

DRAFT

The business of marketplaces will be regulated

FAO: marketplaces, owners of pick-up points and sellers using marketplace platforms.

Pepeliaev Group advises that, on 5 March 2024, [draft law No. 568223-8](#) (the “Draft Law”) has been put before the State Duma. It provides for the unified legal regulation of marketplaces’ business.

Who are aggregators of information about goods (marketplaces)?

Pursuant to article 2(3) of the Draft Law, an aggregator of information about goods is software and/or a website (webpage) that enables the consumer to do the following with respect to a specific sort of goods:

- study the seller’s proposal to enter into a sale and purchase contract for the goods;
- enter into a sale and purchase contract for the goods with the seller;
- make an advance payment for such goods by transferring funds to the aggregator owner using forms of cashless settlements that are applied under Russian legislation.

Pursuant to article 2(5) of the Draft Law the owner of an aggregator of information about goods is a company, regardless of its legal form, or an individual entrepreneur that owns software and/or a website and/or a webpage, which is an aggregator of information about goods.

What the Draft Law is essentially about

The Draft Law establishes requirements for:

- a contract to supply the services of an aggregator of information about goods that is concluded with the seller (article 3);
- a contract that the owner of an aggregator of information concludes with the owner of the pick-up point in relation to goods (article 4);
- how the business of aggregators of information about goods is organised and conducted (article 5).

The draft law also sets out special rules for organising and conducting the business of aggregators of information about goods that occupy a prominent position on the market (article 6).

The provisions of the Draft Law are expected to come into force on 1 March 2025

Let us examine some of the provisions of the Draft Law.

Requirements for a contract to supply the services of an aggregator of information about goods, which is concluded with the seller

At present, the relationship between the seller and the owner of an aggregator of information about goods may be determined by a contract to provide services for a fee, an agency contract, a commission contract etc. Russian legislation does not establish requirements for the content of such contracts in relation to sellers and owners of aggregators of information.

According to article 3(1) of the Draft Law, the owner of an aggregator of information about goods will be required to enter into a contract to supply services of organising electronic trade. It is not permitted to include in such contract the provision of other services, including of a marketing, logistics and another nature that accompany the performance of contracts for the sale and purchase of goods concluded with the use of the aggregator of information about goods.

The draft law also establishes compulsory conditions that must be contained in a contract to supply services of organising electronic trade. Examples of these are: provisions that allow one to determine the list of services provided; the requirements for contracting parties that must be met for the contract to be concluded; the procedure for goods to be sold within the aggregator of information about goods; and the procedure for determining the fee of the aggregator, among others (article 3(2)).

According to article 3(3) of the Draft Law the owner of an aggregator of information about goods must provide access to information about the terms and conditions of the contract to supply services of an aggregator of information about goods by posting on its website the form with the current wording of the contract as well as the previous versions of the contract.

Requirements for a contract that the owner of an aggregator of information concludes with the owner of a pick-up point in relation to goods

At present, there are no conditions or restrictions applicable to a contract that the owner of an aggregator of information about goods concludes with the owner of a pick-up point.

The draft law establishes compulsory terms and conditions of a contract that the owner of an aggregator of information about goods concludes with the owner of a pick-up point. Among them are requirements for: the infrastructure

of the pick-up point; the procedure for conducting activities involving the acceptance, storage and dispatch of goods for which a sale and purchase contract has been concluded within the aggregator of information about goods; the liability of the parties for breaching the terms of the contract, including the list of sanctions, together with the grounds and procedure for applying them, etc. (article 4(2)).

The owner of the aggregator of information about goods must provide access to information about the terms and conditions of the contract to supply services that the owner of the aggregator of information about goods concludes with the owner of the pick-up point by posting on its website the form with the current wording of the contract as well as the previous versions of the contract (article 4(3)).

Requirements for how the business of aggregators of information about goods is organised and conducted

For the first time the draft law proposes establishing compulsory requirements for how the business of aggregators of information about goods is organised and conducted.

For instance, pursuant to article 5(1) of the Draft Law, the owner of an aggregator of information about goods must:

- not allow for the placement, within the aggregator of information about goods, of proposals to enter into sale and purchase contracts for types of products that are prohibited for free sale, items, substances and/or media that are prohibited to be put on the market in Russia, as well as commodities that are banned from being sold via the Internet;
- not to allow the placing, in the aggregator of information about goods, of proposals to enter into a sale and purchase agreement with respect to goods that are subject to compulsory confirmation of conformity, as well as goods that are subject to compulsory labelling with means of identification in the absence of information about whether they conform to Russian statutory requirements;
- stop placing a card of a commodity if it contains information that is at variance with the facts and/or if the marketing of such commodity is in breach of Russian legislation;
- ensure the protection of the rights of title holders under the procedure established by Russian legislation;
- provide to sellers and owners of pick-up points upon request the reasoning behind sanctions being applied for a breach of contractual terms and conditions specifying the grounds for and term of the sanctions being applied etc.

We note that, at present, Russian Law No. 2300-1 "On the protection of consumer rights" (the "Consumer Rights Law") dated 7 February 1992 does

not regulate the operating procedures of the aggregators of information about goods.

According to article 12(2.1)(3) of the Consumer Rights Law the owner of an aggregator of information about goods is liable only for improper information about goods (the seller). At the same time, the owner of an aggregator is not liable for losses caused to the consumer as a result of inaccurate or incomplete information being provided to the latter about goods, provided that the owner of the aggregator does not change information about the goods that has been provided by the seller and is contained in the proposal to enter into the sale and purchase agreement for goods.

Nor do the owners of aggregators of information about goods bear any responsibility for a preliminary check of goods sold by means of an aggregator of information about goods in terms there being any infringements of right holders' exclusive rights¹.

The rules for organising and conducting the business of aggregators of information about goods that occupy a prominent position on the market

Pursuant to article 2(4) of the Draft Law, an aggregator of information about goods that occupy a prominent position on the market is an aggregator of information about goods that serves as a platform for transactions between sellers and buyers (save for transactions that the aggregator of information about goods performs as a seller of goods on the aggregator of information about goods) that account, in monetary terms, for more than 20% of the entire volume of transactions performed on the aggregators of information about goods in Russia over the preceding calendar year.

The new obligations of aggregators of information about goods occupying a prominent position on the market are connected with counteracting the monopolisation of the market, ensuring the transparency of the market and preventing discrimination against market participants.

For instance, under article 6 of the Draft Law, owners of aggregators of information about goods that occupy a prominent position on the market are prohibited from:

- creating discriminatory conditions that are determined pursuant to Federal Law No. 135-FZ "On the protection of competition" dated 26 July 2006;
- forcing upon a counterparty services that are unrelated to the services of organising electronic trade;
- entering into a contract that prohibits the supply, in one pick-up point, of services of accepting, storing, returning and giving out to customers goods purchased by means of other aggregators of information about goods and

¹See, for example, Resolution No. C01-2468/2022 of the Court for Intellectual Property Rights dated 2 February 2023 in case No. A41-80851/2021.

supply other services to (perform other instructions of) other owners of an aggregator or seller of goods on other aggregators of information about goods, or perform (implement) such contracts;

- amending the terms and conditions of the contract to supply services of organising an electronic trade or contract with the owner of the pick-up point in a way that worsens the position of the sellers or owners of the pick-up point without prior notification sent at least 30 days before the relevant amendment comes into force, except in situations provided for by the Draft Law, etc.

According to article 6(2) of the Draft Law the owner of the aggregator of information about goods that holds a dominant position on the market must make sure that it adopts and publishes on its website for the use of the general public the trading and sales (commercial) policy that sets out the value of the services it supplies of organising electronic trade and other services that accompany the performance of sale and purchase agreements for goods performed with the use of the aggregator of information about goods, as well as the grounds for and the size of discounts.

At the same time, articles 6(3) - 6(7) of the Draft Law establish, for the first time, additional restrictions on owners of the aggregators of information about goods that occupy a prominent position on the market. For instance, the aggregate value of all services supplied by the aggregator of information about goods that occupies a prominent position on the market to the seller of the goods on the aggregator of information about goods that occupies a prominent position on the market may not exceed 10% of the total value of the goods with respect to which such services are provided, etc.

The Draft Law proposes that the Federal Antimonopoly Service be vested with the power to exercise state control (oversight) over the operations of such aggregators.

Liability

At present, no provision is made for specific liability of aggregators of information about goods for a breach of the Draft Law.

However, we note that there are general grounds for administrative offences that are applied to owners of aggregators of information about goods:

- in terms of antitrust requirements (articles 14.31, 14.33, 14.40 of the Code of Administrative Offences, and others);
- in terms of requirements established by the Consumer Rights Law (articles 12(2.1.) and 12(2.2.) of the Consumer Rights Law);
- in terms of requirements for the sale of goods and products with respect to which requirements have been established for labelling and/or placing information (article 15.12 of the Code of Administrative Offences) and others.

What to think about and what to do

We recommend that the owners of aggregators of information about goods:

- gradually bring the forms of contracts and relationships with sellers and owners of pick-up points into compliance with the Draft Law;
- be ready to develop forms of contracts that are fully in line with the requirements of the Draft Law, should it be adopted, setting out the material terms and other provisions of such contracts in a manner that does not contradict the Draft Law;
- be ready to provide access to information about the terms and conditions of the contracts with sellers and owners of pick-up points by posting on its website the forms with the current wording as well as the previous versions of the contracts;
- be ready, if necessary, to adopt and publish on its website the trading and sales (commercial) policy that sets out the value of the services it supplies of organising electronic trade and other services that accompany the performance of sale and purchase contracts for goods performed with the use of the aggregator of information about goods, as well as the grounds for and the size of discounts.

Help from your adviser

The lawyers of Pepeliaev Group stand ready to provide comprehensive legal support in compliance with legislation governing the operations of marketplaces.

Pepeliaev Group provides the following types of services:

- legal support for the activities of marketplaces;
- drawing up forms of contracts of marketplaces with sellers and owners of pick-up points, as well as commercial policies;
- drafting documents for a marketplace's website (a user agreement, offer, confidentiality policy, etc.);
- advising on remote sales of goods;
- legal support in the field of antimonopoly regulation;
- representing clients before the FAS of Russia, the antitrust regulator, and in courts in cases involving an abuse of dominance and other breaches of antitrust legislation;
- developing trade and sales (commercial) policies.

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