employee premium system does not explicitly include parameters targeting competitors and/or competing products, FRITO LAY's bonus/incentive system operates on a pyramid basis; new sales targets determined based on the relevant sales data from the previous year are notified to FRITO LAY's sales managers, regional managers, and sales supervisors, and bonus payments are made to all salaried employees and distributor personnel based on the target achievement rate. Therefore, the performance of the sales representative directly affects the sales manager, the performance of the sales manager directly affects the regional manager, and the performance of the regional manager directly affects the sales director.
- (425) When FRITO LAY's employee premium system is examined, (.....) can be seen in summary. The expenses incurred by FRITO LAY from its bonus budget allocated for the years 2019-2023 are presented in the table below, and upon reviewing the table, it

¹⁰² Additionally, it is stated that manual point loading can be performed in cases such as acquiring new customers through *Dükkan Senin*, placing new display stands, gaining additional display space outside the display stand, conducting PO1 inventory work, ensuring traditional channel food inventory compatibility (ensuring the compatible display stand is located at the compatible point), and ensuring traditional channel food planogram compatibility and that related expenses are made under the name of "Business Development Budget.

is understood that, except for 2019, the budget allocated by FRITO LAY for bonus payments was lower than the expenses incurred.

Table 102- FRITO LAY Bonus Payments Budget and Actual Expenditures (millions ₺)

Bonus Payments	2019	2020	2021	2022	2023
Budget	(.....)	(.....)	(.....)	(.....)	(.....)
Actual Expenditures	(.....)	(.....)	(.....)	(.....)	(.....)
Source: FRITO LAY					

- (426) Since premium systems for employees can generally increase employee productivity, it cannot be argued in competition law that their mere existence is anti-competitive; on the contrary, premium systems can contribute to achieving competitive outcomes by increasing the total output in the relevant market. Furthermore, the decision found that the packaged chips market is not yet a saturated market and that the output volume in the market has increased over the years, with the lowest being in the traditional channel.
- (427) In addition to the efforts of both FRITO LAY salaried and distributor salaried personnel to increase the potential turnover of all packaged chips at the final sales point, taking action regarding the availability and visibility of competing products that could reduce sales of FRITO LAY branded packaged chips will lead to increased sales of their own products and this will enable employees to achieve higher target attainment rates and earn bonuses close to the maximum level. In other words, despite market growth, actions that reduce competitors' presence and visibility at the final sales point may result in a larger share of the pie as the pie grows.
- (428) On the other hand, it is considered beneficial to look at the success of the premium system. In this context, the weighted average success rate of FRITO LAY Regional Managers and Sales Chiefs in the traditional channel and the ratio of bonus payments to salary payments for the 2019-2023 period are presented below.

Table 113 - FRITO LAY's Traditional Channel Regional Managers and Sales Chiefs' Bonus Statistics

Traditional Channel Title	Data	2019	2020	2021	2022	2023
Regional Manager	Weighted Average Success Rate	(.....)	(.....)	(.....)	(.....)	(.....)
	Ratio of Average Bonus Payment to Average Salary Payment	(.....)	(.....)	(.....)	(.....)	(.....)
Sales Manager	Weighted Average Success Rate	(.....)	(.....)	(.....)	(.....)	(.....)
	Ratio of Average Bonus Payment to Average Salary Payment	(.....)	(.....)	(.....)	(.....)	(.....)
Source: FRITO LAY						

- (429) The data in the table indicates that, with the exception of 2019, target achievement rates and, consequently, the ratio of bonus payments to salary payments have increased. In this context, it is understood that the bonus payments made correspond to a significant proportion of salary payments and constitute a noteworthy additional financial right. Therefore, it is considered that the premium system may have indirect effects in terms of hindering the activities of competitors at retail sales points.
- (430) Furthermore, although the exemption granted to FRITO LAY for its exclusive agreements with retail points of sale was revoked by the Board's decision dated

04.05.2004 and numbered 04-32/377-95, it is not possible to speak of any development in market dynamics or improvement in the establishment of effective competition since that date. On the contrary, FRITO LAY has stood out significantly from its actual competitors for many years with high market shares, particularly in the traditional channel. The Board has investigated numerous cases alleging that FRITO LAY has hindered the activities of its competitors, moreover, in 2013, the undertaking was fined for violating Article 4 of Act No. 4054 by engaging in exclusive practices. In this context, it is expected that the undertaking and its employees must have a high level of awareness of competition law. Although it is reported that the undertaking has organized intensive training programs for its employees on competition law compliance¹⁰³, including a precondition in the premium system for not taking action regarding the availability and visibility of competing products is important for establishing competition in the market.

- (431) Furthermore, although not directly within the scope of competition law, actions such as damaging competitors' products, deflating these products, collecting and burning them, and collecting and sealing display stands owned by competitors in the packaged chips market have been encountered in the past Board decisions¹⁰⁴. The regulation of the premium system will also have an impact on preventing such cases from occurring.
- (432) Considering all these points, it is concluded that adding preconditions to FRITO LAY's employee premium system that *"No action shall be taken regarding the availability and visibility of competing products at final sales points, and personnel working under or outside the FRITO LAY payroll may only make recommendations at final sales points regarding products within the FRITO LAY portfolio."* will contribute to reducing employee motivation for exclusivity-based actions in the packaged chips market and establishing effective competition.
- (433) Finally, it is known that there are practices in the Board's past decisions in similar markets that address measures, commitments, and obligations, and that include the provision of providing information to retail sales points by the investigating parties to ensure the effectiveness of behavioral measures.¹⁰⁵ In this context, it would also be appropriate to include an information obligation that can be considered largely complementary to the behavioral measures applied within the scope of the file. In this regard, within the context of the final decision to be made in this investigation, taking

¹⁰³ The undertaking states that it has conducted internal reviews regarding compliance with competition law in relation to its use of the *Pepsell*, *KazandıRio*, and *Dükkan Senin* applications, customer and distributor relations, performance development assessment targets, and employee premium system, that training programs focusing on the retail sector, including the obligations set forth in the 2004 decisions, were organized, tests were conducted to measure employees' awareness of competition law, question-and-answer documents were prepared taking into account frequently asked questions regarding competition law, that informational announcements reminding employees of compliance with competition law rules within the company have been made, efforts are being made to establish and develop a culture of compliance within the company's digital platforms through programs such as *"Culture of Integrity"* and *"GenEthics"*, that with digitalization, access to open sources is ensured for employees, a commitment to comply with competition law is established in the disciplinary procedure, and a reporting system has been integrated where competition law concerns can be reported anonymously via websites.

¹⁰⁴ See The Board's decisions dated 06.04.2006, numbered 06-24/304-71, and dated 12.06.2018, numbered 18-19/329-163, concerning FRITO LAY.

¹⁰⁵ For example, see. *Mey İçki* decision dated 06.10.2022 and numbered 22-45/670-284, Coca Cola decision dated 02.09.2021 and numbered 2141/610-297, *Tadım* decision dated 07.07.2022 and numbered 22-32/505-202.

into account the obligations imposed by the 2004 Board decision regarding the withdrawal of the exemption for FRITO LAY, the notification of information letters, which will also be subject to the approval of the Authority, prepared to remind retailers that decisions regarding whether to stock competing products and displays and their placement within the store are entirely at their own discretion, and that FRITO LAY and/or its distributors cannot make any recommendations or requests regarding the availability or visibility of competing products and that financial benefits (such as additional discounts, concessions, rebates, or *Dükkan Senin* points) cannot be provided to final sales points in any way related to the purchase of products from FRITO LAY, will increase the effectiveness of the Board's decision.

(434) Consequently, pursuant to the first paragraph of Article 9 of Act No. 4054; a behavioral measure should be imposed that,

“To be implemented within one month starting from the notification of the reasoned decision and documented to the Competition Board on the date determined for the information obligation in point 3 stated below,

1. *In terms of the products sold by FRITO LAY or its distributors in the packaged chips market, except standard purchasing transactions in return for trade made with retail outlets in the traditional channel, any kind of rebates, additional discounts, privileges as well as financial benefits called Dükkan Senin points and/or financial benefits similar to those shall be ended,*
2. *The precondition that no action shall be taken in terms of availability and visibility of competing products at sales points and the employees of FRITO LAY and/or its distributors can give recommendations to the sales points about only the products they sell shall be added to FRITO LAY's employee premium system, within this scope, employees shall be informed regularly and the necessary in-house measures shall be taken to monitor the precondition and*
3. *The informing letters, which are prepared after taking the consent of the relevant Department of the Competition Authority in order to increase the efficiency of the behavioral remedies stipulated above and to serve as a complement with regard to compliance with competition rules in the packaged chips market by considering the provisions in the decision of the Competition Board dated 04.05.2004 and numbered 04-32/377-95 about FRITO LAY, shall be delivered physically to undertaking's consumers in the traditional channel; the first one shall be completed and documented to the Board within six months as of the notification of the reasoned decision, others shall be prepared biennially corresponding to the same month of the year, totally there shall be five informing letters.*

J. CONCLUSION

(527) According to the Report prepared and the Additional Opinion, evidence collected, written pleas, the explanations made during the oral hearing and the scope of the file examined regarding the investigation conducted per the Board decision dated 21.03.2024 and numbered 24-14/291-M, it has been decided UNANIMOUSLY that

- I- Frito Lay Gıda San. ve Tic. violated article 4 of the Act no 4054 on the Protection of Competition by means of restricting competition by applying exclusivity in the packaged chips market in traditional channel retail sales points,
- II- Taking into account the fact that with the Competition Board decision dated 04.05.2004 and numbered 04-32/377-95, it was found that the exclusive sales system, which the undertaking applied in final sales points in the market through written contracts and de facto, did not carry out the conditions specified in the Block Exemption Communiqué no 2002/2 on Vertical Agreements and thus article 5 of the Act no 4054, and it was decided that the exemption granted to the undertaking would be withdrawn according to article 6 of the Communiqué and 13 of the Act; within this framework, practices such as giving products for free or giving various presents, making discounts or rebates would be carried out without depending on exclusivity condition and in a way not to create de facto exclusivity and the exclusivity provisions in written contracts shall be amended, and given the relevant market as well as the effects of the conduct in terms of FRITO LAY's direct and indirect exclusivity practices about points of sale, there are not any developments that could change the evaluation in the said decision; therefore, the said practices cannot benefit from exemption under article 5 of the Act no 4054,
- III- Thus, due to the said practices, FRITO LAY shall be imposed administrative fines according to 16(3) of the Act no 4054, within this scope, according to article 4, article 5(1), 5(2), 5(3)(d) and 6(1) of the "Regulation On Fines to Apply in Cases of Agreements, Concerted Practices And Decisions Limiting Competition, and Abuse of Dominant Position", which was published in the Official Gazette dated 27.12.2024 and numbered 32765, at a rate of (.....)% of the gross revenues in 2023 by discretion, 1.365.467.533,01-TL administrative fines shall be imposed,
- IV- According to article 9(1) of the Act no 4054, behavioral remedies shall be imposed regarding the following issues for terminating the violation and establishing efficient competition in the packaged chips market,
 - 1. To be implemented within one month starting from the notification of the reasoned decision and documented to the Competition Board on the date determined for the information obligation in point 2 stated below,
 - i. In terms of the products sold by FRITO LAY and/or its distributors in the packaged chips market, except standard purchasing transactions in return for trade made with retail points of sale in the traditional channel, any kind of rebates, additional discounts, privileges as well as financial benefits called *Dükkan Senin* points and/or financial benefits similar to those shall be ended and
 - ii. The precondition that no action shall be taken in terms of availability and visibility of competing products at sales points and the employees of FRITO LAY and/or its distributors can give recommendations to the sales points about only the products they sell shall be added to FRITO LAY's employee premium system, within this scope, employees shall be informed regularly

and the necessary in-house measures shall be taken to monitor the precondition,

2. The informing letters, which are prepared, after taking the consent of the relevant Department of the Competition Authority, in order to increase the efficiency of the behavioral remedies stipulated above and to serve as a complement with regard to compliance with competition rules in the packaged chips market by considering the provisions in the decision of the Competition Board dated 04.05.2004 and numbered 04-32/377-95 about FRITO LAY, shall be delivered physically to undertaking's consumers in the traditional channel; the first one shall be completed and documented to the Board within six months as of the notification of the reasoned decision, others shall be prepared biennially corresponding to the same month of the year, totally there shall be five informing letters,
3. The following obligations shall be valid for sales points with a closed sales area below 200 m², the arrangements shall be made by taking into account the net basket (shelf) width of the display stand where the products are placed and be applied in the same way for each basket without any exceptions:
 - The areas apart from the display stand such as checkout, etc. shall not be used for calculating the basket area allocated for competing products.
 - The basket area to be allocated to competing products in display stands shall be arranged in the same vertical level in a way to be visible by the consumers. The basket area to be allocated shall be in single piece and placed at the leftmost or rightmost side of the display stand.
 - In line with this,
 - i. Frito Lay can only place one display stand in points of sale.
 - ii. In addition to only one display stand, there shall be one hanger or similar additional display material at the most and products shall be placed in single file in an outlet.
 - iii. If there is not at least one display stand wider than 80 cm belonging to a competing producer at the sales point, 30% of Frito Lay's display stand, not smaller than 35 cm per basket vertically, shall be allocated for competitors. The allocated part shall be divided by a separator and carry a sticker stating "*This part is allocated to competing chips products*" readably on each basket. In cases where competing products are not available/are sold out in the outlet, the area allocated for competing products shall not be used for Frito Lay products.
 - iv. Even if there is a display stand belonging to another undertaking apart from Frito Lay at the sales point, upon the request of the competing producer, within one week at the latest, within the framework of the criteria stated above, 30% of Frito Lay's display stand, not smaller than 35 cm per basket vertically, shall be opened for other competing producers who do not have their own display stand in the outlet.
 - v. Regardless of whether there are competitors' display stands in the sales point, 30% of the part, which is related to the products that are

the subject of the investigation and which is visible for the consumers in the same vertical level, in PO1 or similar integrated display stands, regardless of their name, where different product groups are displayed, shall be opened to competing products, if there are not any competing products for any reason, this part shall be left empty. Likewise, this area shall be separated from Frito Lay products with a separator and the baskets in the separated area shall carry a sticker stating "*This part is allocated to competing chips products*".

- vi. To be valid for all display stands, competing producers can attach the visuals of their own products on the part corresponding to the area allocated for competitors on brand/advertisement areas on the display stand if they request, in a way not to distort the integrity of the display stand.
- Frito Lay or Frito Lay dealers/distributors shall not provide any suggestion or direction to outlets especially with respect to competing products, placement of competing products or the location of competing display stands in the outlet directly or indirectly.
 - Frito Lay is obliged to take any measures contractually to ensure that the outlet complies with the abovementioned issues. Frito Lay shall notify the outlets, dealers/distributors of the terms of use for display stands under the scope of this decision in writing.
 - All obligations, which are stated above and whose due date is not specified, shall be realized and documented to the Authority within 90 days as of the notification of the reasoned decision at the latest.
 - During the period following the documentation, the measurement changes in all display stands in sales points shall be reported to the Authority every six months together with the reason of the change and the first report shall cover the display stand inventory in all sales point.
 - The arrangements about display stand shall be reviewed two years after the notification of the reasoned decision and additional arrangements can be made for the sake of making the market more competitive.
 - The Presidency shall monitor regularly the issues examined under the scope of this file.
- V- Article 4 and/or 6 of the Act no 4054 was not violated by the other actions of FRITO LAY examined under the scope of the file,
- with the decision subject to appeal before Ankara Administrative Courts within 60 days as of the notification of the reasoned decision.