

E-Commerce in Turkey

Introduction

1 In the modern era, as a result of the transformation of living conditions and standards, commercial activities and operations are also undergoing a fundamental change. As major technological developments are rapidly achieved in today's world, companies have plunged into a quest to attain a position enabling lucrative businesses in the globalized system of trade. Especially with the intervention of internet into our daily lives, business operations have begun to uphold a competitive approach to trade more than ever. In this context, the advent of e-commerce has given a totally novel aspect to the way the business is conducted.

According to the definition made by OECD, e-commerce is the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing orders.¹ E-commerce has become a paramount element of the contemporary world economy in recent years. Cumulative data from Statista shows that global e-commerce sales reached \$1,859 trillion in 2016 and this amount is expected to hit \$2,290 trillion in 2017.² In the same report, it is anticipated that the global e-commerce sales in 2021 will amount to \$4,479 trillion.

In Turkey, the first implementation of large scale internet marketing had occurred in 1992 with the electronic funds transfer

¹ OECD, OECD Guide to Measuring the Information Society, OECD Publishing, 2011, at 72.

² <https://www.statista.com/statistics/379046/worldwide-retail-e-commerce-sales/>

initiated between the Central Bank of the Turkish Republic and other banks. Later in 1997, the Supreme Council of Science and Technology had convened for the purpose of allocating an Electronic Commerce Web and rendering e-commerce widespread; and the Council had drafted an extensive plan for such purposes.

Since then, the tendency of using e-commerce has exponentially intensified especially by virtue of the young population in Turkey. The internet penetration, being 45% of the population in 2012 soared to 58% in 2016. It is expected that 62 million people, 76% of whole population, will be actively using internet in 2020. By virtue of the increasing use of internet and smart phones, e-commerce market volume has reached to TL 30,8 billion in 2016.³

Legal Landscape

In Turkish law, e-commerce is specifically regulated within the scope of the Code of Electronic Commerce Regulation (“CECR”) numbered 6563 and dated 23.10.2014. With CECR, commercial communication, responsibilities of service providers and intermediary service providers, contracts made by means of electronic communication devices, obligations to represent information, and the sanctions to be applied are regulated. In addition to CECR, several regulations and communiques were also enacted for the purpose of elucidating the legal background of e-commerce activities in Turkey.

Obligation to Represent Information

Pursuant to CECR, the service provider is obliged to represent information regarding several issues while conducting e-commerce activities. Before a contract is made by means of electronic communication devices, the service provider must declare the current introductory information in a manner that purchasers can easily see. In addition to this, the service provider must declare the information regarding the steps to be taken within the process of making the contract as well as the information pertaining to whether the text of the contract, once it is signed, is

³ TUSIAD, Dijitalleşen Dünyada Ekonominin İtici Gücü: E-Ticaret, 2017, at 41.

to be kept by service provider and whether the access to this contract by the purchaser is to be available, and how much time is to be given for such an access. Apart from the information stated above, the information relating to the technical devices to be used for the on-point determination of the errors in data entry and the rectification of such errors; and the information related to the privacy rules, and, if any, alternative dispute resolution mechanisms must also be declared to the purchaser.

Where a service provider is a member of a trade association, he must also represent the code of conducts belonged to such an association as well as how the said code of conducts can be electronically accessed.

It should also be noted that where both parties of an e-commerce relationship are not consumers, they can agree on the opposite of the above-stated representation obligations. In other words, if the said e-commerce activity transpires as B2B, then the parties thereof can renounce the representation obligations. However, in any case, the service provider must enable the purchaser to keep the provisions of the contract entered into inter se and the standardized terms thereof.

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Order Process

The orders made by means of electronic communication devices are subject to specific provisions in Turkish law. First of all, the service provider, at the confirmation phase of the order and before the entry of payment information, must render the terms of the contract, including the total amount to be paid, easily accessible by the purchaser. In addition to this, once an order is received, the service provider must confirm forthwith the receipt of the order made by the purchaser. It is also stipulated that the order and the confirmation of the receipt is deemed to be actualized when the parties are enabled to access the said representations. Within CECE, the service provider, before an order is made, is also obliged to present accessible technic devices to the purchaser that can be used fittingly and effectively for the determination and rectification of data entry errors. As is the case with the renouncement of the representation obligations stated above, where both parties are not

consumer, they can renounce the obligations regarding the order process pointed out herein as well.

Commercial Communication

Within a commercial communication, the information rendering the commercial communication and the real person or the legal entity, with which the said communication is made, clearly ascertainable must be represented. Additionally, within the context of commercial communications, the characteristics of promotions such as discounts and gifts, and contests or games pertaining to a promotion must be clearly seen, and the conditions of joining or benefiting from such events must be easily accessible, and finally these conditions must be represented so clearly that no doubt can arise.

Pursuant to CECR, commercial electronic messages can be sent to the purchaser on the condition that their consent has been obtained in advance. Such a consent can be acquired in writing or through any electronic communication device. Once the purchaser gives his communication information for the purpose of being communicated, then no consent is required to be obtained for commercial electronic messages regarding the modification, use and maintenance of the provided goods. On the contrary of the stipulation regarding the consumers, commercial electronic messages can be sent to artisans and merchants without a consent to be obtained beforehand.

Once the consent of the purchaser is obtained, the content of the commercial electronic message to be sent to the purchaser must be in accordance with the consent. The message must contain the information identifying the service provider, and depending on the method of communication, the information such as phone and fax number, short message service number and e-mail address as well as the subject and purpose of the message.

Regardless of how much time has passed since the actualization of the consent, purchasers can, at any time and without the need to specify a reason, reject to take commercial electronic messages. The service provider is obliged to provide a free of charge method to the purchaser for the submission of the said rejection. Upon the

receipt of the rejection from the purchaser, the service provider must stop sending messages to the purchaser in 3 business days.

Protection of Personal Data

In Turkish law, the protection of personal data is generally regulated within the context of the Code on the Protection of Personal Data numbered 6698. However, specifically in the area of e-commerce, CECR has a stipulation regarding the protection of personal data. Pursuant to Article 10 of CECR, the service provider and the intermediary service provider are liable with the reservation and protection of personal data obtained through an e-commerce activity. In this respect, without the consent of the relevant person, the service provider and the intermediary service provider are prohibited to transfer the personal data to third parties and to use it for a reason other than the relevant e-commerce activity.

Sanctions

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In CECR, several sanctions are stipulated for the actions taken on the contrary of the provisions thereof. Firstly, those having failed to comply with the provisions regarding the obligation to represent information, those having breached the obligations such as obtaining the consent of the purchaser for any commercial electronic messages and sending messages in accordance with the consent acquired, and those having failed to represent the information regarding the terms of contracts and the amount to be paid to the purchaser within confirmation phase of an order are imposed a monetary fine being min. 1.000 TRY and max. 5.000 TRY.

Secondly, the service providers and intermediary service providers having failed to abide the provisions regarding the confirmation of the order, and the provision stipulating the representation of clear information, within the text of commercial electronic message, of the merchant sending the message, and lastly the obligation to represent the information enabling the service provider to be known by the purchaser are imposed a monetary fine being min. 1.000 TRY and max. 10.000 TRY.

Ultimately, those having failed to comply with the stipulations regarding the promotions and gifts, and the provisions pertaining

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to the rejection of commercial electronic messages are imposed a monetary fine being min. 2.000 TRY and max. 15.000 TRY.

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