

US-Turkey Business Council, Session III

Topic 5.b.

Cross-border Cooperation in Digital Commerce

Turkey and the United States are at different places in the digital economy spectrum, but both governments agree that the nurturing and development of the digital economy in their respective jurisdictions is a key challenge and priority for policy development. Few dispute the conclusion that digital commerce spurs economic growth by generating new job opportunities and consumer choice as well as optimizing efficiency and productivity in industrial sectors. But what is also becoming apparent to all global jurisdictions is that the digital economy often transcends national geographies, laws and regulations. The result has been a palpable increase in regulatory interest in web-based business, transnational data flows and processing, data rights, interoperability of systems, and cybersecurity. This includes increasing interest in taxation of digital economic activity, controls on the cross-border flow of data (particularly when it may contravene national data privacy laws), or when regulators fear that access to data may be impeded by its storage or processing outside its national boundaries.

Both the United States and Turkish governments have been enacting laws and regulations to address the new realities of digital commerce, but most would agree that the speed by which new technologies develop far outstrips most legislative and regulatory responses that seek to protect consumers, investors, or public health and safety – at least when the law or regulation is too narrowly drafted. And the opposite governance approach is equally harmful: Laws that offer government overly broad authority to restrain commercial, social, or industrial use of the internet will impede innovation and have a tendency to drive investment and economic development to other jurisdictions more amenable to digital commerce.

In light of the rapid pace of change in the digital economy, various policy proposals have been developed in order to help nourish digital commerce while

also fulfilling certain key sovereign prerogatives. But in these formative stages of governmental response to digital innovations, the process of forming policy, or developing legislative and regulatory actions relating to the digital economy, is a foundational prerequisite to enlightened government action now and in the future. For this critical reason, the Council recommends that the Turkish and US governments form a digital economy working group under the auspices of the Framework for Strategic and Economic Cooperation (FSEC) which would meet semi-annually to evaluate legislative and regulatory actions in order to enhance greater cross-border digital solutions and cooperation. Key principles should guide the evaluations in order to promote the development of digital economic tools and participants:

Allow an open and unfragmented Internet to continue to flourish.

Adopt a regulatory perspective that considers the value of the entire communications and digital services ecosystem, and takes into account the public interest. This will foster a positive environment for the investment in the development and proliferation of capable and compelling digital networks, content, applications, and services. Recognizing that e-Commerce has served as an equalizer, allowing companies that offer the best products to succeed regardless of size and location, we hope both governments will adopt facilitative approaches to this engine of small business export growth.

Subscribe to a transparent regulatory process – To maximize its effectiveness, the regulatory process must be clearly understood by policymakers and industry. Policymakers would need to be open and forthcoming as to their domestic initiatives. It would need to establish well-defined timetables for the coordination of regulations and provide for a consistent means of consultation and dialogue with market participants and industry bodies, with reasonable timelines for market participants to respond to regulatory proposals.

Provide consumers with predictable levels of protection by evaluating regulatory frameworks for information and communications technologies , and digital services in order to apply consistent approaches. This is about finding the appropriate level of rules for consistently protecting consumer rights in the digital

economy while at the same time fostering the development of new services and innovation for all. Careful and comprehensive analysis is required to determine which services are similar, competing and substitutable in today's rapidly changing and highly innovative markets.

Demonstrate transparent and responsible use of data. Consumer acceptance of new technologies also requires demonstration of transparency and responsible use of data. The nature of digital industry requires a careful balancing of privacy concerns in light of the risks posed both by misusing data and conversely, by restricting the use of data in a way that could affect the use of digital industry to improve the safety, efficiency, and function of critical infrastructure.

Promoting internationally-recognized cybersecurity standards. Digital commerce and industry is marked by fast-moving technological development. As such, the US and Turkish governments should promote mutual adherence to existing, voluntary cybersecurity frameworks as opposed to broad-scope cybersecurity legislation covering the digital economy and/or industry as a whole.

Clarify and rationalize tax and tariff treatment of digital/electronic commerce. This effort would seek to make valuation methodology more certain, tax rates less susceptible to arbitrage (affecting where new start-ups are sited for tax purposes), and tax liabilities and payments more balanced and in keeping with the guidelines established under the OECD Base Erosion Profit Shifting project.

Apply comprehensive, evidence-based impact analysis and an evaluation of competition and consumer protection laws across the entire economy, and favor the use of such broad tools to the creation of new sector specific regulations. With the objective to ensure consumer protection, while also providing incentives for investment and innovation by all parties, policymakers should be mindful of the unintended consequences of new regulations. Building in a comprehensive risk impact assessment is encouraged, where objectives are clearly defined, and risks fully analyzed in light of the objective. Wherever possible, reliance on existing general competition and consumer protection laws is preferable to new prescriptive regulations that could stifle investment and innovation.

Use competition law to evaluate product and geographic market definitions on a continuous basis. Rapidly evolving technologies and business models make prescriptive, *ex ante* regulations quickly obsolete. To the extent possible, a preference should be for the sophisticated application of competition law and economics as a less stifling and more efficient means by which to regulate innovative and technologically advanced business activity.

Timely – Identifying cross-border issues early in the regulatory drafting process would be an important advance compared with the existing ad-hoc frameworks where international dialogues occur too late to improve outcomes.

Aimed towards conflict mitigation – While important and useful dialogues do exist between regulators, at present there are no processes in cross-border regulation to systematically manage divergences in well-understood ways. The absence of such a formalized and regular mechanism potentially delays and even prevents countries from moving towards mutually satisfactory outcomes.

With the rapid growth of digital economy comes a unique opportunity for regulatory modernization – that is, updated rules that can adapt to new facts. These new and updated rules can promote investment, competition and innovation throughout the digital economy, while satisfying the sovereign prerogative to protect consumer interests and investor expectations no matter who is providing the service. Such a consultation mechanism will help strike the right level of protection for business and consumers while fostering competition, investment and innovation both domestically but also on a cross-border basis. Regulators are encouraged to engage meaningfully, on cross-border basis as well as with business throughout the policy-making process in establishing a digital economy.

The US and Turkish governments' actions should be coherent and coordinated to avoid dampening the prospects for mutual improvements in economic growth and productivity resulting from digital commerce and industry. A key positive role a bilateral working group can play is to recognize the critical nature of

international data flows. The global digital economy relies on the interchange of data. The US and Turkish governments should promote the free flow of data across borders and ensure that any future, applicable trade agreement(s) address any existing barriers to data movement.

Recommendation:

The Council recommends that the Turkish and US governments form a digital economy working group under the auspices of the Framework for Strategic and Economic Cooperation (FSEC) which would meet semi-annually to evaluate legislative and regulatory actions in order to enhance greater cross-border digital solutions and cooperation