

## **Are the rules of the game in e-commerce in turkey being rewritten?**

On 7 May 2021, the Turkish Competition Authority (the “**TCA**”) published the preliminary findings report on its e-marketplace sector inquiry. The sector inquiry was initiated on 11 June 2020 with the Turkish Competition Board’s decision number 20-28/353-M, in order to determine potential competition issues arising in relation to online marketplaces operating in Turkey (including Amazon Turkey, Trendyol, Hepsiburada, GittiGidiyor, ÇiçekSepeti), and set out policy recommendations to remedy them.

In its preliminary report, the TCA proposes a number of policy recommendations devised in three pillars:

- (i) Reviewing and strengthening existing competition rules to tackle potential competition concerns arising from the activities of online platforms,
- (ii) Issuing a code of conduct to address the unfair commercial practices of online platforms,
- (iii) Implementation of an ex-ante regulatory instrument which established obligations and sanctions specifically designed for designated gatekeepers (i.e., online platforms with a strong and durable market position and that link a large user base to a large number of businesses).

### ***The e-marketplace sector inquiry***

As part of the sector inquiry, the TCA collected extensive information from the market, including consumers (shoppers), third party sellers on online marketplace platforms, third party service providers such as shipping and package delivery companies, the Turkish Ministry of Trade and the Turkish Informatics Industry Association. In addition to locally operating e-marketplaces, the TCA also looked into the global evolution and growth potential of multinational e-marketplaces, through case studies on Amazon and Alibaba. In the preliminary report, the TCA provides an overview of alleged market malfunctions that are due to intrinsic characteristics of e-marketplace industries such as network externalities, economies of scale and scope and data-driven business models.

As a result of the sector inquiry, in its preliminary report, the TCA sets forth the following theories of harm arising from certain practices of e-marketplaces, considered in conjunction with such industry specific market characteristics:

- *Theories of harm regarding inter-platform competition* - Practices such as the use of wide most-favoured-nation clauses, contractual or de facto exclusivity, or limitation on multi-homing of third party sellers are flagged by the preliminary report as having a potential to harm competition between e-platforms.
- *Theories of harm regarding intra-platform competition* - The preliminary report sets forth that asymmetries in information and bargaining power favours e-marketplaces over third party sellers. This would increase the likelihood of e-marketplaces unilaterally imposing unfair commercial practices. An example of such practices would be to provide priority to the products of third party sellers that purchase ancillary services (e.g., logistics, payment or cloud services) from the platform provider over the products of those who do not. Another example would be self-preferencing practices of e-marketplaces, designed to favour products offered by the platform over those offered by third party sellers.
- *Consumer theories of harm* - The preliminary report emphasizes the need for transparent and easily accessible information regarding the collection and use of consumer data by e-marketplaces, in order to avoid unfair manipulation of consumer choice. Moreover, the

preliminary report suggests that killer-acquisitions may further limit new entry, in turn limiting consumer choice.

### **Background**

In the last decade, digitalisation has been the driving force of global economy. The same is true in Turkey, where the developments in internet technologies has drastically changed both business models and consumer behaviours. Digitalisation was further accelerated by the Covid-19 pandemic. Indeed, the Turkish e-commerce sector grew by 64% in the first half of 2020. As emphasized in the preliminary report, online marketplaces have been at the centre of such growth, with 112% growth in the same period.

The rapid growth of e-marketplaces giving rise to unprecedented competitive challenges led to some high profile investigations by the TCA, most notably against Booking.com, Yemeksepeti.com (a Turkish online food delivery platform), Sahibinden.com (a Turkish online classified advertisement platform) and Hepsiburada.com (a Turkish online retail platform). Moreover, on 30 January 2020, the TCA announced that it had begun work on a Digitalisation and Competition Policy Report, in order to establish its main focal points in its future enforcement practices in the digital economy. It is safe to say that the e-marketplace sector inquiry will mark the first step towards concrete regulatory action following the TCA's long-lasting enforcement efforts in the digital economy.

### **Next steps**

As such, once the preliminary report is finalized, it is expected that the TCA will begin work on a number of legislative changes and new regulatory instruments, based on the findings of the sector inquiry. Moreover, it should be noted that the discussion in the preliminary report on the need for ex-ante regulation of gatekeepers is in clear analogy with the European Commission's proposal of a Digital Markets Act.<sup>1</sup> Since the legislative framework of competition rules in Turkey is broadly aligned with the European Union, it is safe to assume that –if and once enacted- the new ex-ante regulatory instrument proposed by the TCA would likely reflect the main principles of the Digital Markets Act.

A public consultation on the findings and policy recommendations laid out in the preliminary report will run until 9 July 2021, following which the report will take its final form. Moreover, the TCA announced that a workshop would be held in the coming months with respect to the preliminary report, with the participation of all stakeholders. Details on the workshop will be later announced on the TCA's official website.

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<sup>1</sup> The Digital Markets Act aims at regulating the behaviour of the Big Tech firms and guaranteeing a level playing field within the European Single Market.