



Commission sets new standards on transparency and fairness for online platforms

Brussels, 26 April 2018

Questions and Answers

Why is the Commission proposing a Regulation to increase fairness and transparency for online platforms?

Online platforms offer access to cross-border consumer markets and have become the go-to interface for millions of businesses, big and small, in sectors ranging from online retailing, professional services and app development, to transport and hospitality.

Online search engines and platforms generate the vast majority of internet traffic for big businesses as well as SMEs. However, the current position of the online platforms as intermediators of business customer relationships allows them to engage in unfair trading practices that can cause significant economic harm to the businesses that use them. 46% of business users surveyed in a [study](#) noted problems in their relationships with such platforms, 21% of which experience these problems often. Additionally, 75% of heavy users (i.e. users generating more than 50% of their turnover via online platform intermediaries) are far more likely to experience problems and 33% of them experience these problems often.

Moreover, the online visibility of small businesses can depend on their position in search results, whether on online platform intermediaries or in the results of general online searches. 66% of EU SMEs [surveyed](#) explain that their position in search results has a significant impact on their sales.

What does the proposed Regulation aim to achieve?

The proposal aims to establish a fair, trusted and innovation-driven ecosystem in the online platform economy in the EU and contribute to a strengthened, better-functioning Digital Single Market in terms of innovation, competitiveness, growth and jobs.

Granting businesses more predictability in their relationships with platforms, as well as giving access to effective means to address problems, will encourage their use of online platforms as a means to grow their business. Clearer rules at EU level should provide platforms with a predictable regulatory environment and enable them to scale-up in a less fragmented Single Market.

Which online platform intermediaries are in the scope of the Regulation?

The Regulation covers online platform intermediaries and general online search engines that provide their services to businesses established in the EU and that offer goods or services to consumers located in the EU. A consumer may, for example, directly subscribe to an online service on a platform (e.g. download an app), she/he may be redirected to the website of an airline, or use a platform to locate a physical restaurant or shop in his/her proximity (e.g. by using Google's My Business).

Such online platform intermediaries include third-party e-commerce market places (e.g. Amazon Marketplace, eBay, Fnac Marketplace etc.), app stores (e.g. Google Play, Apple App Store, Microsoft Store etc.), social media for business (e.g. Facebook pages, Instagram used by makers/artists etc.) and price comparison tools (e.g. Skyscanner, Google Shopping etc.). Whereas online platform intermediaries are covered to the extent that they have a contractual relationship with both the businesses trading via them and the consumers using them, general online search engines are covered irrespective of whether they have a contractual relationship.

The proposal excludes online advertising and payment services that do not intermediate direct transactions between businesses and consumers, as well as intermediaries that operate between businesses only.

Which online search engines are in the scope of the Regulation?

General online search engines that facilitate web searches based on a query on a subject and provide links corresponding with the search request (e.g. Google Search, Seznam.cz, Yahoo!, DuckDuckGo, Bing etc.).

What does this Regulation bring to EU businesses?

The proposal ensures that businesses operating on online intermediation services and general online search engines have greater legal certainty and clarity on what rules govern their relationships with these platforms and how to resolve potential disputes.

Firstly, businesses will be made aware of the principles that affect their ranking position in general online search results or in the search results on a particular online intermediation platform. In the case of online intermediation platforms, this also includes the circumstances under which businesses can influence their ranking position, for example, through payments of additional commissions. Additionally, these businesses will also be informed on how online intermediation platforms treat and rank goods or services offered by themselves compared to other "external" businesses, on the type of data that will be shared with them (i.e. data which businesses or consumers provide when using the online intermediation services), and why they may be restricted from offering goods and services on different conditions through other intermediation platforms.

Secondly, businesses will also now have clarity on when their use of an online intermediation platform can be suspended or terminated, including delisting and removing of goods and services from search results. They will also be informed about the reasons should a platform decide to do so.

Finally, the Regulation also provides effective and quick means to resolve disputes between businesses and online platform intermediaries. This includes for online platform intermediaries the obligation to establish internal complaints handling systems by the larger platforms or through mediation in the cases of smaller enterprises. In addition, in cases of court disputes, the Regulation now enables businesses to be represented by associations or organizations in cases against online platform intermediaries or online search engines with the requirements of the Regulation.

What will online platform intermediaries and general online search engines need to do?

The Commission proposes a co-regulatory approach requiring online platform intermediaries and online search engines to comply with legal obligations and encourages them to take voluntary complimentary steps.

Online platform intermediaries are required to make their standard terms and conditions more transparent, and easily available. The terms and conditions will now have to state the reasons for suspending or terminating a business' account. In addition, they will need to include a description of any differentiated treatment given to goods or services offered by the platforms themselves, the access the platform gives to personal or other data which businesses or consumers provide through them, and how they may restrict the ability for those that use their platform to offer different conditions through other means (so called 'most favoured nation' clauses). Any changes to terms and conditions will have to be announced and businesses given a reasonable time to adjust before the changes come into effect.

Should an online platform intermediary decide to suspend or terminate a business' account, including the delisting of individual goods or services or effectively removing them from search results, it is required to provide a statement of reasons to the business concerned.

Both online platform intermediaries and online search engines will need to set out their general policy on ranking of businesses in search results in their terms and conditions or in a publically available description.

Online platform intermediaries will be required, unless they are a micro or small enterprise (i.e. less than 50 staff members and generating less than €10 million turnover), to have in place an internal complaints handling system and to report annually to the general public on its functioning (e.g. number of complaints, their subject matter, time taken to process complaints and the decision taken). In addition, all online platform intermediaries shall need to name at least one mediator with whom they are willing to engage in settling disputes out of court.

Why are small enterprises with less than 50 staff members and generating less than €10 million turnover exempted from the obligation to set up internal complaint handling mechanisms?

The internal complaint-handling mechanism entails higher compliance costs compared to the other measures proposed in the Regulation. The exemption of undertakings that qualify as a small enterprise under the EU SME definition will ensure that no disproportionate regulatory burden is imposed on platform businesses during the startup and scale up phases of their development.

The work carried out under the EU Observatory of the online platform economy (see further below) will allow monitoring the efficiency of the proposed exemption. Given the fast moving nature of the platform environment, it is important to adjust this exemption if appropriate. The monitoring work will ensure that the exemption proposed is properly capturing those platforms which display the

specificities underlying the platform-to-business issues identified.

What will be the benefits for consumers?

Though the proposal concerns consumers only indirectly, they are likely to benefit from the overall positive effects of the new rules. By improving trust, predictability and legal certainty in the online business environment, the use of online intermediation platforms is expected to lead to an increase in the number of businesses active on them. This is likely to expand consumer choice and services, increasing the online business competition and leading to better quality and lower prices of goods and services for the consumer.

How does this Regulation relate to national laws? If there is no harmonisation of these rules, how does this initiative help?

The instrument chosen is a directly applicable Regulation, preventing Member States from setting additional rules in the areas explicitly covered by the Regulation. The Regulation constitutes a maximum harmonisation tool which applies exclusively in relation to the transparency and redress obligations which it establishes.

The Regulation only applies to the contractual relationships between platforms and businesses, excluding commercial practices law pertaining to general business-to-business relations. Member States' fairness standards that are independent from contractual relationships would therefore continue to apply. In this way, the fairness standards of the Member States and this Regulation will be to a large extent complementary. Additionally, the Commission will closely cooperate with Member States to ensure that the enforcement of the proposed Regulation is proportionate and limited to the platforms in the scope. Finally, the EU Observatory on the Online Platform Economy will evaluate the need for more specific, sectoral rules.

Why does the Commission create a new Regulation instead of relying on the existing EU competition law?

EU Competition law addresses anticompetitive behaviour and mergers. The trading practices described in Section 2.1.1 do not necessarily have an anticompetitive object or effect under Article 101 of the Treaty on the Functioning of the European Union (TFEU). In order for the rules against the abuse of dominance pursuant to Article 102 TFEU to apply, the respective platforms must be dominant in the relevant market. As a result, competition law at EU or national level does not necessarily address the type and breadth of platform-to-business issues targeted by the present Regulation, which will, therefore, aim at complementing the enforcement of EU competition law.

Why does the Commission not leave it up to the individual unfairness laws of the Member States?

Existing or envisaged measures of Member States neither cover the whole set of potentially harmful trading practices nor the range of online platform intermediaries that can engage in them.

The emergence of national laws demonstrates that Member States increasingly recognise that existing rules do not sufficiently address the harmful practices used by online platform intermediaries. However, national laws may be diverse or even conflicting. Leaving the regulation of the intrinsically cross-border online economy to Member States risks leading to the very fragmentation of the internal market that this proposal aims to prevent.

Why does the Commission create a new Regulation instead of extending the existing consumer law instruments to B2B?

The consumer law instruments were not considered appropriate to deal with business-to-business relations. This is because extending consumer law to platform-specific business-to-business issues would be disproportionate, as these instruments would inherently extend beyond online platforms, to all traders. Consumer law addresses practices that consumers face vis-à-vis all businesses in their commercial relationships, including online platform intermediaries acting as traders.

Regarding the protection of consumer rights on online platforms, the Commission has just adopted a proposal for the [New Deal for Consumers](#) to update relevant consumer legislation, including the Unfair Commercial Practices Directive (UCPD) and the Consumer Rights Directive (CRD). The New Deal for Consumers proposes the introduction of an obligation for online market places to inform consumers of the main parameters determining ranking of offers presented as a result of their search query. In this sense, this targeted transparency obligation complements the aims of the proposed Regulation on online platforms but is too broad to be extended to online businesses.

What is the evidence-base used for preparing the Regulation?

The proposed Regulation is based on a wide-ranging fact-finding exercise. This includes a [public consultation](#), [several studies](#) (including one which surveyed over 3,500 companies), [workshops](#) with

online platforms and business users, bilateral discussions with stakeholders, talks with representatives of Member States, and internal research on the legal and economic aspects of online platforms and their business-to-business practices.

How will the Commission ensure that the proposed Regulation remains fit for purpose?

The Commission today adopted a decision setting up a group of experts that, together with a dedicated team of Commission officials, will form the EU Observatory of the online platform economy. The group will be composed of independent experts in the field of the online platform economy who will be selected through a public call for applications. The group will meet at least four times a year and provide the Commission with advice and expertise on the evolution of the online platform economy.

It will monitor market trends and opportunities and the evolution of potentially harmful practices as well as the development of national policy and regulatory approaches. Its work will focus on issues such as algorithmic decision-making and ranking, data access and use, remuneration of material displayed online, business-to-business commercial relations in online advertising, alleged discriminatory practices of service providers towards users and restrictions on users to offer different conditions on other distribution channels.

This monitoring exercise will inform public policy makers about the opportunities and challenges arising from the online platform economy and specifically inform the review of the proposed Regulation three years after its entry into force.

For More Information

[Press Release](#)

[Communication and other useful links](#)

MEMO/18/3373