

Turkey



Rules Under Development

There are currently no digital-specific competition law rules in force in Turkey. In October 2022, the Turkish Government published draft amendments to the Turkish Competition Act, proposing to introduce new obligations that specifically target digital platforms. The proposed regulations largely mirror the operation of and substantive provisions in the EU Digital Markets Act, though go further in certain respects.

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1. What rules govern competition in digital markets in Turkey?

There are currently no digital-specific competition law rules in force in Turkey. Digital firms are subject to general competition and consumer protection laws applicable to all firms under the Act No. 4054 on the Protection of Competition (“APC”). There are no special rules or exemptions applying to competition in digital markets.

2. What is the status of any forthcoming digital regulation in Turkey?

At the start of 2020, the Turkish Competition Authority (“TCA”) initiated a sector inquiry into e-commerce platforms. In its Final Report,¹ published in April 2022, it made policy recommendations applicable to a wider set of

technology companies beyond e-commerce platforms.

Following these recommendations, in October 2022, the Turkish Government published its Draft Regulation on Amending Law on the Protection of Competition (the “**Draft Regulation**”). The Draft Regulation proposes amendments to the APC that in several places track the language of the EU Digital Markets Act (“**DMA**”) (*see* Question 5). The preamble to the Draft Regulations states that “*the fast-paced changes in internet technologies in recent years have reshaped the digital market and consumer habits.*”²

¹ Turkish Competition Authority, *E-Pazaryeri Platformlari Sektor Incelemesi Nihai Raporu* (available in Turkish only) (April 2022).

² General Preamble to the Draft Regulation.



October 2022

ON OCTOBER 14, 2022, THE TURKISH GOVERNMENT PUBLISHED DRAFT REGULATIONS GOVERNING DIGITAL PLATFORMS, MODELLED ON THE EUROPEAN DIGITAL MARKETS ACT.

The Draft Regulation was issued for feedback from companies that are expected to be in-scope. There are, however, no updates on when the regulation is expected to take effect or what the final law will look like, if passed.

3. How is the Draft Regulation expected to be enforced?

The Draft Regulation proposes an enforcement mechanism similar to that provided by the DMA, albeit in several places it goes further. The TCA may choose to cooperate with relevant public authorities and institutions³ in monitoring obligations and enforcement.

Designation process

Only firms designated as undertakings with significant market power (“USMPs”) will be subject to the obligations and prohibitions proposed in the Draft Regulation. The process for designation is structured as follows:

- **Notifications of USMPs.** Firms that provide core platform services (“CPSs”) must apply to the TCA within thirty days of the thresholds in the relevant Communiqué (which is yet to be published) being exceeded.⁴ This application must contain the firm’s objections, if any, that despite meeting the thresholds, it does not enjoy significant market power. The TCA must review the application and make

a USMP designation decision within sixty days.⁵ The TCA may also designate a firm as an USMP on qualitative grounds, even if the firm does not exceed the quantitative thresholds in the relevant Communiqué (*see* Question 4). A USMP designation is valid for three years. This period is extended by a further three years automatically if the undertaking does not apply to the TCA to dispute its designation at least ninety days before the end of the initial three-year period.

- **CPSs.** The Draft Regulation has replicated the list of CPSs from the DMA, which includes online intermediation services, online search engines, online social networks, video-sharing platforms, number independent communication services, operating systems, web browsers, virtual assistants, cloud computing services, and online advertising services.

The Draft Regulation has also largely copied the definitions of the CPSs, but not always identically.

- **Relevant thresholds.** The relevant quantitative thresholds that must be met for obligations to apply will be set by the TCA’s Communiqué, which has not yet been published. The Draft Regulation states that the quantitative thresholds will take into account: (1) annual gross revenues; (2) the number of end users; **or** (3) the number of commercial users. The use of “*or*” in the Draft Regulation differs from the DMA, which sets out cumulative criteria based on revenues and market capitalization and end user and business user numbers.
- **Compliance.** Together with its designation decision, the TCA must determine a reasonable period of time not exceeding six months for

³ The Draft Regulation specifically mentions the Information Technologies and Communication Authority, and a Coordination Committee consisting of representatives of the General Directorate of Domestic Trade, Digital Transformation Office of the Presidency, Information Technologies and Communication Authority, and Personal Data Protection Authority.

⁴ Draft Regulation, Article 5 (introducing a new Article 8/A).

⁵ For applications filed in the first year following enactment of the relevant Communiqué, the time periods for application to the TCA and for the TCA’s designation decision are doubled (Draft Regulation, Article 12(introducing a Provisional Article 8)).

the USMP to fulfill the substantive obligations proposed in the Draft Regulation. The USMP may submit justifications explaining why it will not be able to fulfill the relevant obligations within the prescribed time period. The TCA must evaluate the justifications within sixty days, and may order compliance by the firm if it is not convinced by the justifications.

Enforcement process

- **Notification of infringement.** The TCA may determine that there is an infringement on its own initiative or in response to a denouncement, complaint, or request from the Ministry. The TCA must notify an infringement decision to the defendant firm, setting out any behavioral or structural remedies with which the firm must comply. The TCA may impose structural remedies only if it is clear that behavioral measures would not be sufficient.
- **Failure to comply.** If a USMP fails to comply with the obligations set out in the Draft Regulation twice or more in a five year period, the TCA will have the power to ban mergers and acquisitions by that USMP for up to five years.⁶ This is said to protect against “*the damages arising from repeated violations or to prevent serious or irreparable damages that may arise.*”⁷ For other penalties imposed under the Draft Regulation, see Question 10.

4. Which firms would the Draft Regulation apply to?

The Draft Regulation is proposed to apply to firms designated as being USMPs. This is a similar concept to “gatekeeper” under the DMA.

USMPs will be designated, similar to the DMA, based on whether they operate a CPS and meet certain quantitative thresholds. The Draft Regulation has not yet set out what these quantitative thresholds may be, so it is not yet possible to assess which kind of firms will be subject to the Draft Regulation. As noted in response to Question 3, the quantitative thresholds will take into account: (1) annual gross revenues; (2) the number of end users; or (3) the number of commercial users.

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-

In USMP designation decisions, the TCA may take into account factors such as ownership of the undertaking, vertical integration and conglomerate structure, economies of scale and scope, lock-in and evolution impact, switching costs, multi-homing, user behavior, M&A activity, and quantitative thresholds to be set by the relevant Communiqué.⁸

While not completely clear, the proposed set of substantive obligations seem to apply not only to specific products (or CPSs) of the USMP, but to the whole undertaking designated as an USMP.⁹ This would mark a significant departure from the DMA, despite the obvious inspiration that has been drawn from it.

The rules proposed by the Draft Regulation apply to USMPs that provide CPSs to end users or business users located in Turkey, irrespective of

⁶ Draft Regulation, Article 6.

⁷ *Ibid.*

⁸ Draft Regulation, Article 5.

⁹ See Draft Regulation Article 4 (introducing a new Article 6/A to the APC).

whether they have offices or establishments in Turkey.¹⁰

5. What are the main substantive rules that govern the firms covered by the Draft Regulation?

Several of the rules appear to have been modeled on behavioral obligations in the DMA, but in places they go considerably further due to the Draft Regulation's uncertain and open-ended drafting. These include:

— Prohibitions on:

- Self-preferencing in ranking, crawling, indexing, or “*other conditions*” (the equivalent DMA rule (Art. 6(5)) does not refer to “*other conditions*”);
- The use of non-public data when competing with business users (equivalent to Art. 6(2) of the DMA);
- Conditioning the supply of goods and services offered to business users and end users on the supply of other goods and services offered by the USMPs (there is no equivalent DMA provision);
- Conditioning users' access to any CPS offered by the USMP on membership or registration to another CPS offered by the USMP (similar to Art. 5(8) of the DMA);
- Restricting business users from working with competing undertakings (there is no equivalent DMA provision);
- Combining users' personal data obtained from one CPS with data obtained from other services the firm offers, and using such data in the context of other services, especially targeted advertising (this is similar to Art. 5(2) of the DMA, but seems to go considerably further because the DMA

allows combination of personal data with user consent); and

- Discriminating between business users by imposing unfair or unreasonable conditions (there is no equivalent DMA rule that applies to all CPS types).
- Obligations to:
- Allow users to uninstall preinstalled applications, switch to third party applications or software, and easily change default settings (this is somewhat similar to Art. 6(3) of the DMA, though there are no express requirements to show choice screens);
 - Provide business users with free, effective, continuous, and real-time access to end users' data produced by their use of CPS (this is somewhat similar to Art. 6(10) of the DMA);
 - Facilitate data portability (this is similar to Art. 6(9) of the DMA, which is about user data portability);
 - Enable free interoperability of CPSs with other related products or services (this is much broader than the DMA equivalent, because the interoperability rule in the DMA (Art. 6(7)) applies only to operating systems and virtual assistants, not to all CPS types);
 - Provide advertisers and publishers with access to real-time information regarding the visibility and usability of ad portfolio, including pricing terms of bids submitted, the auction process and pricing principles, and the fee paid to the publisher for the ad services (similar to Art. 5(10) of the DMA).

While the prohibitions and obligations are largely similar to those contained in the DMA, certain

¹⁰ Draft Regulation, Article 2.

provisions are significantly wider in scope in comparison. For example:

- The prohibition on self-preferencing covering “*other conditions*” extends the scope of the ban considerably.
- The prohibition on rendering goods and services dependent on other goods and services offered by the USMP might, if enforced literally, impose a broad and absolute ban on tying or bundling any type of product.
- The prohibition on restricting business users’ work with competing undertakings may cover all contractual exclusivity agreements or loyalty arrangements, irrespective of the market share of the product.

6. Are there specific rules governing digital platforms’ relationships with publishers in Turkey?

There are no rules in the Draft Regulation which regulate digital platforms’ relationships with publishers.

7. Will the TCA need to establish the effects of certain conduct in order to establish a breach of the rules?

No, there is no requirement for the TCA to establish the effects of conduct to establish a breach of the rules proposed under the Draft Regulation.

8. Can firms defend or objectively justify their conduct under the Draft Regulation?

The Draft Regulation does not contain any provisions that allow for objective justifications or defenses. In fact, it goes even beyond the DMA, which, as well as being subject to the overall principle of proportionality, has narrow defenses to cover public health and public security, and cases where the gatekeeper can demonstrate that complying with an obligation would endanger the economic viability of its operation.

9. What procedural safeguards does the Draft Regulation include?

Procedural details have not been included in the Draft Regulation. But given that the Draft Regulation contains a set of rules proposed to amend the APC, we would expect the procedural safeguards and processes set out under the APC to apply, such as the right to judicial review of TCA decisions,¹¹ the right of access to file,¹² and the right to be heard before the TCA makes a decision on remedies.¹³

10. What kinds of penalties or remedies can be imposed following a breach of the rules under the Draft Regulation?

The TCA may impose penalties on USMPs for non-compliance with the notification obligation and for breach of the substantive obligations. For breaches of substantive obligations, the TCA may impose administrative fines of up to 20% of the USMPs’ annual gross revenue in the financial year preceding the TCA’s decision (the Draft Regulation does not specify whether the revenue generated in Turkey or globally is used).¹⁴

¹¹ Article 55 of the APC.

¹² Communiqué No. 2010/3 on the Regulation of the Right of Access to the File and Protection of Trade Secrets.

¹³ Article 9 of the APC.

¹⁴ Draft Regulation, Article 9.

11. Has the TCA issued any guidance or reports regarding the digital regulation?

On April 14, 2022, the TCA published the Final Report in its sector inquiry on e-commerce platforms.¹⁵ The Final Report made policy recommendations, including *ex ante* regulation of USMPs. But the TCA has not published any guidance or reports following the issuance in October 2022 of the Draft Regulation.

12. Is the new regime competition based, or does it target other types of conduct, such as consumer protection, moderation of content, or privacy?

The proposed regime is principally competition based, with many of the rules having been inspired by the DMA. The Draft Regulation touches on issues relating to data usage, but does not address other issues relevant to digital platforms such as privacy or content moderation.

13. What is the current enforcement practice with respect to conduct that is expected to be addressed by the digital regulation?

The TCA has been active in its use of existing enforcement tools against digital platforms. Some recent enforcement action taken by the TCA include:

- **Investigation into Google Search (April 2021).**¹⁶ The TCA fined Google over 296 million lira for abusing a dominant position in search engine services, including by favoring its own price comparison for accommodation and local search services.

- **Interim measures against Meta for data sharing between platforms (January 2021).**¹⁷

The TCA found that WhatsApp's terms of use and privacy policy requiring mandatory consent to data sharing was likely to result in serious and irreparable harm. It imposed interim measures, requiring Meta to cease the roll out of the new terms of use in Turkey.

- **Investigation into Google Adwords (November 2020).**¹⁸

The TCA found that Google had abused a dominant position by increasingly placing text ads above general search results. The TCA's decision requires Google to offer text advertisements at the quality, scale, and location that will not exclude organic search results, and to submit compliance measures to the TCA.

- **Investigation against Trendyol (October 2021).**¹⁹

The TCA launched a preliminary investigation into whether Turkish e-commerce platform Trendyol (controlled by Alibaba) engaged in self-preferencing and discrimination against business users on its platform. It found that Trendyol had violated the APC by intervening with algorithms to rank its own products at an advantage and by providing next-day delivery only for its own products. It further found that Trendyol used business users' data to its advantage and discriminated between business users.

14. Are there merger rules specific to digital platforms in Turkey?

Under the Draft Regulation, the TCA may ban mergers and acquisitions involving a USMP for up to five years if the USMP has breached the newly proposed obligations twice or more in five years.

¹⁵ Turkish Competition Authority, [E-Pazaryeri Platformlari Sektor Incelemesi Nihai Raporu](#) (available in Turkish only) (April 2022).

¹⁶ Reuters, [Turkey fines Google for abusing dominant position](#) (April 14, 2021).

¹⁷ TCA, [The Competition Board launched an investigation against Facebook and WhatsApp and stopped the data sharing obligation imposed by Facebook to WhatsApp users](#), (January 11, 2021)

¹⁸ TCA, [Reasoned Decision on Adwords](#) (available in Turkish only) (November 12, 2020).

¹⁹ Arden Papuççuyan, [Webrazzi, Rekabet Kurulu, Trendyol hakkında gecici tedbir karari aldi](#) (October 1, 2021).

Save for this provision, the Draft Regulation does not propose amendments to existing merger rules.

Merger rules applicable to transactions involving technology companies²⁰ were amended in March 2022²¹ and came into force in May 2022. Under the amended regime, the local turnover threshold does not apply to acquisitions of technology companies that operate in the Turkish market or are engaged in research and development activities or provide services in Turkey. It requires mandatory notification even where the target company has no turnover, as long as the other notification thresholds are met.



UNDER THE AMENDED MERGER CONTROL REGIME, THE LOCAL TURNOVER THRESHOLD DOES NOT APPLY TO ACQUISITIONS OF TECHNOLOGY COMPANIES THAT OPERATE IN THE TURKISH MARKET OR ARE ENGAGED IN R&D ACTIVITIES OR PROVIDE SERVICES IN TURKEY.

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²⁰ “*Technology companies*” include companies active in digital platforms, software and gaming software, financial technologies, biotechnology, pharmacology, agrochemicals, and health technologies, as well as assets related to these companies.

²¹ See Communiqué No. 2022/2 on Amending Communiqué No. 2010/4 Concerning the Mergers and Acquisitions Requiring the Turkish Competition Board’s Approval.