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Analysis of Monopoly Risk in TikTok Shop's Acquisition of Tokopedia: A Per Se Illegal Perspective

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ABSTRACT

A company's strategy to accelerate marketing reach and introduce new businesses to consumers can be implemented through a stock acquisition scheme, as demonstrated by TikTok's acquisition of 75% of Tokopedia's shares. However, excessive stock ownership dominance has the potential to lead to control over production and the goods and services market, which may trigger monopolistic practices that harm the public interest. This study aims to analyze potential violations of business competition law related to e-commerce market dominance resulting from the acquisition of the TikTok Shop digital platform business over Tokopedia. The research method used is normative juridical, with a legal and regulatory approach related to acquisitions and anti-monopoly laws, as well as a case study approach to relevant regulations. The findings of this study indicate that the acquisition of TikTok Shop over Tokopedia, along with the trade policies implemented, has a strong potential to result in monopolistic practices based on the *per se illegal* approach.

Keywords: E-Commerce Platform, TikTok Shop, Monopolistic Practices, *Per Se Illegal*

ABSTRAK

Strategi perusahaan dalam mempercepat jangkauan pemasaran dan memperkenalkan bisnis baru kepada konsumen dapat dilakukan melalui skema akuisisi saham, seperti yang dilakukan oleh TikTok dengan mengakuisisi 75% saham Tokopedia. Namun, dominasi kepemilikan saham yang berlebihan berpotensi menyebabkan pengendalian produksi serta pasar barang dan jasa, yang dapat memicu praktik monopoli yang merugikan kepentingan publik. Penelitian ini bertujuan untuk menganalisis potensi pelanggaran hukum persaingan usaha terkait dominasi pasar e-commerce akibat akuisisi bisnis platform digital TikTok Shop terhadap Tokopedia. Metode yang digunakan adalah yuridis normatif dengan pendekatan peraturan perundang-undangan terkait akuisisi dan hukum anti-monopoli, serta pendekatan kasus terhadap regulasi yang berlaku. Hasil penelitian menunjukkan bahwa akuisisi TikTok Shop terhadap Tokopedia, beserta kebijakan perdagangan yang diterapkan, memiliki potensi kuat menimbulkan praktik monopoli berdasarkan pendekatan per se illegal.

Kata Kunci: Platform E-Commerce, TikTok Shop, Praktik Monopoli, Per Se Illegal

INTRODUCTION

The paradigm shift from conventional trade to digital commerce has brought new challenges in maintaining fair and healthy business competition. Digital platforms have become an integral part of daily life, particularly in the context of online commerce. The rapid growth of digital trade, with various platforms competing for consumer attention, has led each platform to implement different marketing strategies. Common strategies include offering discounts, engaging in *predatory pricing*, and acquiring other platforms. Additionally, in digital marketing, *Search Engine Optimization* (SEO) is a crucial factor in promoting businesses and products online to achieve top rankings in search engine results. SEO utilizes various media such as websites, blogs, and infographics, which play a significant role in enhancing digital business exposure (Sari et al., 2023).

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The acquisition strategy in the digital platform industry requires substantial capital, making it unattainable for all companies, despite its potential to accelerate business growth in various aspects. Digital platform acquisitions provide advantages in several key areas:

1. Geographical Aspect – Acquisitions can be used to expand a company's geographical reach. By acquiring local platforms in different countries or regions, companies can quickly enter new markets and expand their global presence without having to build infrastructure from scratch.
2. Product Portfolio Diversification – Acquisitions allow companies to expand their portfolio of products and services. By acquiring companies operating in different sectors or offering different products, companies can attract a broader market segment and reduce their dependence on a single type of product or service.
3. Technology and Intellectual Property Aspect – Acquisitions enable companies to gain access to new technologies, patents, or intellectual property, which can be leveraged for development and innovation. This helps digital platforms remain competitive in a rapidly evolving market. The benefits of digital platform acquisitions can be fully realized when there is synergy between the acquiring and acquired platforms (Lim & Ruslin, 2020).

However, acquisition policies must still comply with prevailing legal provisions, particularly Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition. Article 28 of this law states that a company is prohibited from carrying out acquisitions if they result in monopoly or unfair business competition.

One of the most attractive platforms among consumers is TikTok Shop. TikTok Shop is an e-commerce platform that allows users to buy and sell goods online, similar to other e-commerce platforms. Initially, TikTok functioned solely as a social media platform, but it has now evolved into a business platform after acquiring Tokopedia, securing a 75% share valued at IDR 23.4 trillion (Kompas.com, 2024). Between January and December 2023, Tokopedia ranked second in terms of visitor numbers among digital business platforms in Indonesia, following Shopee and surpassing Blibli, Lazada, and Bukalapak (Katadata, 2024). Previously, Tokopedia had dominated the Indonesian e-commerce market in 2021(Frantika, Eltivia, & Riwajanti, 2022).

Meanwhile, TikTok, as a Chinese-origin social media platform, has a significant user base in Indonesia. In 2023, TikTok ranked sixth among the most-used social media platforms, following Facebook, YouTube, WhatsApp, Instagram, and WeChat. Despite this ranking, TikTok recorded the longest user engagement time, with an average of over 23 hours per month spent on the application (Olejniczak, 2022). Through the acquisition of Tokopedia, TikTok successfully launched TikTok Shop, which quickly gained traction in Indonesia, capturing the largest market share (45%) in online shopping transactions, surpassing WhatsApp (21%), Facebook Shop (10%), and Instagram Shopping (10%)(Mutiara & Putri, 2024).

In this context, the acquisition of TikTok Shop raises questions regarding fairness, transparency, and compliance with business competition regulations. There are growing concerns that this acquisition may violate competition law. Therefore, this study aims to explore and analyze potential violations of business competition law that may arise from TikTok Shop's acquisition. Additionally, this research seeks to educate the public on the dynamics of digital market competition and provide recommendations for improving fair and healthy business practices.

Several previous studies have examined acquisitions from various perspectives. Hidayat (2021) analyzed delays in acquisition reporting to the Indonesian Competition Commission (KPPU), where KPPU considered the delay intentional, whereas the reported party argued it resulted from differences in affiliation interpretations. KPPU's decision to impose fines was deemed consistent with competition law. Tifa (2023) examined the merger and acquisition of PT GoTo Gojek Tokopedia Tbk., concluding that GoTo became the largest technology-based company in Indonesia and Southeast Asia, although no discussion was made regarding competition law violations. Rezmia Febrina (2022) explored digital-era business competition in product and service marketing but did not focus on competition law violations. Muh. Rizal (2018) analyzed Go-Jek's marketing strategies in Indonesia following Uber's exit from the ride-hailing market but did not investigate competition law violations. Meanwhile, Ida Nadhira (2021) discussed electronic acquisition notification, emphasizing the importance of pre-notification to KPPU to prevent monopolistic practices and unfair competition.

Other relevant studies include Hendra Cendekiawan (2023), which focused on mergers, consolidations, and acquisitions in Indonesia's banking sector, particularly concerning Bank Indonesia regulations. Sitanggang (2019) analyzed the acquisition of PT Uber Indonesia Technology by PT Grab Indonesia, finding that KPPU only monitored pricing and service quality post-acquisition without imposing sanctions. Lalu Muhammad Faisal (2022) studied consumer data protection in the integration of Gojek and Tokopedia data but did not explore the implications for business competition. Mulfi & Nasution (2022) examined the merger of three Islamic banks under POJK No. 41/POJK.03/2019, concluding that the merger complied with applicable regulations. Luthfia (2022) investigated mergers, acquisitions, and consolidations as forms of corporate restructuring that could potentially lead to monopolies and unfair competition, but did not specifically discuss digital platform acquisitions in e-commerce.

Based on this literature review, a research gap exists in analyzing how digital platform acquisitions impact market dominance and potentially violate business competition laws. Previous studies predominantly focused on the legality of acquisition reporting, data protection, and acquisition regulations within banking and technology sectors, but did not specifically examine the impact of digital platform acquisitions on business competition.

Therefore, this study introduces a novelty by investigating TikTok Shop's acquisition of Tokopedia as a case study of potential market dominance in the e-commerce sector. It will analyze the acquisition using the "per se illegal" approach, which presumes that certain business practices are inherently anticompetitive, regardless of intent or actual market impact. Through this research, new insights into the effects of digital platform acquisitions on business competition in Indonesia can be provided, alongside recommendations for regulatory improvements to promote a more equitable and competitive business environment.

The primary focus of this study is to analyze how TikTok Shop's acquisition of Tokopedia may lead to market control, potentially resulting in business competition law violations based on the per se illegal approach.

RESEARCH METHOD

This study employs a normative juridical research method, which is based on an analysis of relevant laws and regulations concerning acquisition rules, anti-monopoly laws, and other related implementing regulations. The approach used consists of the statute approach and the case approach. The statute approach examines legal provisions governing acquisitions and business competition, including Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, Government Regulation No. 57 of 2010 on Mergers or Consolidations that May Lead to Monopoly, Law No. 40 of 2007 on Limited Liability Companies, and KPPU regulations on digital platform acquisitions. The case approach analyzes precedent cases of acquisitions, including TikTok Shop's acquisition of Tokopedia, GoTo's

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merger, and Grab's acquisition of Uber, assessing their impact on business competition. This study relies on secondary data, including primary legal materials (laws and regulations), secondary legal materials (academic literature, legal journals, and previous research), and tertiary legal materials (legal dictionaries and encyclopedias). Data collection is conducted through library research, involving an in-depth review of legal documents, literature, and reports from KPPU. The data is analyzed using a qualitative-descriptive method, which includes interpretation of legal provisions, comparative case analysis, and evaluation of legal impacts based on the per se illegal theory, which considers certain business practices as inherently anti-competitive without requiring proof of their market effects. This research aims to provide a comprehensive legal assessment of how TikTok Shop's acquisition of Tokopedia may lead to market dominance, potentially violating business competition laws, while also offering policy recommendations to ensure fair competition in the digital marketplace.

RESULTS AND DISCUSSION

The practice of acquisition on digital platforms as carried out by TikTok against Tokopedia, which is 75%, certainly has a significant impact on market control, especially the digital (online) market, its presence becoming a new competitor among other digital platforms.

Tokopedia Acquisition by TikTok Shop: Impact on the Digital Market

The acquisition of 75% of Tokopedia's shares by TikTok Shop has a significant impact on the dominance of the digital (online) market. With this acquisition, TikTok Shop has become a new and increasingly strong competitor among other e-commerce platforms in Indonesia. Acquisitions in the digital business world are a strategy to expand the market and accelerate business growth, but when share ownership becomes dominant, this can create market power that has the potential to lead to market monopoly.

This acquisition also raises concerns that TikTok Shop will have full control over Tokopedia's business strategy, including pricing policies, marketing, and the seller ecosystem within it. Therefore, the potential for market dominance and monopolistic practices must be immediately anticipated by the Business Competition Supervisory Commission (KPPU) with stricter policies in supervising acquisitions in the digital sector.

The tight competition in the e-commerce industry requires business actors to implement aggressive marketing strategies in order to survive. TikTok Shop, as part of a social media platform with a high level of user engagement, has implemented several main strategies in attracting consumer attention, including:

1. Increase video advertising content as a promotional media to increase product appeal and encourage impulsive buying.
2. Implement a free shipping program throughout Indonesia without a minimum purchase transaction, which has a significant impact on consumer purchasing decisions.

As researched by Tusanputri & Amron (2021), advertising and free shipping variables have an influence of 78.1% on purchasing decisions, while 21.9% is influenced by other factors. In addition, TikTok Shop also has a new feature "Shopping Center", which provides flash sale facilities, a marketing strategy that provides big discounts within a certain period of time (Putri, 2022). With this strategy, TikTok Shop, which was initially just a social media platform, has now developed into an e-commerce business platform that has its own ecosystem. Some of the features that support business activities on TikTok Shop include:

- Shop Tab: A new product promotion facility for sellers and a place for customers to find promos and make orders.
- Short Video: A feature for sellers to display promoted products.
- TikTok Live Shopping: Online advertising that allows sellers to display products in real-time via live streaming.
- Product Showcase: A place for customers to explore products, read reviews, and buy directly from their favorite seller profiles.

The aggressive strategy implemented by TikTok Shop through the acquisition of Tokopedia needs to be further analyzed in relation to competition law, especially in ensuring whether this business policy is still within the limits of healthy competition or is actually leading to monopolistic practices.

Impact on Competition and Policies of the Business Competition Supervisory Commission (KPPU)

Acquisitions with majority share ownership have the potential to limit business competition and create unbalanced market power. This can have a negative impact on the sustainability of competitors' businesses and new business opportunities in the e-commerce industry. In several previous cases, KPPU has imposed sanctions on business actors who control majority shares because they have been proven to have practiced monopoly. Several KPPU decisions related to majority share ownership that results in monopoly are:

1. KPPU Decision in Case Number 07/KPPU-L/2007 against PT Temasek Holdings, which owns the majority of shares in PT Telekomunikasi Seluler. In this case, Temasek was found to have violated the Anti-Monopoly Law because it created excessive market power.
2. KPPU Decision in Case Number 07/KPPU-I/2020 against Lion Group Airlines, which was proven to have practiced price discrimination and legally violated the Anti-Monopoly Law (Jayusman & Setianingrum, 2023).

Looking at the pattern of previous cases, TikTok Shop's majority shareholding of Tokopedia also has the potential to cause similar problems, especially related to price control, market access, and healthy business competition. Therefore, the role of KPPU in overseeing this transaction is crucial to ensure that no violations occur that harm other business actors or consumers.

Case Studies and Comparative Studies

Controlling a majority of shares in a company has great potential to create a market monopoly, as has happened in several cases abroad, including:

1. Grab's acquisition of Uber in Singapore, which resulted in a decrease in the level of competition, so that the Singapore government authorities imposed fines on both companies because they were considered to have reduced market competition.
2. Apple which acquired several companies, so that the European Union government imposed a fine of 500 million Euros for alleged violations of anti-monopoly laws (Suhartanto, 2024).

These cases show that strict supervision of majority share acquisitions is necessary to prevent market domination that could harm business competition as a whole.

Legal Analysis: Potential Violation of Law No. 5 of 1999

Acquisition of a majority stake in a company, especially in the digital sector, has the potential to create monopolistic practices that can harm healthy business competition. The acquisition by TikTok Shop

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of 75% of Tokopedia's shares provides a great opportunity for TikTok Shop to control the e-commerce market in Indonesia. Based on Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, monopolistic practices are defined as the concentration of economic power by one or more business actors (Latif, Wafa, & Alia, 2024), resulting in the control of production and marketing of certain goods or services, thus creating unhealthy business competition and harming the public interest (Article 1 Paragraph 2 of Law No. 5 of 1999). Acquisition in the business world is a legitimate strategy to expand market share, accelerate the introduction of new businesses to consumers, and reduce business risks. However, acquisitions also have complex legal implications, especially when they lead to dominant market control. As explained by Moin (2010), an acquisition is the takeover of ownership or control of shares or assets of a company by another company, where both entities remain separate legal entities. This is in line with Government Regulation No. 27 of 1998, which defines a takeover as a legal act carried out by a legal entity or individual to take over, either most or all of a company's shares, which results in the transfer of control over the company.

Acquisition Regulation and Prohibition of Monopolistic Practices

Acquisition of a majority stake in a company is not prohibited, but must still comply with legal regulations governing healthy business competition. Based on Article 28 Paragraph (2) of Law No. 5 of 1999, share acquisitions are prohibited if such actions can result in monopolistic practices and/or unhealthy business competition. Furthermore, Article 29 explains that any merger, amalgamation, or share acquisition that impacts the value of assets and/or sales value exceeding a certain limit must be reported to the KPPU within a maximum of 30 days from the transaction. As a supervisor of business competition in Indonesia, the Business Competition Supervisory Commission (KPPU) has the authority to assess whether an acquisition has the potential to result in monopolistic practices or not. In Commission Regulation No. 3 of 2019 concerning the Assessment of Mergers, Amalgamations of Business Entities, or Acquisitions of Shares that Have the Potential to Result in Monopolistic Practices and/or Unfair Business Competition, it is stated that monopolistic practices are the concentration of economic power by one or more business actors, which causes domination over the production and marketing of certain goods/services and creates unfair business competition and is detrimental to the public interest. Thus, the regulations governing acquisitions can be mapped into several main points:

1. Acquisition (takeover of shares) can result in control of the company by the acquiring party.
2. Acquisition must not result in monopolistic practices and unfair business competition.
3. Acquisition of shares that exceeds the value of certain assets must be reported to the KPPU.

In accordance with Article 5 of PP No. 57 of 2010, acquisitions that cause the combined asset value to exceed IDR 2.5 trillion (or IDR 20 trillion for the banking sector) and the combined sales value reaches IDR 5 trillion, must be reported to the KPPU within a maximum of 30 days since the merger or acquisition was carried out. If this reporting is late, administrative sanctions will be imposed in the form of a fine of IDR 1 billion per day of delay, with a maximum fine of IDR 25 billion.

Indications of Monopoly in TikTok Shop's Acquisition of Tokopedia

In practice, a monopoly occurs when a business actor has full control over a market and can regulate prices, distribution, and market access, which has the potential to hinder other business actors from competing. According to Article 17 of Law No. 5 of 1999, business actors are prohibited from controlling the production and marketing of goods or services that can lead to monopolistic practices and unfair business competition. Furthermore, Article 17 Paragraph (2) states that a business actor is suspected or considered to be controlling the production and marketing of goods/services if it meets one of the following criteria:

a) The goods and services concerned do not yet have adequate substitutes.
b) The acquisition results in other business actors being unable to enter the same competitive market.
c) One business actor or group of business actors controls more than 50% of the market share in a particular type of goods or services.

In the context of TikTok Shop's acquisition of Tokopedia, the potential for monopoly can occur through the following mechanisms:

1. Market Control – With a 75% stake in Tokopedia, TikTok Shop has great control over e-commerce policies, including pricing and marketing strategies, which have the potential to reduce the competitiveness of other platforms such as Shopee, Blibli, and Bukalapak.
2. Discriminatory Pricing Practices – TikTok Shop implements flash sale and free shipping strategies, which can greatly affect consumer shopping patterns and create dependency on one platform, making it difficult for competitors to survive in the competition.
3. Barriers for Other Business Actors – TikTok Shop's dominance in e-commerce can hinder the entry of new business actors into the market due to the difficulty of competing with aggressive pricing strategies and wider market access.

Elements of Monopolistic Practices in the TikTok Shop Acquisition

Referring to Sitompul (1999), there are several main elements in monopoly practices:

1. Centralization of economic power, namely real control over a market for goods and services that allows business actors to set prices (price fixing).
2. Unfair business competition, namely business activities carried out in a dishonest manner, breaking the law, or harming the public interest.

In this case, if TikTok Shop with majority ownership of Tokopedia manages to control more than 50% of the e-commerce market in Indonesia, then they can have a dominant influence in setting prices, regulating product offerings, and inhibiting competitors from developing.

Thus, based on Article 17 of Law No. 5 of 1999, if this acquisition is proven to cause a concentration of economic power and dominant market control, then TikTok Shop can be considered to have carried out monopolistic practices that have the potential to violate business competition law. Therefore, the role of KPPU is very important in evaluating the impact of this acquisition, in order to ensure that there is no market dominance that hinders healthy business competition.

Illegal Per Se Approach to TikTok Shop Acquisition

After the acquisition, TikTok Shop implemented several strategies that have the potential to create monopolistic practices in Indonesia's e-commerce industry. One of the main strategies introduced is the unlimited free shipping program, where TikTok Shop offers free shipping across Indonesia with no minimum purchase requirement. This strategy aims to increase consumer attraction to the TikTok Shop platform, as found in a study by Tusanputri & Amron (2021), which states that advertising and free shipping strategies influence 78.1% of consumer purchasing decisions, while 21.9% are influenced by other factors.

The impact of this policy on business competition is significant (Dutz & Vagliasindi, 2000). By offering widespread free shipping, TikTok Shop attracts a large number of consumers and limits

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opportunities for other e-commerce platforms that do not have the financial capacity to implement similar strategies. As a result, small and medium-sized businesses selling on other platforms experience a drastic decline in customers, as consumers prefer to shop on platforms offering greater incentives. If competitors are unable to offer the same policy, they may experience a significant decrease in transactions and could be forced out of the market. In the context of competition law, Article 17 of Law No. 5 of 1999 prohibits businesses from dominating the market to the extent that competitors cannot enter the same industry for goods and/or services. Therefore, the unlimited free shipping program can be categorized as a predatory pricing strategy, where TikTok Shop leverages its financial strength to pressure competitors, ultimately potentially damaging business competition and promoting monopolistic practices.

In addition to the free shipping program, TikTok Shop has also introduced a large-scale Flash Sale feature, offering discounts of up to 50% or more on certain products for a limited time (Putri, 2022). This strategy significantly increases transaction traffic on the TikTok Shop platform while simultaneously reducing consumer visits to other e-commerce platforms. With much lower prices during the flash sale period, consumers are more likely to buy from TikTok Shop, which ultimately hinders competitors from gaining a fair market share. From a legal perspective, Article 15 of Law No. 5 of 1999 prohibits businesses from restricting or obstructing the distribution of competitors' goods unfairly. If TikTok Shop uses flash sales as a tool to monopolize digital shopping traffic and suppress competitors' profit margins, then this action could be considered an abuse of dominant market position, which contradicts the principles of fair business competition.

Based on the above analysis, TikTok Shop's policies following the acquisition of 75% of Tokopedia shares have the potential to create monopolistic practices that meet the criteria for violation under the Per Se Illegal approach. Several key factors support this, including the majority shareholding, which grants full control to TikTok Shop, enabling them to set prices and marketing strategies unilaterally. Additionally, the implementation of the unlimited free shipping policy can be classified as a predatory pricing strategy, intended to eliminate competitors and dominate the market. The large-scale flash sale feature also creates an imbalanced competition, as competitors do not have access to the same sales mechanisms with equal financial power.

According to Article 17 of Law No. 5 of 1999, an action can be classified as a monopolistic practice if it meets certain criteria, namely market control exceeding 50%, obstruction of competitors' market entry, and price-setting that harms the business ecosystem. In the context of TikTok Shop's acquisition of Tokopedia, there is a possibility that its business policies could impact the competition structure in Indonesia's e-commerce sector. To ensure that business competition remains fair, the Indonesian Competition Commission (KPPU) plays a crucial role in conducting further evaluation and investigation into TikTok Shop's business strategies post-acquisition. This evaluation is necessary to determine whether the policies implemented, such as unlimited free shipping and flash sales, potentially hinder competition or still fall within the boundaries of fair business practices.

If the evaluation results indicate that these strategies negatively impact fair business competition, then KPPU may issue recommendations or impose policy restrictions to ensure that the e-commerce ecosystem remains competitive and favorable for all business actors. This approach aims to create balance within the digital industry, ensuring that innovation continues to be encouraged without compromising the principles of fair and just business competition.

CONCLUSION

TikTok Shop's acquisition of 75% of Tokopedia's shares makes TikTok Shop the majority shareholder with full control over the company's management and policies. Although both companies continue to operate as separate legal entities, TikTok Shop's dominance in share ownership has a significant influence on Tokopedia's business strategy. Several policies implemented, such as free shipping without a minimum purchase limit throughout Indonesia and flash sale features with big discounts, have the potential to create monopolistic practices because they give TikTok Shop dominant market power compared to its competitors. The impact of this acquisition needs to be of special concern to the government, especially the Business Competition Supervisory Commission (KPPU), to carry out careful supervision and assessment of TikTok Shop's business strategy after the Tokopedia acquisition. If not properly supervised, the policies implemented by TikTok Shop have the potential to hinder healthy business competition in the e-commerce industry, especially for small and medium enterprises and other e-commerce platforms. Therefore, firm action and clear regulations are needed from the KPPU to ensure that TikTok Shop's acquisition of Tokopedia does not result in monopolistic practices and does not harm other business actors. This step aims to maintain the stability of the digital trade ecosystem in Indonesia, create a fair business competition climate, and encourage the growth of a healthier and more sustainable e-commerce industry for all stakeholders.

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