

ONLINE PLATFORMS AND SEARCH ENGINES SHOULD DEAL FAIRLY WITH OTHER BUSINESSES

The online platform economy is extremely important to the EU. Digital platforms offer a wide range of opportunities for fast and efficient access to international consumer markets. A 2016 Eurobarometer survey confirms this conclusion, revealing under half of the EU small and medium enterprises (SME) use online marketplaces to sell their products and services.

The European Commission has long been concerned about perceived unfair and harmful Internet practices, which negatively affect the proper functioning of the digital single market. Several years ago the EU has largely dealt with this problem on a case-by-case basis, through competition enforcement. On the 26th April 2018, the Commission published a draft regulation intended to set new standards on transparency and fairness for businesses that contract with online intermediaries. The draft regulation relates to e-commerce marketplaces, app stores and price comparison tools that also include search engines. Since platforms possess a global dimension, the regulation applies to providers regardless of where they are established, as long as: (i) the business users are established in the EU; and (ii) the business users' customers are in the EU.

This trend of action of the Commission continues in 2019. On 13th February 2019, the European Parliament, the Council of the European Union and the European Commission agreed to set up new European rules to improve fairness of online platforms' trading practices. The rules, which come under the Digital Single Market strategy put a particular emphasis on assisting small and medium-sized enterprises. By and large they are designed to promote a "fair, transparent and predictable business environment for businesses and traders when using online platforms".

The rules ban unfair practices. Digital platforms will no longer be able to suspend or terminate a seller's account without clearly stating the reasons for that and the possibility of an appeal. The platform must reinstate a seller where suspension was made in error. Terms and conditions must be easily available at all stages of the contractual relationship, including to prospective business users at the pre-contractual phase, and must be written in plain and intelligible language. Changes to terms and conditions will require at least 15 days' prior notice, to allow sellers time to adapt to the changes.

The rules provide for greater transparency. Marketplaces and search engines will have to disclose the main parameters they use to rank goods and services on their platforms. Parameters include "any general criteria, processes, specific signals incorporated into algorithms or other adjustment or demotion mechanisms used in connection with the ranking". There is no obligation to disclose trade secrets. If the same entity provides the marketplace and operates as a seller on that marketplace, it must "exhaustively disclose" any advantage given to their own products over others. Platforms will have to also disclose the data they collect and how it is used. If personal data is concerned, the GDPR will apply.

Dispute resolution mechanisms should operate to assure redress

to the affected. Platforms will have to install an internal complaint-handling system to assist business users, and publish reports on the number of complaints lodged, the subject matter of the complaints, the time period needed to process the complaints and the decision taken on the complaints. This system will be complemented with mediation, which should save time and money. Small platforms with less than 50 staff members and generating less than €10 million turnover will be exempt from these obligations.

Under the newly adopted rules, business associations will have the right to take platforms to court on behalf of their members in cases of non-compliance with the rules. Member States will also be able to appoint a public authority with enforcement powers.

Some businesses such as online advertising, payment services, search engine optimization and services that connect hardware and applications not requiring intermediate direct transactions between businesses and consumers, as well as intermediaries that operate between businesses only (e.g. online advertising exchanges) are excluded from the scope of the rules. The rules will not apply to online retailers, such as super markets and retailers of brands, provided such online retailers directly sell only their own products, without relying on third party sellers, and are not involved with facilitating direct transactions between those third party sellers and consumers. Whilst the rules will apply to the US tech giants such as Amazon, Apple, Ebay, Facebook, Google and Microsoft, the Commission estimates that around 7,000 online platforms will be scrutinized across the entire online platform economy covering categories such as search, e-commerce, app stores, price comparison and social media.

The new rules will come into effect 12 months after adoption and publication. Since they are being passed as regulation, they will be directly



applicable in Member States. The rules will be subject to review within 18 months to ensure they keep pace with the rapidly developing market relationships. A dedicated Online Platform Observatory will monitor the evolution of the market and the effective implementation of the rules.

The regulatory effect is expected to take place in the changes in platforms' business practices and operating processes, along with terms and conditions of business, codes of conduct and online statements.

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