



Digital Platforms are on the Turkish Competition Board's Radar: Meta Threads Decision

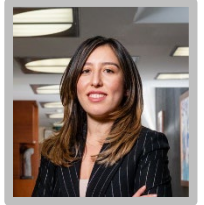
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Rapid increase in the use of digital platforms and introduction of new products brings to the agenda the applicability of various legal regulations, including competition law, to digital platforms. In this article, we review the Turkish Competition Board's ("Board") decision on the Threads application by Meta Platforms Inc. ("Meta") and discuss the Turkish law with respect to digital platforms in comparison with the European Union ("EU") legislations.

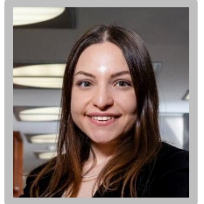
Meta Threads Decision of the Turkish Competition Board

Meta had connected the use of its Threads application with Instagram, an application also developed by Meta, and had established a data integration policy whereby data collected from users' Instagram accounts could be transferred to the Threads. Under this policy, users would create their Threads profiles based on their Instagram accounts and combine the data obtained through Threads with Instagram data. Subsequently, the Board initiated a preliminary investigation as this practice could constitute an abuse of dominant position within the scope of the Law No. 4054 on the Protection of Competition ("Law No. 4054") [1].

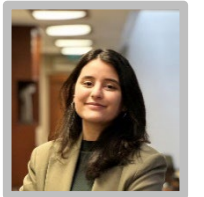
As a result of the preliminary investigation, the Board defined the relevant product market as the "social media market" and determined that Meta has a dominant position in the market with its decision dated 8 February 2024 [2]. The Board emphasised the significance of data for digital platforms and stated that although social media services are perceived as free of charge by users, in fact, users pay for such services through their data. Moreover, it was noted that data has a vital importance for online advertising and that a significant amount of revenue is generated by providing advertisers with data collected from digital platform users.



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In addition, Board considered that as the undertakings in digital markets and operating in different and/or related markets create an ecosystem, Meta's processing of the data obtained from each of its digital services by including these data in this ecosystem cumulatively strengthens the position of the said ecosystem.

In the light of all these evaluations of the Board, it has been concluded that the data integration would create a barrier for entry into the market in favour of Meta, with the contribution of direct and indirect network effects in the market, and a provisional injunction has been issued to cease the data integration activity until the final decision. Besides, an administrative fine was imposed for each day of non-compliance with the provisional injunction.

In its final decision following the provisional injunction decision, the Board announced its rejection of the measures submitted by Meta for the remedy of the infringement, as the Board did not find them sufficient to eliminate the concerns regarding data integration. Thereupon, Meta did not offer any new proposals, withdraw Threads from the Turkish market and deactivate the profiles of Threads users in Türkiye [3].

Following these developments, the Board announced on 6 June 2024 that because of the suspension of Threads' operations in Türkiye, the obligations under the provisional injunction became devoid of essence, thus the daily administrative fine was discontinued and a total administrative fine of TRY 335.730.707,707,20 was imposed on Meta for the 70 days period in which the infringement continued.

Applicability of Competition Law Rules to Digital Platforms

As there is no competition law regulation applicable for all digital platforms and their market practices in Türkiye, the Board issues decisions in accordance with the provisions of the Law No. 4054 in its investigations. Especially while mentioning digital platforms that have become an ecosystem, the Board frequently refers to the abuse of dominant position provisions.

In this context, in its decision regarding Meta dated 2022, the Board drew attention to the legislations on abuse of dominant position [4]. The Board found that Meta's practice of combining data collected from its Facebook, Instagram, and WhatsApp services created challenges for competitors in the social networking services market and the online display advertising market, while creating a barrier to market entry. Therefore, an administrative fine was imposed on Meta in addition to various injunctions. Following this decision, the measures submitted by Meta were deemed sufficient to eliminate the infringement and to ensure the reconstruction of effective competition in the market. The administrative fine imposed on Meta was suspended with a total amount of TRY 551,557,589.86 for 115 days [5].

In both Meta decisions, it was assessed that Meta's data integration acts constituted abuse of dominant position and these acts were intervened afterwards (*ex post*) with a classical understanding of competition law. While the measures proposed in the decision regarding Facebook, Instagram and WhatsApp were accepted and the services did not need to be withdrawn from the market, the decision regarding Threads resulted in the withdrawal of the application from the market.

EU Legislation

The Threads application was globally launched on July 2023 but its entrance to the EU market was delayed. Recently adopted legislation on digital markets in the EU has contributed to this delay.

The EU Digital Markets Act (“DMA”) was published on 1 November 2022 and most of its provisions entered into force on 2 May 2023. It aims to identify the large digital platforms acting as gatekeepers that offer core platform services, and to ensure a fair and contestable market structure by supervising and auditing these platforms. Accordingly, certain obligations have been introduced for platforms identified to have significant market power under the DMA.

Although the purpose of the DMA is not directly the protection of competition, it is foreseen that this legal framework will be complementary to EU competition law rules and will support the protection of competition both at EU and Member State level. Among other obligations, it is envisaged that concentration notifications of gatekeeper platforms falling within the scope of the DMA will be made in accordance with EU competition rules.

In the scope of the DMA, Meta, like Amazon, Apple and Microsoft, has been designated as a gatekeeper and therefore, Meta has ex ante obligations. Accordingly, Meta is under the obligation not to combine personal data from its core platform service with personal data from other services it offers. Therefore, Meta fulfilled these obligations under the DMA before launching Threads in the EU market.

Legislation Activities Resembling DMA in Türkiye

In Türkiye, even before the DMA was published, a legislative study on digital platforms was brought to the agenda for the first time with the amendments to the Law No. 6563 on the Regulation of Electronic Commerce [6], which was published on 7 July 2022 and entered into force on 1 January 2023 [7]. With the amendment, new obligations were stipulated for electronic commerce intermediary service providers, a subtype of digital platforms. These new obligations are intended to mitigate the risk of monopolisation of electronic commerce intermediary service providers. There is no special or general legislation applicable for other types of digital platforms.

On the other hand, an amendment to the Law No. 4054 was proposed for such purpose, and the draft legislation on the Amendment to the Law No. 4054 on the Protection of Competition (“Draft”) was presented for the opinions of certain public institutions on 14 October 2022. Within the scope of the Draft, additional obligations are stipulated for digital platforms to protect a fair and competitive market structure for competitors and platform users, in particular to identify the undertakings that provide core platform services with significant market power and to prevent these undertakings from using the data obtained from their activities to the detriment of their competitors or the market. The Draft aimed to create a DMA-like legislation in Türkiye directly in the context of competition rules, and to pave the way for an *ex ante* intervention regarding the behaviour of undertakings, as in the DMA. However, no progress has yet been made in adopting the draft into law.

Conclusion

Digital markets are highly concentrated markets where direct and indirect network effects are observed explicitly. Data integration, on the other hand, increases this concentration tendency and expands network effects to the detriment of other competitors in the market. It has been observed that *ex post* interventions by competition authorities against digital platforms are insufficient. Therefore, *ex ante* measures have been introduced in many legal systems, particularly in the EU, and pre-market entry obligations have been stipulated. Although various steps have been taken to adopt similar policies in Türkiye, there is still no legal mechanism in place to impose liability on platforms with significant market power before an infringement occurs. Consequently, as in the Meta Threads decision, interventions can only be made after the infringement and may result in the withdrawal of the relevant platform from the market and/or high fines.