

Guidance on fairness and transparency for business users of online intermediation services and online search engines

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What are online platforms?

Most, if not all platforms, share a very basic function: they provide a service or infrastructure that brings together diverse groups of people or companies. Platforms are not limited to the internet but exist in the offline world: for example, a traditional market, yellow pages or video game consoles are platforms. Similarly, classic media such as newspapers, radio or TV channels are platforms. The internet brought about online platforms that connect different user groups even more conveniently and cost-efficiently. They have been driving growth and innovation on the internet by revolutionising the way people access products and services.

In Europe, online platforms play a particularly important role as they facilitate cross-border transactions bridging geographic and language divides that would otherwise constitute major hurdles for European consumers as well as for small and medium-sized businesses, the backbone of the European economy. In fact, platforms have stepped in where regulation has failed to support businesses cross-border and thus constitute a key element in achieving a truly Digital Single Market.

The diversity of online platforms

Besides their common basic function, platforms are incredibly diverse in what they offer, in their business models and their size. They can range from business-to-business platforms to business-to-consumer or even peer-to-peer consumer platforms. While some are globally active, many are smaller and only focus on local or regional markets¹. For example:

- applications stores such as Google Play, Apple App Store or Microsoft Store
- content sharing platforms such as Dailymotion, Vimeo, YouTube, Flickr, Instagram or Pinterest
- e-commerce platforms such as Allegro, Zalando, West Wing, Alibaba, Amazon or eBay
- online travel booking pages such as BlaBlaCar, Airbnb, Booking.com or Expedia
- search and comparison platforms such as Seznam, Bing, Google, TripAdvisor or Kelkoo
- social media platforms such as Seznam, Twitter or LinkedIn

Despite their diversity in primary focus and business models, platforms fiercely compete with each other. Overlapping in terms of business models and looking to enter different markets, all are vying for the attention of consumers. The internet economy is very dynamic as barriers to market entry are low and services are highly susceptible to changes in technology and user preferences (think mobile, cloud, machine learning or augmented reality). This is exemplified by the multitude of companies that appeared and disappeared over time. All platforms seek to retain both consumers and business users by providing the best experience, while at the same time innovating in function, technology and business model.

¹ 19 pan-EU trade associations representing thousands of small platforms issued a letter offering concerns in regard to the upcoming platform to business regulation. The letter can be found here: <http://www.spcr.cz/en/news/11649-the-confederation-fully-supports-digital-single-market>

Existing regulatory environment and self-regulation

Platforms are already subject to extensive EU and national regulation in areas such as consumer protection, cyber security, data protection, secure payments or anti-money laundering. Any abuses of strong market positions can and should be remedied with competition law instruments. The principle of freedom of contract between businesses should be upheld online just as in the offline world, not least since no widespread market failures have been shown.

Being attractive to consumers as well as gaining and retaining business users are key interests of platforms. To do so, platforms provide a wealth of information, advice, tools and data to their business users to help them be successful and offer great services and products. At the same time, they have rules and policies in place to ensure that their ecosystem is performant and safe for consumers. In conversation with consumers and business users, platform have continuously sought to improve this ecosystem, reflected in evolving terms and conditions. A single set of rules for all users, consumers and businesses, is the prerequisite to operate platforms, especially across borders. The resulting high-degree of legal certainty and significant cost savings benefit all involved. This self-regulating nature of platforms should be fully reflected when making platform policy.

General policy-making implications

Transparency and redress mechanisms can ensure a mutually beneficial relationship between platforms and their business users. However, any new legal requirements should be proportionate to the evidence. While some disagreements are inevitable in finding a delicate balance between interests, they remain anecdotal compared to the large number of business users who benefit from platforms. This is why a one-size fits all approach applied to such diverse business models will lead to disproportionate administrative burden and additional costs, raising market entry barriers for new platforms. Secondly, any transparency and redress requirements should be carefully weighed against their potential negative impacts on consumer and business users.

Transparency of ranking algorithms

DIGITALEUROPE believes that clarity regarding the functioning of platforms is important in building trust for both consumers and business users alike.

Platforms constantly improve the user experience by helping consumers find easily the product or service they are looking for. They also innovate on behalf of business users, helping them evolve in-line with consumer expectations and technological advancements. These are underpinned by their terms and conditions and their approach to ranking and search.

Over-prescriptive requirements as to the transparency of algorithms could significantly limit such innovation. Platforms need to ensure their significant investments in research and innovation in mechanisms matching the different user groups are safeguarded. However, too much transparency not only raises concerns for platforms but also for businesses and consumers. Disproportionate transparency requirements would allow rogue business users to abuse their knowledge of determining factors, in other words to game the algorithm.

Instead of finding the product that best matches their needs, consumers would first see those offers that managed to influence the ranking. This is not only to the detriment of consumers but ultimately also to the detriment of other businesses fairly competing.

Balancing the interests of business users and consumers

The key role for platforms is to provide a favourable environment for business users and consumers alike. Balancing the, at times conflicting, interests of all participants can pose challenges for platforms. For example, consumers may expect a platform to respond quickly to complaints regarding a business user, say the removal of an unsafe product or inappropriate, even if legal, piece of content. Equally, other business users will want an efficient reaction to business users who do not compete fairly. Finally, the platform itself has an interest in remedying any issues swiftly as its own reputation and user trust could be negatively impacted. Any requirements that would make it more cumbersome for platforms to take action (such as strict prior notification of any changes to terms and conditions, compulsory mediation procedures or extensive public reporting requirements) may ultimately be to the detriment of all platform users.

Naturally, it is in the platforms' interest to give clear guidance to users in their terms and conditions as regards account suspension or termination. This promotes legal and business certainty for all parties.

However, DIGITALEUROPE is concerned that a strict requirement for “objective” criteria may disproportionately restrict platforms' ability to take action against abuses. For example, “inappropriate content” is naturally a term that requires interpretation in the context of the case at hand. This is particularly true for pan-European or global platforms that face the challenge of accounting for cultural and legal differences in their decisions. Keeping platforms clean is best served by rules that are clear to all users as these prevent unintended infringements in the first place. Nevertheless, in cases of doubt platforms will need to reserve themselves a certain degree of discretion in order to fulfil their role efficiently and in the interest of consumers.

Complaint handling procedures

DIGITALEUROPE points out that platforms already provide effective internal complaints procedures, which lead to satisfactory results for all involved in the large majority of cases and which should therefore be exhausted in any case before turning to voluntary mediation or court procedures. While DIGITALEUROPE acknowledges that mediation can in some cases help to resolve conflicts, we would like to underline that the application should remain voluntary for both platforms and business users.

Disproportionate disclosure requirements regarding complaints not only reveal relevant operational information to competitors but also represent a significant administrative burden. Given the large variety of contacts that platforms have with business users, it should be clarified, which categories of material complaints need to be reported.

DIGITALEUROPE cautions against the introduction of collective redress mechanisms as they would significantly increase the risk of litigation and reputational damage – no matter whether the court action was finally dismissed or not. In any case, safeguards against abuse of such systems as well as against commercial motivations in the filing of complaints should be addressed.

Final observations

DIGITALEUROPE remains concerned about the effects any disproportionate and unwarranted regulation could have on platforms and ultimately for their users. Any perceived problems with platforms cannot be generalized in a way a one-size fits it all approach would do and would better be remedied by properly enforcing existing regulatory frameworks with competition law as a primary instrument against any abuses of strong market positions. In addition, the formulation of best practices driven by industry should be fostered.

Our members and national trade associations stand ready to discuss this topic with the co- legislators. We invite the European Commission, the Parliament and the Council of the EU to maintain an open dialogue with DIGITALEUROPE whose members include in total 25,000 ICT Companies in Europe represented by 60 corporate members and 38 national trade associations from across Europe.

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For more information please contact:
Ray Pinto, DIGITALEUROPE's Policy Director
+32 472 55 84 02 or ray.pinto@DIGITALEUROPE.org

ABOUT DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies.

DIGITALEUROPE's members include in total over 25,000 ICT Companies in Europe represented by over 60 Corporate Members and 38 National Trade Associations from across Europe. Our website provides further information on our recent news and activities: <http://www.digitaleurope.org>

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National Trade Associations

Austria: IOÖ

Belarus: INFOPARK

Belgium: AGORIA

Bulgaria: BAIT

Croatia: Croatian Chamber of Economy

Cyprus: CITEA

Denmark: DI Digital, IT-BRANCHEN

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Finland: TIF

France: AFNUM, Syntec

Numérique, Tech in France

Germany: BITKOM, ZVEI

Greece: SEPE

Hungary: IVSZ

Ireland: TECHNOLOGY IRELAND

Italy: Anitec-Assinform

Lithuania: INFOBALT

Netherlands: Nederland ICT, FIAR

Poland: KIGEIT, PIIT, ZIPSEE

Portugal: AGEFE

Romania: ANIS, APDETIC

Slovakia: ITAS

Slovenia: GZS

Spain: AMETIC

Sweden: Foreningen Teknikföretagen i Sverige, IT&Telekomföretagen

Switzerland: SWICO

Turkey: Digital Turkey Platform, ECID

Ukraine: IT UKRAINE

United Kingdom: techUK