

# China's New Ecommerce Law

## What this will mean for Consumers, Operators and Providers

by DANIEL ALBRECHT

*China's new Ecommerce law, which is in progress, shall regulate the relationship between consumers, platform operators as well as online providers in the field of Ecommerce.*

### China's Ecommerce Market

In accordance to analysis by digital marketing researcher eMarketer, cross-border Ecommerce in China was due to hit USD 85.76 billion in 2016, up from USD 57.13 billion in 2015. Furthermore the China Internet Network Information Center (CNNIC) reported 710 million Internet users in June 2016. Notably, 40 per cent of China's online consumers are buying foreign goods and eMarketer estimated the amount of money that each of them would have spent an average of USD 473.26 in 2016.

If the projection that cross-border Ecommerce will have a compound annual growth rate of 18 percent through to the end of the decade – reaching an estimated USD 222.3 billion – will come true, the consequence would be that China's Ecommerce market will catch up with those of the US, Britain, Japan, Germany and France combined by 2020.

### China's New Ecommerce Law

As the Ecommerce market is constantly changing and undoubtedly its major impact on social life and the current economy cannot be denied, it seems to be necessary to provide a legal framework to give answers to upcoming questions within the scope of Ecommerce.

Hence a new Ecommerce law is in progress and drafts are waiting to be adopted. The new law shall remedy the current situation by promoting the Ecommerce market's development, putting things straight and satisfying all the parties' interests. These central ideas are laid out in Article 1 of the recent draft law and shall summarize simultaneously the political objectives pursued by this law.

#### Fundamental Principles

The fundamental principles emerged from the central ideas and can be regarded as significant basis for both the future implementation and interpretation of the Ecommerce law.

In the recent draft the following principles are suggested: Encouraging innovation, honesty and credibility, allocation of resources by the market, improving the monitoring of innovations, self-discipline and social governance, anti-discrimination, extrapolation of data, balance between exchange and protection. These principles shall complement each other, as this system archives to be comprehensive.

#### Structure of the Draft

The draft consists of eight chapters and recently 94 articles. The structure is the following:

- Chapter I: General regulations, Article 1–10;
- Chapter II: Ecommerce subjects and operators, Article 11–25; This chapter is subdivided into two parts: General provisions and Ecommerce platforms as third parties. The two sub-chapters emphasize the relevance of this law concerning other rules and regulations on ecommerce platforms.
- Chapter III: Trade and services in the area of Ecommerce, Article 26–44; This chapter is about the conclusion of a contract and its performance as payment and logistics.
- Chapter IV: Safeguarding in Ecommerce, Article 45–66; This chapter is subdivided into four parts: Data and information, market regulations and fair competition, protection of consumers interests and arbitration.
- It should be mentioned that chapters II, III and IV are the main parts of the draft.
- Chapter V: Cross-border Ecommerce, Article 67–73; Cross-border Ecommerce is not only about cooperation and collaboration of several departments (customs office, inspection office, etc.) but also the coordination with international systems.
- Chapter VI: Monitoring and management, Article 74–80;
- Chapter VII: Legal responsibilities, Article 81–93;
- Chapter VIII: Appendix, Article 94.

#### Relationship between the Ecommerce Law and other Relevant Laws and Regulations

The Ecommerce law shall not repeat the contents already mentioned in prevailing laws and regulations such as the electronic signature law of 2004. Moreover, the regulations of this law shall refer especially

to issues relating to Ecommerce. Thus, the general provisions of the contract law are applied in general and only concerning special questions will the Ecommerce law be relevant. Moreover, in the field of consumer protection the Ecommerce law will only be used in addition to the law on protection of consumers' rights and interests. While working on the draft other ministries' regulations were taken into consideration and some of them such as the Standards and Regulations Governing Online Transaction Services of the MOFCOM were even incorporated into the draft in order to increase the draft's efficiency.

Although the draft also includes provisions about transnational Ecommerce, international treaties and agreements like the UN Convention on the Use of Electronic Communications in International Contracts, the UNCITRAL Model Law on Electronic Commerce, the WTO's Work Programme on Electronic Commerce, the Preferential trade agreements (PTAs) in the Asia-Pacific region and the data protection provisions of the APEC, the TPP and the RCEP will still prevail. Nevertheless, it is permissible to specify these provisions by national regulations as intended by the Ecommerce law.

#### *Main Contents of the Draft*

##### 1. Subject of Ecommerce

The draft makes a difference between the normal Ecommerce operators on the one hand and on the other hand the platform operators as third party, which are the targets of this draft. A clear definition of this group is missing. Although this gap provides space for innovations and future development.

##### 2. Obligations for the platform's operator

The draft envisages several obligations for the operator of the platform such as verifying the providers' information, to offer only stable and safe services and to act transparently.

##### 3. Electronic contracts

Not only clear criteria for the recognition of a signed electronic contract but also criteria for an electronic representative are laid out in the draft's regulations. Unlike stipulated by former provisions a contract can be revoked, if there were typing errors caused by electronic mistakes.

##### 4. Services for electronic payment

The rights and obligations of the Ecommerce service provider are defined. Especially requirements for the security of the service. Furthermore, in case of erroneous payment the different reasons and responsibilities of the parties shall be examined. Among other principles the presumed-default liability shall apply, if the payment happened unfounded.

##### 5. Express service and logistics

In the new draft, there are also some important provisions relating to express services and logistics. Thus, the liability of the haulage companies is emphasized. Furthermore, the protection of consumers from deception is highlighted. Additionally, the necessity for cash-management, security-management and risk-management in the field of debt collection is underlined.

##### 6. Data and information

While Ecommerce is increasing, the consumer protection should also be adjusted to this change. Hence the draft provides many regulations about data and information: Thus, it is laid out in detail under which circumstances data collection is allowed. Moreover, before using the private data, the use of that amount of data has to be approved by the user. However, the security of private data must be guaranteed.

##### 7. Fair competition

The draft also makes clear stipulations, in which way the platforms have to respect and protect the intellectual property. Besides that, it is stipulated that unfair competition is strictly prohibited.

##### 8. Protection of consumers' interests

Apart from private data and information there are also some other provisions in order to protect consumers' interests. For instance, other provisions about the completeness of goods and services and about guarantee for consumer interests in general are laid out.

##### 9. Arbitration

Concerning arbitration i.e. Online-Arbitrage-rules will be recognized and the duties and restrictions of platforms relating to this are provided.

##### 10. Monitoring and management system

Furthermore, there are regulations mentioned, which refer to territorial area, social governance and the development of Ecommerce

#### **Future Prospects**

Though its large number of clear regulations, the new Ecommerce law would bring many changes and improvements for instance regarding the consumer protection as well as the protection of intellectual property. At the same time, there are also gaps that provide the necessary scope for flexibility and development. However, the current draft has not yet been adopted. It remains to be seen whether the Chinese legislator will pass the law or whether the market will take the wind out of the legislator's sails with self-regulation. Thus Alibaba - China's Ecommerce giant - has already set up its own rules and systems to claim intellectual property infringements by developing AliProtect and TaoProtect.

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