

## INFORMATION NOTE ON THE AMENDMENTS TO THE E-COMMERCE LEGISLATION

*The Law on the Amendment of the Law on the Regulation of Electronic Commerce (“**Amendment Law**”) was submitted to the Grand National Assembly of Turkey on 28 June 2022, adopted on 01 July 2022, and published in the Official Gazette No. 31889 on 07 July 2022. Most of the provisions of the Amendment Law will enter into force on 1 January 2023.*

*To summarize, with the amendment; the responsibility of intermediary service providers regarding illegality has been expanded, and accordingly, they will be obliged to establish an information system, maintain its accessibility, and operate it effectively; in order to ensure monitorability, both service providers and intermediary service providers are obliged to keep books for 10 years; precautions have been introduced to identify and prevent unfair commercial practices in electronic commerce, such as forcing and preventing the electronic commerce service provider to sell promotional goods or services, and ensuring that the relationship between the electronic commerce intermediary service provider and the service provider is regulated in a transparent, fair manner protecting the legal interests of the parties; some certain obligations imposed on electronic service intermediary providers are also imposed on electronic service providers. The amendment has importance as it requires electronic commerce intermediary service providers that exceed certain thresholds, to obtain licenses and renew them. It is also noteworthy that there are obligations on personal data protection.*

### I. INTRODUCTION

It is known that new businesses, business models and product groups have been included in the e-commerce ecosystem since October 2014, when the Law No. 6563 on the Regulation of Electronic Commerce (“**E-Commerce Law**”) entered into force. Also, "electronic commerce marketplaces" (**Marketplace**) have been an important sales channel in the growth of e-commerce.

It has been seen in practice that electronic commerce intermediary providers have so far been able: to impose unilaterally determined or unclear contractual provisions; to highlight their own goods or services; to complicate or not allow data portability; to force the supply of goods or services; to make late payments; to offer promotional goods or services; to engage in unfair practices such as coercion, receiving a fee despite not providing any service, dropping them back in the ranking or recommendation system of electronic commerce service providers, restricting, suspending or terminating the services offered.

Again, e-commerce intermediary service providers, which have become large-scale by implementing aggressive growth strategies, have further strengthened their position in the market by taking advantage of their network effects and economies of scale, and they make it difficult for the new intermediary service providers to enter the sector with their bargaining power, ability to determine consumer preferences and control over the service providers.

It should be noted that, although the enterprises operating in the fields of travel agency, banking, insurance, payment services and electronic communication of which the establishment and activities are regulated by special laws and which are exclusively authorized by these laws, are obliged to continue to comply with the obligations under the E-Commerce Law, it is explicitly stated that they will not be accepted as electronic commerce intermediary service providers or electronic commerce service providers.

### II. WHAT IS NEW IN THE AMENDMENT LAW?

#### 1. Definitions

With the Amendment Law, new definitions of electronic commerce intermediary service provider and electronic commerce service provider are introduced in addition to the existing definitions of the intermediary service provider and the service provider in the E-Commerce Law. The new definitions under the Amendment Law are as follows;

- **Electronic commerce intermediary service provider:** *“the intermediary service provider that enables placing orders or executing agreements pertaining to the provision of electronic commerce service providers’ goods or services in the electronic commerce marketplace”.*

- **Electronic commerce service provider:** *“the service provider that executes agreements or receives orders on its goods and services in the electronic commerce marketplace or in its own electronic commerce medium”.*
- **Electronic commerce environment:** *“platforms such as website, mobile site or mobile application where electronic commerce activities are carried out”.*
- **Electronic commerce marketplace:** *“the electronic commerce medium of which the electronic commerce intermediary service provider provides its intermediary services”.*
- **Net transaction volume:** *“the sum of the final invoice values or the values of the documents substituting the invoice, which are required to be issued by all service providers for electronic commerce intermediary service providers in electronic commerce marketplaces where they provide intermediary services; and as for electronic commerce service providers, for the sales made in a certain period in its own electronic commerce medium that does not have characteristics of an electronic commerce marketplace, excluding cancellations and refunds”.*
- **Economic integrity:** *“a person’s directly or indirectly holding at least 25% of the shares or majority of the voting rights of a commercial company or holding shares enabling it to obtain resolutions to manage the commercial company; having the rights to elect the majority of members that can obtain resolutions in the management organ per the articles of association; constituting the majority of the voting rights alone or along with other shareholders apart from its own voting rights as part of an agreement or holding the commercial company under its control within the scope an agreement or, depending on these circumstances, the relationship between all commercial companies and businesses belonging to this person, or the management of more than one commercial company by the same person or persons, regardless of whether they are shareholders or not”.*

Since **the net transaction volume** is taken into consideration while determining the obligations of these actors, this concept has been clearly defined. Accordingly, the **net transaction volume includes the total values of the final invoice or documents substituting invoice, including all taxes, funds, fees and so on, excluding cancellations and refunds.** Additionally, if the e-commerce intermediary service provider has more than one e-commerce marketplace, the net transaction volume generated through all of these marketplaces, and if the e-commerce service provider has more than one electronic commerce environment, the volume generated through all of these environments will be included in the net transaction volume.

The definition of economic integrity has been defined to cover both horizontal and vertical control relations, and to cover real or legal persons and commercial companies and businesses associated with these persons. In addition, the management of more than one legal entity by the same person or persons, regardless of whether they are shareholders or not, is also considered as economic integrity. **For example, if both companies are managed by the same person(s), it will be accepted that there is economic integrity between them.**

## 2. Authorities Given to the Ministry of Commerce

With the amendment, the Ministry of Commerce (“**Ministry**”) is given the authority to regulate the activities of the service provider and intermediary service provider and to determine the issues that should be included in the intermediation agreement to ensure the development of electronic commerce, and protect the fair competition environment. On the other hand, the Ministry has the authority to appoint experts in cases that require technical knowledge and special expertise.

Again, in order to ensure monitorability and effectiveness in monitoring, intermediary service providers and service providers are **obliged to keep the information, documents, ledgers, and electronic records of their business and transactions** within the scope of the E-Commerce Law **for a period of ten years** from the date of the business or transaction. With the amendment, the scope and duration of the obligation of service providers and/or intermediary service providers to keep electronic records of electronic commerce transactions for three years from the date of the transaction and submit them to the Ministry upon request, which is regulated in the Regulation on Service Providers and Intermediary Service Providers in Electronic Commerce, has been increased.

Finally, since there are problems in the detection of commercial electronic message senders in the process of finalizing commercial electronic message complaint applications, an arrangement has been made by the Ministry to obtain the information needed from the Information Technologies and Communication Authority in order to eliminate these problems and to finalize the complaints much more easily and quickly.

### 3. Obligations of the Electronic Commerce Intermediary Service Providers and Sanctions

With the amendment, it is aimed to impose certain obligations on electronic commerce intermediary service providers. In this respect, with the Amendment Law, the obligations that all intermediary service providers must comply with regardless of the net transaction volume are regulated; if the specified net transaction volume thresholds are exceeded, additional liabilities are foreseen for each threshold. These thresholds are arranged respectively as the annual net transaction volume of (i) ten billion Turkish Liras, (ii) thirty billion Turkish Liras and the number of transactions are one hundred thousand, excluding cancellations and refunds, and (iii) sixty billion Turkish liras, and the number of transactions one hundred thousand, excluding cancellations and refunds.

<b>Obligations of All Intermediary Service Providers, Regardless of Net Transaction Volume</b>	
<b>Obligation</b>	<b>Sanction</b>
<p><b>Removal of illegal content:</b> Article 9 of the E-Commerce Law states that intermediary service providers are not liable for illegal content provided by service providers. This nonliability applies to all intermediary service providers, regardless of whether they are electronic commerce intermediary service providers or not. In addition, e-commerce intermediary service providers are obliged to immediately remove the content and inform the authorized public institutions and organizations if they are aware that the content provided by the e-commerce service providers is illegal.</p> <p>On the one hand, the electronic commerce intermediary service provider is obliged to remove the product of the electronic commerce service provider, upon the rightholder's complaint based on information and documents regarding the violation of intellectual and industrial property rights, and to notify electronic commerce service provider and the rightholder. On the other hand, the electronic commerce intermediary service provider is obliged to republish the same content based on information and documentation that prove otherwise.</p>	<p>An administrative fine of ten thousand Turkish liras and one hundred thousand Turkish liras is foreseen for each violation.</p>
<p><b>Not offering their own brands for sale:</b> According to Additional Article 2/1(a), which has been newly added to the E-Commerce Law, electronic commerce intermediary service providers are obliged not to offer the goods for sale or not to act as an intermediary in the sale of the goods which bear the brand of themselves or the persons with whom they have economic integrity, or have the right to use the brand, goods in the electronic commerce marketplaces where they offer intermediary services. If these goods are offered for sale in different electronic commerce environments, providing access between these environments and promoting each other are also prohibited in the article.</p> <p>In addition, the sale of goods bearing the brand or for which the right to use the brand is obtained by persons who derive more than half of the total sales revenue from sales other than electronic commerce, periodical publications such as magazines and newspapers, and books and electronic book reader devices are exempted from the abovementioned prohibition.</p>	<p>An administrative fine of five percent of the net sales amount for the calendar year preceding the date of the violation is foreseen.</p>
<p><b>Presenting and verifying the information of electronic commerce service providers:</b> The new Additional Article 2/1(b) requires electronic commerce intermediary service providers to allow electronic commerce service providers to disclose the information necessary under the Tax Procedure Law on the electronic commerce marketplace where the sale is made. Additional Article 2/1(ç) requires electronic commerce intermediary service providers to verify the electronic commerce service provider's introductory information using documents given by them and publicly available electronic systems of relevant institutions.</p>	<p>In case of violation of Additional Article 2/1(b), an administrative fine of not less than one hundred thousand Turkish liras is imposed at the rate of five per ten thousand of the net sales amounts of the calendar year preceding the date of the violation.</p>

	In case of violation of additional article 2/1(ç), an administrative fine of ten thousand Turkish liras is foreseen for each violation.
<b>Not using the brands of electronic commerce service providers for promotional purposes:</b> According to Additional Article 2/1(c), if the electronic commerce intermediary service provider does not receive the electronic commerce service provider's affirmative declaration of will, either in writing or electronically, it is not permitted to engage in marketing and promotion activities in online search engines using the registered brands that are the main element of the domain names registered to the Electronic Commerce Information System ("ETBIS") of the electronic commerce service provider.	An administrative fine of ten thousand Turkish liras and one hundred thousand Turkish liras is foreseen for each violation.
<b>Not conducting unfair commercial practices:</b> Unfair business practices in internet commerce are forbidden under the new Additional Article 1. Practices of an electronic intermediary commerce service provider that disrupt or are likely to disrupt the commercial activities of the electronic commerce service provider to which it provides intermediary services, reducing the latter's ability to make a reasonable decision or causing the electronic commerce service provider to become a party to a commercial relationship that it would not normally be a party to by requiring it to make a certain decision, shall be deemed prohibited.  In this context, for example, the payment to be made to the electronic commerce service provider in refund for the sale of goods or services is not made in full within five working days from the latest the sale price is at the disposal of the electronic commerce tool service provider and the order reaches the buyer; forcing the electronic commerce service provider to sell goods or services with a campaign, including the unilateral change in the sales price by the electronic commerce intermediary service provider, is considered within the scope of unfair commercial practice. The cases listed in the article are exemplary, and whether the operation is "an operation that significantly disrupts the commercial activities of the electronic commerce service provider to which it provides intermediary services, reduces its ability to make a reasonable decision, or causes it to become a party to a commercial relationship that it would not normally be a party to by forcing it to take a certain decision" will need to be evaluated separately.	Administrative fines are issued for each violation, in each instance and for each electronic commerce service provider.

<b>Additional Obligations Applied to Electronic Commerce Intermediary Service Providers with a Net Transaction Volume Exceeding Ten Billion Turkish Liras in a Calendar Year</b>	
<b>Obligation</b>	<b>Sanction</b>
<p><b>Obligation to Obtain an Electronic Commerce Licence:</b> An Electronic Commerce Intermediary Service Provider, whose net transaction volume in a calendar year is over ten billion Turkish Liras and the number of transactions excluding cancellations and refunds is over one hundred thousand, must obtain a license from the Ministry and renew its license in order to continue its activities. In the said evaluation, the net transaction volumes and the number of transactions of the electronic commerce tool service providers, which are in economic integrity, are taken into account.</p> <p>Pursuant to Additional Article 4 added to the E-Commerce Law with the Amendment Law, the licence fees will be calculated based on the following criteria:</p> <p>The net transaction volume of the electronic commerce intermediary service provider in a calendar year;</p>	<p>In case of violation of the obligation to obtain a license pursuant to Additional Article 4/1, an administrative fine of ten million Turkish liras is imposed and a period of sixty days is given to remove the violation. In case of non-compliance, an administrative fine of TRY 20 million is imposed this time and a period of thirty days is given. Again, if the violation is not eliminated, this time an administrative fine of forty million Turkish liras is imposed and fifteen days are given to eliminate the violation. If the violation has not been eliminated at the end of this deadline, the Ministry may decide to block access to the website. It is possible to appeal against the decision of the blocking of access at the penal court</p>

<ul style="list-style-type: none"> <li>• TRY 10 billion and TRY 20 billion, 3/10,000 of the part exceeding TRY 10 billion</li> <li>• TRY 20 billion and TRY 30 billion, 5/1,000 of the part exceeding TRY 20 billion in addition to the above amount</li> <li>• TRY 30 billion and TRY 40 billion, 1/100 of the part exceeding TRY 30 billion in addition to the above amount</li> <li>• TRY 40 billion and TRY 50 billion, 5/100 of the part exceeding TRY 40 billion in addition to the above amount</li> <li>• TRY 50 billion and TRY 55 billion, 10/100 of the part exceeding TRY 50 billion in addition to the above amount</li> <li>• TRY 55 billion and TRY 60 billion, 15/100 of the part exceeding TRY 55 billion in addition to the above amount</li> <li>• TRY 60 billion and TRY 65 billion, 20/100 of the part exceeding TRY 60 billion in addition to the above amount</li> <li>• Or exceeds TRY 65 billion, 25/100 of the part exceeding TRY 65 billion in addition to the above amount</li> </ul> <p>However, in the calculation of the license fee, the sales made abroad through the electronic commerce marketplaces of the e-commerce intermediary service provider and the e-commerce intermediary service providers with which they are in economic integrity are not included in the calculation.</p>	<p>of peace. The decisions of the criminal judgship of peace can be appealed through the procedure provided for in the Criminal Procedure Code.</p>
<p><b>Restrictions on the Use of Data:</b> Pursuant to Additional Article 2/2(a), Electronic Commerce Intermediary Service Providers are obliged to use the data obtained from the Electronic Commerce Service Provider and Buyer only for the purpose of providing Brokerage Services, and they cannot use the data in question in the electronic commerce marketplaces where they provide brokerage services and other marketplaces to compete with other electronic commerce service providers. Other people who are in economic integrity are also subject to this assessment.</p> <p>Pursuant to Additional Article 2/2(b), Electronic Commerce Intermediary Service Providers are obliged to provide technical means for the Electronic Commerce Service Providers in order to carry data obtained from their sales free of charge and provide them free and effective access to these data and the processed data obtained from them.</p>	<p>In case of violation of Additional Article 2/2(a), an administrative fine of up to ten percent of the net sales amount of the calendar year preceding the date of the violation is envisaged.</p> <p>In case of violation of Additional Article 2/2(b), an administrative fine of five hundred thousand Turkish Liras is envisaged for each electronic commerce service provider.</p>
<p><b>Not providing transitions between environments:</b> Pursuant to Additional Article 2/2(c), Electronic Commerce Intermediary Service Providers cannot provide access between their own electronic commerce environments and cannot advertise each other in these environments. The scope of this obligation does not include transitions between electronic commerce environments, which are included in the net transaction volume. Other people in economic integrity are also subject to this assessment.</p>	<p>In case of violation of Additional Article 2/2 (c) , an administrative fine of ten million Turkish liras is envisaged.</p>

<p><b>Notification of share changes:</b> Pursuant to Additional Article 2/2(ç) and (d), Electronic Commerce Intermediary Service Providers are obliged to notify the Ministry of the transfer or acquisition of shares that reach five percent or more, within one month from the date of the transfer or acquisition that led to these ratios being recorded in the share register. In case electronic commerce intermediary service providers establish a company, take over the shares of the established company or transfer these shares; It is obliged to notify these transactions to the Ministry within one month from the registration of the establishment to the trade registry in the establishment and from the date of the transfer to the share register in the transfer.</p>	<p>In case of violation of Additional Article 2/2(ç) and (d), an administrative fine of one million Turkish liras is envisaged for each notification not made in due time.</p>
<p><b>Submission of independent audit reports to the Ministry:</b> Pursuant to Additional Article 2/2(e), Electronic Commerce Intermediary Service Providers are obliged to send the reports prepared by the Independent Audit Firms to the Ministry. The report must include the activities, management and organizational structure of the electronic commerce intermediary service provider, current shareholders and their share ratios and their shareholding ratios with their subsidiaries and affiliates, information about people with whom they are in economic integrity and financial statements and financial situation and compliance with certain obligations in the E-Commerce Law.</p> <p>The electronic commerce intermediary service provider is also obliged to submit to the Ministry a report containing the procedures for the detection of illegal issues regarding the content of electronic commerce service providers and the violations detected as a result, in accordance with Additional Article 2/2(f).</p>	<p>In case of violation of Additional Article 2/2 (e), an administrative fine of one million Turkish liras is envisaged.</p> <p>In case of violation of Additional Article 2/2(f), an administrative fine of not less than one hundred thousand Turkish liras is imposed at the rate of five per ten thousand of the net sales amounts of the calendar year preceding the date of the violation.</p>

<b>Additional Obligations Applied to Electronic Commerce Intermediary Service Providers Exceeding a Net Transaction Volume of Thirty Billion Turkish Liras and 100,000 Transactions in a Calendar Year, Excluding Cancellations and Refunds</b>	
<b>Obligation</b>	<b>Sanction in case of Violation:</b>
<p><b>Advertising and promotional spending limitations:</b> With the newly added articles 2/3(a) and (b), certain limits are stipulated for advertising and campaign/promotional expenditures. In this context, the twelve-month average Consumer Price Index change rate applied for the net transaction volume of electronic commerce intermediary service providers for the same calendar year;</p> <ul style="list-style-type: none"> <li>• 2/100 of the TRY 30 billion of such amount</li> <li>• 3/1000 of the portion above TRY 30 billion</li> </ul> <p>will be able to spend on advertising, promotions, rewards, points, coupons, gift certificates and similar opportunities. The budget determined as above for advertising expenditures constitutes cap of the total advertising expenditures of electronic commerce intermediary service providers and electronic commerce service providers in economic integrity. This budget will be shared between electronic commerce intermediary service providers and electronic commerce service providers in proportion to their contribution to the net transaction volume and can be used quarterly in a calendar year at a rate of 1/4 at the most.</p> <p>The expenditure budget for promotions and similar opportunities also constitutes the total discount budget that can be made by the electronic commerce intermediary service provider and the persons with whom it is in economic integrity to the buyers and electronic commerce service providers in the electronic commerce market place and this budget can be used at a rate of 1/4 quarterly in a calendar year.</p>	<p>In case of violation of Additional Article 2/3(a) and (b), an administrative fine of ten times the amount exceeding the limit that is not less than ten percent of the upper limit determined according to the aforementioned provisions is envisaged.</p>

<p>Finally, none of the electronic commerce service providers and electronic commerce intermediary service providers in an economic integrity shall receive more than 20% of the total budget of total advertising expenditures or other promotional expenditures.</p>	
<p><b>Not restricting the commercial activities of the electronic commerce service provider:</b> Pursuant to additional article 2/3 (c), electronic commerce service providers cannot restrict electronic commerce service provider's commercial relations, its provision of goods or services through alternative channels on the same or different prices or its advertising, and they cannot enforce them to procure goods or service from anyone. Moreover, electronic commerce service providers cannot include provisions in their agreements that allow such activities.</p>	<p>Pursuant to Additional Article 2/3 (c), an administrative fine of two hundred and fifty thousand Turkish liras is imposed for each electronic commerce service provider who commit unfair practice.</p>

<b>Additional Obligations Applied to Electronic Commerce Intermediary Service Providers Exceeding a Net Transaction Volume of Sixty Billion Turkish Liras and a 100,000 Transactions in a Calendar Year, Excluding Cancellations and Refunds</b>	
<b>Obligation</b>	<b>Sanction in case of Violation:</b>
<p><b>Restrictions on electronic money and banking operations:</b> Pursuant to Additional Article 2/4(a), It is prohibited that the electronic commerce intermediary service providers to allow banks, financial leasing companies which they are in economic integrity, factoring companies, financing companies, and savings finance companies to carry out activities related to the all kinds of services including lending transactions, excluding credit card payment transactions and other payment transactions in electronic commerce marketplaces where they offer intermediary services.</p> <p>Similarly, pursuant to additional article 2/4(b)(1), electronic commerce intermediary service providers are prohibited from allowing activities regarding the acceptance of e-money issued by e-money institutions within the same economic integrity as a means of payment.</p> <p>Pursuant to additional article 2/4 (b)(2), Electronic commerce service providers may not provide any services relying on the "closed network/circuit" exemption or procure such services from institutions that are not in the same economic enterprise with them. Accordingly, the electronic commerce intermediary service providers are not able to engage in "wallet" type services offered themselves or through institutions that are in the same economic enterprise with them, and they will need to procure such services from the institutions that are not in the same economic enterprise with them. The obligations listed here will also apply to electronic commerce service providers included in the net transaction volume of the electronic commerce intermediary service provider and electronic commerce service providers within their economic integrity and operating in the electronic commerce marketplace.</p>	<p>In case of violation of Additional Article 2/4(a) and (b), an administrative fine of TRY 10 million is imposed and time is provided to remedy the violation. For noncompliance, the penalties are increased gradually and if the violation is not remedied despite the warnings, the Ministry may block access to the website. An objection can be made against the access-blocking decision to the criminal judgship of peace. The decisions of the criminal judgship of peace can also be appealed through the procedure set forth in the Criminal Procedure Law.</p>
<p><b>Limitation of Activity:</b> Pursuant to additional article 2/4 (c), electronic commerce intermediary service providers cannot carry out delivery services, transportation organizer services and postal services except for sales under its e-commerce Marketplace, sales made by them as an electronic commerce service provider and sales outside of the e-commerce sector.</p>	<p>In case of violation of Additional Article 2/4(c), sanctions are applied as described above.</p>
<p><b>Not providing transition between environments:</b> As per Additional Article 2/4(ç), if an electronic commerce intermediary service provider provides an electronic environment for the publication of goods or service announcements, it cannot allow for the conclusion of agreements or placing orders for the supply of goods or services in the same environment. If these services are provided in different electronic environments, they cannot provide access between these environments and cannot promote each other.</p>	<p>In case of violation of Additional Article 2/4(ç), an administrative fine of TRY 20 million is envisaged.</p>

The restrictions above will not be applied to the electronic commerce marketplaces **where the products subject to sale in electronic commerce marketplaces are sold only by dealers and agents.**

In terms of sanctions, **in case the violation is not terminated within the period given by the Ministry despite the imposition of the administrative fines mentioned above, or if the same violation is repeated within one year from the date of the notification of the penalty, the previous penalty is to be doubled**; in the event that the above-mentioned administrative fines are committed through **acts and actions aimed at misleading the Ministry, the said fines will be applied as ten times as the administrative fines.**

The total amount of the abovementioned administrative fines for a calendar year **cannot exceed five hundred million Turkish liras** for electronic commerce intermediary service providers or service providers **whose net transaction volume in a calendar year does not exceed sixty billion Turkish liras and whose number of transactions excluding cancellations and refunds does not exceed one hundred thousand.**

However, **this limitation of five hundred million Turkish liras will not be applied in case of contradiction with the works and transactions intended to mislead the Ministry.**

#### **4. Obligations of the Electronic Commerce Service Providers**

In the Additional Article 3, it is stated that some obligations of electronic commerce intermediary service providers will also apply to the electronic commerce service providers by analogy (See *II.4.(i), (ii) ve(iii)*). It is important to note that the obligations regarding electronic commerce service providers **will not be applied to electronic commerce service providers that derive half of their sales from sales other than electronic commerce.**

As a general requirement envisaged for all the electronic commerce service providers, if the electronic commerce service provider does not receive the electronic commerce service provider's positive declaration of will, in writing or electronically, it cannot engage in marketing and promotion activities in online search engines by using the registered brands that constitute the main element of the domain names registered to ETBIS of the electronic commerce service providers with which they do not have an economic integrity.

The other obligations are stipulated based on certain thresholds which are as follows:

**i. Additional obligations applied to electronic commerce service providers with a net transaction volume of TRY 10 billion and a number of transactions over 10 million, excluding cancellations and refunds, in a calendar year:**

Obligations regarding the restriction of the use of data stipulated in Additional Articles 2/2(a) and (b) will also apply to electronic commerce service providers by analogy. Pursuant to Additional Article 2/2(f), the electronic commerce service providers must prepare a report and submit it to the Ministry, which includes the procedures for the detection of illegal content and the violations detected as a result. Also, the electronic commerce service providers are obliged to pay the electronic commerce license fee in accordance with Additional Article 4. The license fee is calculated as described above. Sales of individuals within economic integrity are not taken into account when calculating the thresholds. Sales made abroad are not taken into account when calculating the license fee.

**ii. Additional obligations applied to electronic commerce service providers with a net transaction volume of TRY 30 billion and a number of transactions over 10 million, excluding cancellations and refunds, in a calendar year:**

Obligations regarding the restriction on advertisement and promotion expenditure stipulated in Additional Article 2/3(a) and (b) will also apply to electronic commerce service providers by analogy.

**iii. Additional obligations applied to electronic commerce service providers with a net transaction volume of TRY 60 billion and a number of transactions over 10 million, excluding cancellations and refunds, in a calendar year:**

Obligations regarding the restriction on banking and electronic money operations stipulated in Additional Article 2/4(a) and (b) will also apply to electronic commerce service providers by analogy. Obligations regarding non-restriction of placing orders in case of publication of goods or service announcements and not providing access between these environments and not promoting each other as stipulated under Additional Article 2/4(ç) will also apply to electronic commerce service providers by analogy.

Sanctions for noncompliance with the obligations are set forth in Article 6 of the E-Commerce Law. Article 6 stipulates various sanctions by specifically indicating electronic commerce service providers, but Additional Article 3 stipulates that electronic commerce service providers, taking into account their net transaction volume, must comply with the obligations set out for electronic commerce intermediary service providers with Additional Article 2. Therefore, such sanctions stipulated in Article 6 of the E-Commerce Law may be applicable to the electronic commerce service providers by analogy.

It is regulated that the provisions of Additional Article 2/3-(a) and (b) shall be applied to the electronic commerce service providers whose net transaction volume in a calendar year is over thirty billion Turkish liras and whose number of transactions excluding cancellations and refunds is over ten million. In this way, it is aimed to prevent e-commerce service providers from strengthening their position in the sector by engaging in activities that exclude their competitors in the market with practices such as excessive advertising, under-selling, and cross-subsidies, and thus prevent the destructive competition that occurs.

## 5. Transitional Provisions:

The provisions of the Amendment Law, excluding the provisions of Additional Article 2/2-(b) on data portability, which will enter into force on January 1, 2024, and the provision of Additional Article 2/10, which stipulates the obligation to announce to the Ministry, and the provisions of Additional Article 4, will come into effect on January 1, 2023.

Electronic commerce intermediary service providers must comply with Additional Article 2/1(a) which prohibits the sale of their own brands, Additional Article 2/4(a) and (b) that restricts activities related to banking and electronic money, and Additional Article 2/4(c) that restricts activities related to the delivery of goods, until 1 January 2024.

Obligations for obtaining an electronic commerce license must be met before January 1, 2025. Lastly, intermediation agreements entered between intermediary service providers and service providers in electronic commerce marketplaces, before the Law's entrance into effect, shall be aligned with the Law within six months.

## III. CONCLUSION

As explained above, the Amendment Law imposes many new obligations on e-commerce service providers with the goal of **(i)** preventing unfair competition and monopolization in e-commerce, **(ii)** facilitating the entry of new actors into the market, and **(iii)** ensuring the balanced and healthy growth of the market, taking into account the scales. Companies affected by the amendments should begin the process of harmonization as soon as practicable.

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*Should you have any queries on the above, please do not hesitate to contact us.*

*Güner Law Office was established in 1996 and has since grown into one of the major corporate, M&A, banking and finance, energy, TMT and dispute resolution practices in Turkey.*

### Contact

**Burçak Kurt Biçer**  
Partner  
[bkb@guner.av.tr](mailto:bkb@guner.av.tr)

**Uğurkan Şeber**  
Associate  
[us@guner.av.tr](mailto:us@guner.av.tr)

**Doğaç Karakurt**  
Associate  
[dk@guner.av.tr](mailto:dk@guner.av.tr)

**Deniz Bade Akkoyun**  
Trainee  
[dba@guner.av.tr](mailto:dba@guner.av.tr)

Güner Hukuk Bürosu  
Levent Caddesi, Alt Zeren Sokak No.7  
Levent 34330, İstanbul  
T +90 212 282 4385  
F +90 212 282 4305  
[info@guner.av.tr](mailto:info@guner.av.tr)  
[www.guner.av.tr](http://www.guner.av.tr)