

A new era in electronic commerce

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THE RISE of e-commerce in recent years has led to discussions of new legislation surrounding e-commerce platforms, and regulatory policies became different public authorities' main focus in 2022. The Ministry of Trade and the Turkish Competition Authority (the "TCA") focused primarily on eliminating the competitive concerns posed by e-commerce platforms and unfair commercial practices caused by the asymmetric bargaining power between the platforms and the sellers. The first step for regulating the e-commerce sector was the Law Amending the Law on Regulation of Electronic Commerce (the "Law") which was published on July 7, 2022. The Law introduces new regulations into the e-commerce ecosystem and redetermines sector dynamics by stipulating many obligations for e-commerce platforms.

Among other things, the most important regulation introduced by the Law are the additional obligations imposed on e-commerce platforms of different sizes. According to the Law, as of 1 January 2023, e-commerce platforms with a net transaction volume of over TRY 10 billion in a calendar year will not be allowed to use data obtained through their sellers and buyers while competing with other platforms. In addition, as of 1 January 2024, these e-commerce platforms will have to provide access to their sales data to sellers and transfer this data to other platforms on a free of charge basis. These regulations are in line with the TCA's findings in its E-Marketplace Platforms Sector Inquiry Final Report (the "Report") dated April 2022, which established that e-marketplaces gain an unfair advantage by using their sellers' data, especially regarding the products that they also sell under their own, bespoke brand.

The Law also sets out that, as of 1 January 2023, e-commerce platforms

with a net transaction volume of over TRY 30 billion and over 100,000 transactions in a calendar year, will only be allowed to spend limited amounts on advertisements and offer certain amounts of promotions, rewards, points, coupons, gift certificates and similar opportunities. In addition, these e-commerce platforms must refrain from practices that restrict sellers from selling and advertising products through alternative channels. The Report points out that advertising expenditures have a positive impact on sales volume, and large e-commerce platforms that can bear high costs have more power to offer promotions, gift certificates and similar opportunities. Accordingly, the Law aims to prevent market monopolization by limiting advertising expenditures, promotions, gift certificates of e-commerce platforms with a certain market power.

In addition, the Law prohibits unfair commercial practices for all e-commerce platforms, without imposing any transaction number or volume-based thresholds. "Unfair commercial practices" are defined as practices significantly impairing sellers' commercial activities, reducing their ability to make reasonable decisions, or forcing them to take a particular decision by causing them to accept commercial terms that they would not accept under normal circumstances. For example, the Law prohibits unilateral changes in a sales price. The Law also requires that sellers be paid in full within five working days once a sale price is at the e-commerce platform's disposal or once a sales order is delivered to the buyer.

Lastly, the Law sets out that, as of 1 January 2025, e-commerce platforms with a net transaction volume of over TRY 10 billion and over 100,000 transactions in a calendar year must obtain a license from the Ministry of Trade and renew their license

annually to continue their activities. This license requirement ensures public authorities' supervision and audit of e-commerce platforms with a certain magnitude. While the Law will enter into force on 1 January 2023, additional regulations are expected to be introduced to clarify the sector stakeholders' future responsibilities. Considering that the new regulations introduced by the Law will have serious financial and operational impacts especially on larger sector players, e-commerce platforms should specify the obligations applicable to them in advance and implement relevant compliance measures in a timely manner.

In September 2022, the TCA published a draft amendment to Law No. 4054 on the Protection of Competition (the "Amendment Law") for consultation. Similar to the Law, the Amendment Law stipulates ex ante obligations on digital platforms with significant market power, mainly on issues such as self-preferencing of their own goods and services, usage of and access to personal and public data and online advertising. The Amendment Law also imposes higher monetary fines in cases of infringement by the undertakings active in the digital markets. However, unlike the Law, the obligations stipulated under the Amendment Law do not only cover e-commerce platforms, but also involve other digital platforms defined under "core platform services," such as online search engines, social networking services, video-sharing platform services, and beyond. The suggested regulations set forth in the Amendment Law are similar to the Digital Markets Act, which entered into force in the European Union on 1 November 2022.

In conclusion, the change in the regulatory landscape aims to ensure effective competition in the digital markets by limiting e-commerce platforms' market power.

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