

Law Bulletin

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AMENDMENTS TO THE ELECTRONIC COMMERCE LAW

On 7 July 2022, the Law Amending the Law on the Regulation of Electronic Commerce (the "**Amendment Law**") was published. With the Amendment Law, new definitions and additional provisions regarding the scope of Law No. 6563 on the Regulation of Electronic Commerce (the "**Electronic Commerce Law**") are introduced, additional authorities are granted to the Ministry of Commerce (the "**Ministry**"), and new obligations for electronic commerce intermediary service providers and electronic commerce service providers are adopted.

1. Definitions

The Amendment Law introduced the following definitions to the Electronic Commerce Law:

	Definition
Electronic Commerce Marketplace	<i>The electronic commerce environment where the electronic commerce intermediary service provider provides its intermediary services</i>
Electronic Commerce Environment	<i>Platforms such as website, mobile site or mobile application where electronic commerce activities are carried out</i>
Electronic Commerce Intermediary Service Provider	<i>The intermediary service provider that enables the order placement or the execution of agreements for the provision of electronic commerce service providers' goods or services in the electronic commerce marketplace</i>
Electronic Commerce Service Provider	<i>The service provider that executes agreements or receives orders for the provision of its goods or services in the electronic commerce marketplace or in its own electronic commerce environment</i>
Net Transaction Volume	<i>For electronic commerce intermediary service providers, sum of the final invoice or equivalent documents' values, which must be issued for contracts executed and orders placed during a certain period in electronic</i>

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	Definition
	<p><i>commerce marketplaces, where they provide intermediary services, excluding cancellations and returns;</i></p> <p><i>For electronic commerce service providers, sum of the final invoice or equivalent documents' values for sales made in their own electronic commerce environments that are not qualified as electronic commerce marketplaces, excluding cancellations and returns.</i></p>
Electronic Commerce Information System (ETBİS)	<p><i>An information system created by the Ministry for the purpose of registering electronic commerce service providers and electronic commerce intermediary service providers, collecting electronic commerce data, and producing statistical information by processing these data, and enabling registration and notification within the scope of the Electronic Commerce Law</i></p>
Economic Integrity	<p><i>Covers cases where a person directly or indirectly holds a company's at least 25% of the shares or the majority of its voting rights or where it holds shares that enables it to adopt resolutions to manage the company; a person has the right to elect the majority of members that can adopt resolutions in the management body pursuant to the articles of association; a person holds the majority of the voting rights alone or along with other shareholders apart from its own voting rights pursuant to an agreement or a person holds the company under its control according to an agreement or, depending on these circumstances, where the companies and the relations between the businesses owned by this person or where regardless of whether they are shareholders or not, more than one companies are managed by the same person(s)</i></p> <p>Under this definition, an economic integrity will be assumed to exist even between companies that do not have any shareholding relationship but are managed by the same persons. Thus, the Amendment Law, by keeping a broad definition of the economic integrity, regulates many of the obligations envisaged for electronic commerce intermediary service providers and electronic commerce service providers in a way to include companies within their economic integrity.</p>

2. Scope

The Amendment Law states that companies operating in the sectors of travel agency, civil aviation, private pension, savings and investment systems, banking, insurance, financial leasing, factoring, financing and savings financing, capital markets, payment, securities settlement systems and electronic money services, electronic communication, betting and games of chance shall not be considered as electronic commerce intermediary service providers or electronic commerce service providers.

3. Authority of the Ministry

The Amendment Law granted the following authorities to the Ministry: **(i)** to supervise the Amendment Law's implementation and to appoint an expert to carry out the inspections if technically necessary, **(ii)** to arrange the necessary regulations in order to ensure and protect an

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effective and fair competition environment in electronic commerce in line with the Amendment Law's purposes, **(iii)** to request information from the Information Technologies and Communication Authority at any time in order to be informed about the subscription information of the persons who send commercial electronic messages, and **(iv)** to impose administrative fines on electronic commerce intermediary service providers and electronic commerce service providers in case of violation of the obligations set forth by the Amendment Law, to grant time with certain instructions to rectify the violation to the relevant persons, and to increase the fines up to 10 times in case of non-compliance despite the time granted.

4. Obligations

In parallel with the Ministry's inspection and information request powers, the Amendment Law obliges electronic commerce intermediary service providers and electronic commerce service providers to keep information, documents, books and records related to the electronic commerce activities and operations for a term of 10 years.

The Amendment Law gradually set forth various obligations for electronic commerce intermediary service providers and electronic commerce service providers according to their net transaction volumes, and each obligation is linked to separate monetary sanctions.

4.1. Electronic Commerce Intermediary Service Providers' Obligations

With the Amendment Law, electronic commerce marketplaces where exclusively an electronic commerce intermediary service provider's branded products are offered for sale, based on contracts such as dealership and agency contracts, are exempted from the obligations set forth for electronic commerce intermediary service providers.

• General Obligations

Obligation	Transition Period
Removal of illegal content and notification of the relevant public institutions and organizations of the illegal content	Beginning from 1 January 2023
Removal of the products that violates the intellectual and industrial property rights of the relevant right holder (upon a complaint from the right owner, based on information and documents): <ul style="list-style-type: none">The Amendment Law states that if the electronic commerce service provider objects by presenting an information and document demonstrating that the intellectual and industrial property rights have not been violated, the relevant product may be republished.	
Not engaging in unfair commercial practices in electronic commerce: <ul style="list-style-type: none">The Amendment Law defines electronic commerce intermediary service providers' unfair commercial practices as "practices that significantly disrupt commercial activities of the electronic commerce service provider to which the intermediary service is provided, reduce its ability to make a reasonable decision, or cause it to become a	

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Obligation	Transition Period
<p>party to a commercial relationship that it would not normally be a party to by forcing it to take a certain decision”.</p> <ul style="list-style-type: none"> Article 7 of the Amendment Law enumerates situations that will be deemed as unfair commercial practices such as unilaterally changing electronic commerce service provider's sales price, forcing the electronic commerce service provider to sell campaigned goods or services, and not making the payment to the electronic commerce service provider in return for the sale of goods or services within five working days from the date that at the latest the sale price is at the disposal of the electronic commerce intermediary service provider and the order is delivered to the buyer. 	
<p>Not offering for sale the goods bearing their own brands or for which they have the right to use the trademark, in the electronic commerce marketplace in which they operate, or to act as an intermediary in the sale of these goods</p> <ul style="list-style-type: none"> If these goods are offered for sale in different electronic commerce environments, the Amendment Law prevents the possibility of providing access between these electronic commerce environments and promoting each other. This obligation is not applicable to goods that bear the trademark of persons who derive more than half of the total sales revenue from sales other than electronic commerce, or to goods for which they have the right to use the brand. 	Beginning from 1 January 2024
<p>Ensuring that the electronic platform where the electronic commerce service provider makes sales includes the information in the documents required to be issued within the scope of Tax Procedure Law No. 213</p>	
<p>Not engaging in marketing and promotion activities in online search engines by using the registered trademarks of electronic commerce intermediary service provider or electronic commerce service provider, which constitute the main element of their domain names registered with the ETBIS (Electronic Commerce Information System), without obtaining prior written or electronic consent.</p>	Beginning from 1 January 2023
<p>Verifying the introductory information of the electronic commerce service providers through the documents obtained from them or the relevant institutions' electronic systems</p>	

- Obligations of Electronic Commerce Intermediary Service Providers Whose Net Transaction Volume in a Calendar Year Exceeds TRY 10 billion**

In addition to the general obligations mentioned above, the following obligations are imposed on electronic commerce intermediary service providers with a net transaction volume exceeding TRY 10 billion in a calendar year.

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Obligation	Transition Period
<p>Using data obtained from the electronic commerce service providers and buyers only for the purpose of providing intermediary services and not using this data to compete with electronic commerce service providers:</p> <ul style="list-style-type: none"> The companies which are in the same economic integrity with the electronic commerce intermediary service provider are also included within the scope of this obligation. 	Beginning from 1 January 2023
<p>Providing technical means to electronic commerce service providers for their data's free portability and for free and effective access to these data as well as the processed data obtained from these</p>	Beginning from 1 January 2024
<p>Not providing access between their own electronic commerce environments, except for the electronic commerce environments included in the net transaction volume and not promoting each other in these environments</p> <ul style="list-style-type: none"> The companies which are in the same economic integrity with the electronic commerce intermediary service provider are also included within the scope of this obligation. 	
<p>Notifying the Ministry of shareholders' share transfers or acquisitions amounting to 5% or its multiples, except for the shares registered in the stock exchange, incorporation of companies and the acquisition or transfer of the newly incorporated company's shares</p>	Beginning from 1 January 2023
<p>Submitting reports to the Ministry in accordance with the procedures and principles to be determined:</p> <ul style="list-style-type: none"> Reports prepared by independent auditing firms and including information such as the electronic commerce intermediary service provider's activities, management, organization and shareholding structure, companies within the same economic entity and its financial situation Report stating the operations to detect the illegal contents provided by electronic commerce service providers and the detected illegalities 	
<p>In case the transaction number excluding the cancellations and refunds exceeds 100,000, obtaining a license from the Ministry by paying the license fee calculated in accordance with the Amendment Law and annually renewing the license</p>	Beginning from 1 January 2025

- Obligations of Electronic Commerce Intermediary Service Providers Whose Net Transaction Volume in a Calendar Year Exceeds TRY 30 billion and Transaction Number Exceeds 100,000**

In addition to the obligations mentioned above, the following obligations are imposed on electronic commerce intermediary service providers with a net transaction volume exceeding TRY 30 billion in a calendar year and a transaction number over 100,000:

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Obligation	Transition Period
<p>Not spending on advertisements and promotions, awards, scores, gift cards and similar facilities more than;</p> <ul style="list-style-type: none"> • 2% for the sum amounting to TRY 30 billion • 0,3% for the sum exceeding TRY 30 billion <p>of the net transaction volume after applying the 12-month average Consumer Price Index change rate based on the net transaction volume of the previous year</p>	Beginning from 1 January 2023
<p>Not restricting the electronic commerce service provider's commercial relations, its use of alternative sales channels or its advertisements, not compelling electronic commerce service providers to provide products or services from a company and not include any provisions that allows them to do so in the intermediary contract</p>	

- **Obligations of Electronic Commerce Intermediary Service Providers Whose Net Transaction Volume in a Calendar Year Exceeds TRY 60 billion and Transaction Number Exceeds 100,000**

In addition to the obligations mentioned above, the following obligations are imposed on electronic commerce intermediary service providers with a net transaction volume exceeding TRY 60 billion in a calendar year and a transaction number over 100,000:

Obligation	Transition Period
<p>Except for credit card payments and other payment transactions, not facilitating provision of services by banks or financial leasing, factoring, finance companies and savings finance companies that are in the same economic integrity with them, in the electronic commerce marketplaces they provide intermediary services</p>	Until 1 January 2024
<p>Not accepting for payment electronic money issued by electronic money institutions within the same economic integrity</p>	
<p>Not providing any services similar to the "wallet", relating to instruments that can be used in goods or service purchases within the scope of a commercial agreement concluded with the payment instrument issuer in a limited service provider network or for a limited goods or service category, only in the workplace of the payment instrument issuer or not allowing the companies that are within the same economic integrity with them to provide these services</p>	
<p>Except for its sales made as electronic commerce service provider and sales other than those made in the e-commerce sector, not carrying out transportation, transportation organization and delivery activities</p>	
<p>If it provided an electronic environment for the publication of goods or service announcements, not allowing the conclusion of contracts</p>	Beginning from 1 January 2023

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Obligation	Transition Period
or the placement of orders for the supply of goods and services in the same environment	

4.2. Electronic Commerce Service Providers' Obligations

The Amendment Law imposed on electronic commerce service providers the obligation to not use the registered trademarks that constitute the domain names' main element registered with the ETBIS in their marketing and promotion activities in online search engines, without obtaining the prior written or electronic consent of the persons who are not in the same economic integrity with them. Additionally, the Amendment Law regulates that some of the obligations imposed on electronic commerce intermediary service providers will be applied by analogy to electronic commerce service providers, categorized based on their net transaction volume and transaction number. Accordingly, electronic commerce service providers are divided into those whose net transaction volume exceeds TRY 10 billion and transaction number excluding cancellations and returns exceeds 10 million; those whose net transaction volume exceeds TRY 30 billion and transaction number excluding cancellations and returns exceeds 10 million; and those whose net transaction volume exceeds TRY 60 billion and transaction number excluding cancellations and returns exceeds 10 million.

However, contrary to electronic commerce intermediary service providers, the Amendment Law states that electronic service providers that obtain half of their sales from channels other than e-commerce sales will not be subject to these obligations.

The Amendment Law envisages that the following obligations will be applied by analogy to electronic commerce service providers whose net transaction volume exceeds TRY 10 billion and who has a number of transactions over 10 million:

- Using the data only for the purpose of providing its services and allowing data portability
- Notifying the Ministry of the operations carried out to detect illegal contents and the violations detected as a result of it
- Obtaining a license from the Ministry by paying the license fee calculated in accordance with the Amendment Law (and by excluding the sales made via the electronic commerce service provider's electronic commerce environments) and annually renewing the license

In addition to the obligations mentioned above, the Amendment Law envisages that the following obligations will be applied by analogy to electronic commerce service providers whose net transaction volume exceeds TRY 30 billion and who has a number of transactions over 10 million:

- Spending a maximum of 2% for the sum amounting to TRY 30 billion and a maximum of 0,3% for the sum exceeding TRY 30 billion of the total transaction volume after applying the 12-month average Consumer Price Index change rate based on the net transaction volume of the previous year for advertisements and promotions, awards, scores, gift cards and similar facilities

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In addition to the obligations mentioned above, the Amendment Law envisages that the following obligations will be applied by analogy to electronic commerce service providers whose net transaction volume exceeds TRY 60 billion and who has a number of transactions over 10 million:

- Except for credit card payments and other payment transactions, not allowing any activities relating to the services to be provided by banks or financial leasing, factoring, finance companies and savings finance companies that belong to the same economic integrity with them, in the electronic commerce marketplaces they provide intermediary services
- Not accepting the electronic money issued by electronic money institutions within the same economic integrity
- Not providing any services similar to "wallet", relating to instruments that can be used in goods or service purchase and not allowing companies that are in the same economic integrity to provide these services
- If it provided an electronic environment for the publication of goods or service announcements, not allowing the conclusion of contracts or the placement of orders for the supply of goods and services in the same environment

5. Conclusion

The Amendment Law aims to prevent electronic commerce platforms with significant market share from taking advantage of their positions, excluding other undertakings and favoring themselves by engaging in various unfair commercial practices and intervening with the algorithms. In line with these purposes, the Amendment Law imposes many new obligations on both electronic commerce intermediary service providers and electronic commerce service providers. By defining the concept of economic integrity in a broad manner, the Amendment Law regulates that not only electronic commerce intermediary service providers and electronic commerce service providers, but also other companies that fall under this definition will have to comply with the relevant obligations. The Amendment Law authorizes the Ministry to monitor the compliance with these obligations and to impose administrative monetary fine in case of non-fulfilment. As such, the obligations must be fulfilled by the relevant companies in accordance with the transition periods.