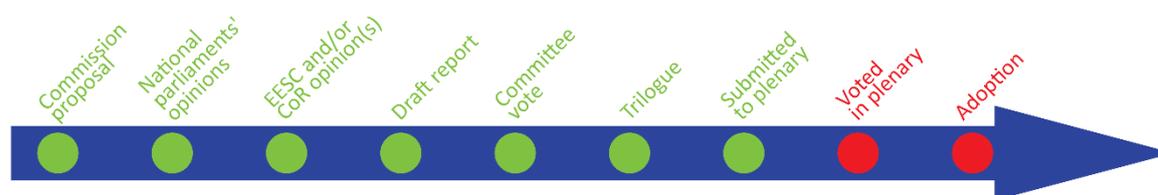


Fairness and transparency for business users of online services

OVERVIEW

The European Parliament and the Council reached an agreement on the proposed regulation on promoting fairness and transparency for business users of online intermediation services in February 2019. Providers of online intermediation services (e.g. Amazon and eBay) and online search engines (e.g. Google search) will be required to implement a set of measures to ensure transparency and fairness in the contractual relations they have with online businesses (e.g. online retailers, hotels and restaurants businesses, app stores), which use such online platforms to sell and provide their services to customers in the EU. The regulation, which, inter alia, harmonises transparency rules applicable to contractual terms and conditions, ranking of goods and services and access to data, is considered to be the first regulatory attempt in the world to establish a fair, trusted and innovation-driven ecosystem in the online platform economy. Now that Member States' and Parliament's negotiators have endorsed the compromise text, the political agreement must be voted in plenary by the European Parliament and formally adopted by the Council to complete the legislative procedure.

Proposal for a regulation of the European Parliament and of the Council on promoting fairness and transparency for business users of online intermediation services		
<i>Committee responsible:</i>	Internal Market and Consumer Protection (IMCO)	COM(2018) 238 26.4.2018
<i>Rapporteur:</i>	Christel Schaldemose (S&D, Denmark)	2018/0112(COD)
<i>Shadow rapporteurs:</i>	Philippe Juvin (EPP, France) Daniel Dalton (ECR, United Kingdom) Dita Charanzová (ALDE, Czech Republic) Dennis De Jong (GUE/NGL, the Netherlands) Julia Reda (Greens/EFA, Germany) Marco Zullo (EFDD, Italy)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	First-reading vote in plenary	



Introduction

The Commission identified the promotion of fairness and responsibility of online platforms as an area where further action was needed to ensure a fair, open and secure digital environment in its May 2017 [mid-term review of the digital single market strategy](#). Against this background, on 26 May 2018, the Commission adopted a proposal for a [regulation on promoting fairness and transparency for business users of online intermediation services](#).

Context

Online platforms (e.g. search engines, social media, e-commerce platforms, app stores, and price comparison websites) are increasingly playing a central role in social and economic life. They enable consumers to find online information, and businesses to exploit the advantages of e-commerce. But online platforms also raise new policy and regulatory challenges. One of the issues which has attracted a lot of attention recently is the intermediary role played by such platforms: between online businesses selling their services and products online and their customers. A European Commission [fact-finding exercise](#) has shown that a large number of these businesses experience problems in the course of their business relationships. The main problematic behaviours observed in 'platform-to-business' (P2B) relations are:¹

- Sudden unexplained changes in terms and conditions, unilaterally imposed by platforms without prior notice, such as changes to the return and exchange policies of e-commerce platforms or increases in the price of apps, to which businesses do not have time to adapt;
- Delisting of products, services or businesses or suspension of accounts without clear statements of reasons, and without suitable safeguards against arbitrary delisting/suspension of accounts;
- Issues related to ranking of business users or their offers. Two thirds of small and medium-sized enterprises (SMEs) explain that their position in search results has a significant impact on their sales, and the impact of ranking on consumer choice has been documented in several studies;² Some business users claim there is a lack of meaningful accountability and predictability with regard to ranking systems used by online platforms, due to biases in their search-related practices;
- Issues related to data access and use. While online platforms aggregate large amounts of personal and non-personal data, some businesses claim there is a lack of clarity as to the conditions for access and use of those data. They criticise the lack of transparency of online platforms' policies and practices with regard to the collection and retention of data, and in the conditions for business users to use such data. Furthermore, the Commission study has shown that a vast majority of online platforms do not give business users the opportunity to ask for customers' consent to obtain and process their personal data;
- Discrimination of businesses and favouring of online platforms' own competing services, for instance through more favourable ranking or use of transaction data to improve their products/services. A related issue concerns 'most-favoured nation' (MFN) clauses that require a supplier to offer a product or service on an online platform at the lowest price and/or on the best terms offered and can have an anti-competitive effect;
- Lack of effective redress. According to the Commission's investigations, a large number of businesses believe that online platforms and search engines do not offer adequate internal or effective external redress mechanisms to correct harmful trading practices. Almost a third of all problems in 'platform-to-business' relations remain unsolved (and a further 29 % can only be resolved with difficulties) while 32 % of EU businesses selling online believe there are no reliable dispute resolution systems available to solve disputes with the operator of online general search engines.³ This is due to the fact that business users fear retaliation in case of complaints and because of other structural factors (i.e. small companies do not have knowledge of the judicial redress possibilities, costs incurred are high and the procedures are lengthy).

Some 60 % of private consumption and 30 % of public consumption of goods and services related to the digital economy takes place through online intermediaries, with more than 1 million businesses (including online retailers, hotels and restaurant businesses and app stores) involved in selling goods and services via online platforms in the EU.⁴ However, according to a Commission [study](#), 46 % of business users experience problems with online platforms in the course of their business relationships, and such harmful behaviour has an impact in the EU economy in the range of €2 to €19.5 billion a year.⁵ A [survey](#) conducted by Developers Alliance challenges the magnitude of the problems in the applications industry, however, and concludes that only 25 % of the developers who face a major challenge with a platform say their problem was not resolved.

Existing situation

No relevant specific EU legislation

There is no specific legislation addressing platform-to-business relationships at EU level. EU consumer protection law (e.g. the [Unfair Commercial Practices Directive](#)) is limited to 'business-to-consumer' ('B2C') transactions, and existing measures targeting harmful trading practices are applicable only to the offline world – not to 'business-to-business' (B2B) relations in the online world. The Commission considered that existing rules are not applicable to the above-mentioned harmful online practices, given the specificities of online business models and the role of algorithms.

At the same time, however, a number of Member States have already adopted some laws specifically addressing online platforms' behaviour (i.e. France, Austria and Italy) while others (e.g. Germany, Belgium, Italy) are considering doing the same, which introduces a risk of legal fragmentation in the EU.⁶

General EU competition law is limited

According to the Commission, existing EU competition rules do not adequately address the issues of B2B relations. EU antitrust rules are aimed at tackling anticompetitive agreements ([Article 101 of the Treaty on the Functioning of the European Union – TFEU](#)) or abuses of dominant position ([Article 102 TFEU](#)). However, the trading practices at stake do not necessarily have an anticompetitive object or effect under Article 101 TFEU and it is difficult to apply Article 102 TFEU, which requires to establish the existence of a dominant position in the relevant market.⁷

The European Commission fined Google for abusing its dominant position over online search engines by giving an illegal advantage to its own comparison shopping service ([Google Search \(Shopping\) case](#)) in June 2017. The technical, legal and economic grounds of the decision and its consequences have been widely [debated](#) by academics. Some consider that the European Commission ordered Google to implement a form of [search neutrality](#) and argue that policymakers must impose 'non-discrimination' rules since 'transparency' alone will not solve the competitive issues at stake.⁸ Others call for more far-reaching policy intervention, such as the enactment of a system of [liability for algorithms](#) similar to that enshrined in the [E-commerce Directive](#).⁹

Parliament's starting position

The European Parliament [resolution](#) of 15 June 2017 on online platforms and the digital single market expressed concerns about a series of unfair B2B trading practices, and called on the Commission 'to propose a pro-growth, pro-consumer, targeted legislative framework for B2B relations based on the principles of preventing abuse of market power and ensuring that platforms that serve as a gateway to a downstream market do not become gatekeepers'.

Preparation of the proposal

The Commission held a [public consultation](#) followed by extensive discussions with stakeholders in 2016 and 2017, as well as workshops and bilateral discussions with stakeholders. Several studies on the [terms and conditions of online platforms](#), on issues related to [data access in platform-to-business relations](#) and various internal research on the [legal and economic aspects](#) of online platforms and their B2B practices were conducted. Finally, an [impact assessment](#) was carried out. EPRS has prepared an [initial appraisal](#) of the Commission's impact assessment.

The changes the proposal would bring

Objective

The proposal intends to ensure a fair, transparent, and predictable treatment of business users by online platforms, to provide business users with more effective options for redress when they face problems, and to create a predictable and innovation-friendly regulatory environment for online platforms within the EU.

Choice of legal instrument

The Commission proposed a regulation ([Article 114 TFEU](#)), directly applicable in Member States, to establish the same level of obligations for companies and have coherent application of rules in a matter which is essentially cross-border. It considers promoting voluntary industry actions and other non-binding instruments (i.e self-regulation or co-regulation) is unlikely to be effective, especially for imposing redress mechanisms and fairness rules.

A study from [Williamson and Bunting](#) stresses that it is not clear why fairness rules should not be general horizontal provisions governing the entire market (including platforms and other business models and online and offline businesses), and argue that such concerns should only arise where there is a competition problem.¹⁰

Scope

The Commission proposed to apply new rules to 'online intermediation services' and 'online search engines' that provide their services to business users and corporate websites established in the EU, and offer goods or services to consumers located in the EU. According to Article 2, 'online intermediation services' would mean services that (i) constitute information society services, (ii) allow business users to offer goods or services to consumers in order to facilitate direct transactions between them, and (ii) are provided on the basis of contractual relationships both between the providers and business users and between the providers and consumers. 'Online search engines' would refer to digital services that allow users to perform searches of websites on the basis of a query.

The Commission explains that e-commerce marketplaces (e.g. Amazon Marketplace, eBay), [app](#) stores (e.g. Google Play, Apple App Store, Microsoft Store), social media for business (e.g. Facebook, Instagram), price comparison tools (e.g. Skyscanner, Google Shopping), and general online search engines (e.g. Google Search, Yahoo!), would fall within the scope of the draft regulation – independently of whether they are established in a Member State or outside the EU. However, the new rules would neither apply to online advertising nor to payment services, which are rather tangential to the transaction. While there is some agreement as to what constitutes a search engine, the [concept of intermediaries](#) is more questionable.

Fairness and transparency measures

Terms and conditions (Article 3)

The Commission proposed that providers of online intermediation services would be required to ensure that their terms and conditions for professional users are easy to understand, easily available for business users, and that there are objective grounds for suspending or terminating the services. A breach of this transparency measure would result in the contractual terms and conditions becoming non-binding on the business users. Such providers would be required to notify their business users in advance of any envisaged modifications of their terms and conditions (with a notice period of at least 15 days from the date of the notification), unless they would be subject to a specific legal obligation. Similarly, a breach of this obligation would have far-reaching legal consequences as the relevant modifications would be considered 'null and void' (i.e they would be considered never to have existed with effects *erga omnes* and *ex tunc*).

Suspension and termination of contracts (Article 4)

The Commission proposed that providers of online intermediation services are required to provide business users – without undue delay – with a statement of reasons (including detailed and specific facts or circumstances and the objective grounds for the decision) that led to a suspension or termination of contract.

Ranking (Article 5)

The ranking of goods and services has an important impact on consumer choice and, as a result, on the commercial success of a website and business. Therefore, the Commission proposed that providers of online intermediation services would have to set out in their terms and conditions the main parameters determining ranking and the reasons behind the relative importance of the different parameters (including a description of the possibility to influence ranking against direct or indirect remuneration). Providers of online search engines like Google Search would have to set out the main parameters determining the ranking for corporate website users.

Business users must be able to understand to what extent the ranking mechanism takes account of the characteristics of the goods and services offered online, the relevance of such characteristics for consumers and the design characteristics of the website used (e.g. optimisation for display on mobile telecommunications devices). However, providers of online intermediation services and of online search engines would not be required to disclose any information amounting to trade secrets pursuant to [Directive 2016/943](#). In this respect, an [OECD study](#) stresses that most algorithms are trade secrets, and that even if companies publicly release or share their secrets, their long and complex program codes would still be extremely hard to interpret, while the effects of algorithms can also be particularly difficult to evaluate.¹¹ It has also been [stressed](#) that while the proposed article would not require disclosure of anything protected under the Trade Secrets Directive, it seems to be impossible to release meaningful information on search ranking criteria without also releasing trade secrets.

Differentiated treatment (Article 6)

The Commission proposed that providers of online intermediation services would be required to include in their terms and conditions a description of any differentiated treatment given to goods and services they offer themselves (or by business users they control), compared to the treatment they give to goods and services offered by other business users, and *a minima*, describe 'access to data', 'ranking', 'indirect remuneration' and 'conditions of use of directly connected or ancillary services'.

Access to data (Article 7)

The Commission proposed that the terms and conditions would have to include a description of the 'technical' and 'contractual' access of business users to 'personal data' (or other type of data) that business users or consumers provide to online intermediation services or that are generated through the provision of those services. However, this obligation would remain proportionate (Recital 20).

Studies¹² have established that, while companies are increasingly using big data analytics, for instance to help them develop new products and services, improve security and risk management, and gain clearer insights into customer needs, they sometimes cannot access the data they need or would like and face contractual limitations when wishing to (re-)use data. The magnitude of the problem arising and the need to impose conditions on 'access to data' in the context of platform intermediation were discussed at the time of the public consultation. The Commission notes in its impact assessment that 'business users do not have consistent views as to their level of satisfaction with the data access policies of the online platforms they use. ... Some argue that they lack access to specific types of information regarding their customers, while others acknowledge that they can access a large variety of data, but that they lack the resources or skills to exploit it'.¹³

Offer of different conditions through other means (Article 8)

The Commission proposed that providers of online intermediation services would be required to explain on what grounds they restrict the ability of business users to use other alternative services to offer the same goods and services to consumers under different (more favourable) conditions.

Redress mechanisms (Articles 9-13)

The Commission encouraged providers and their representative associations to draw up codes of conduct¹⁴ and insist that online intermediation services to implement corrective measures.

Internal complaint handling system

Providers employing more than 50 persons would have to establish and operate an internal system for handling complaints from business users about non-compliance with a legal obligation laid down in the regulation, or any technological issues, measures taken or behaviour by providers that could affect business users in a non-negligible manner. They would have to process each complaint swiftly and effectively, and communicate the outcome of the complaint process individually, in clear and unambiguous language. All relevant information regarding that internal complaint-handling system would be set out in the providers' terms and conditions.

Mediation

Providers would have to identify one or more mediators in their terms and conditions, and provide quick out-of-court dispute resolution mechanisms including an agreement to pay at least half of the total costs of mediation. Furthermore, the Commission would encourage the creation of special mediators for addressing disputes arising because of the cross-border nature of online intermediation services in particular. However, submitting to the outcome of mediation proceedings would remain voluntary for platforms and business users, who would have the possibility to initiate judicial proceedings at any time during or after the mediation process.

Judicial collective proceedings by representative organisations

Representative organisations and public bodies would have the right to take actions before national courts, to stop or prohibit any non-compliance by providers of online intermediation services and search engines with the requirements of the regulation.

While this new right to collective action for businesses mirrors the existing right to collective action for consumers,¹⁵ some key differences would remain. The associations that can bring collective interest litigation for businesses would be verified at the time the action is brought on an ad-hoc basis rather than by means of pre-designation, such as for the collective action for consumers. Also, the action for businesses would be limited to injunctive relief (i.e. stopping or prohibiting any non-compliance) rather than compensatory (i.e. granting damages) in the case of actions for consumers.

EU Observatory and review

Finally, the Commission proposed to set up an EU Observatory to monitor the impact of the new rules as well as emerging issues and opportunities in the digital economy and, on this basis, to assess the need for further measures within three years.

Advisory committees

The European Economic and Social Committee adopted its [opinion](#) (rapporteur Marco Vezzani, Group II – Workers, Italy) in September 2018. The Committee recommended including a ban in the regulation on 'most favoured customer clauses', which guarantee to a distributor that no other distributor will receive a better deal, and asked for more intervention to tackle the social dimension of digitalisation.

National parliaments

The deadline for the submission of reasoned opinions on the [grounds of subsidiarity](#) was 29 June 2018. None of the 16 parliamentary chambers that scrutinised the proposal adopted a reasoned opinion.

Stakeholders' views¹⁶

Following the [political agreement](#) reached by the co-legislators' negotiators in February 2019, stakeholders have expressed, inter alia, the following views:

Online businesses are generally supportive of the political agreement. [HOTREC](#), the European umbrella association of hotels, restaurants and cafés welcomed the political agreement reached by the Council and the Parliament. In their view, the regulation marks a step towards increased and fair competition in online distribution, which is to be continued with the modernisation of the consumer law. The European Technology and Travel Services Association ([ETTSA](#)), representing, inter alia, online travel platforms and search sites, also welcomes the compromise, which increases transparency on the terms and conditions binding platforms and business users. In addition, they praise the fact that preferential trading practices such as 'most-favoured nation' clauses (which guarantee to a distributor that no other distributor will receive a better deal), are recognised as having a legitimate purpose.

The association representing the platforms was opposed to significantly amending the Commission's initial text. The [Developers Alliance](#) expressed their [concerns](#) regarding the inclusion in the scope of the regulation of 'operating systems' that, in their view, do not rank, or filter, or manage, commercial markets. [Digital Europe](#) also warned that an extension of the scope to 'operating systems' without a prior impact assessment will create significant legal uncertainty and risks impacting emerging technologies and business models (e.g. connected cars, smart TVs), which would undermine future innovation. Against this background, the Computer and Communications Industry Association (CCIA) welcomed the fact that EU policy-makers are not imposing a one-size-fits-all framework and have refrained from extending the scope of the proposal. EDiMA, the trade association representing online platforms, welcomed the fact that the Commission's proposals were largely maintained throughout the legislative process.

Legislative process

European Parliament

The proposal on promoting fairness and transparency for business users of online intermediation services was referred to the Internal Market and Consumer Protection Committee (IMCO), which appointed Christel Schaldemose (S&D, Denmark) as rapporteur in June 2018. The IMCO committee voted on the [report](#) from Christel Schaldemose in December 2018, and the mandate to start negotiations with the Council was also approved.

The committee called for significant amendments to the Commission's proposal. The report proposed that the obligations on the providers of online intermediation services set out apply to providers of 'ancillary operating systems' (such as Google's Android and Apple's iOS), when an operating system in itself acts as an online intermediation service. Furthermore, the report, inter alia, proposed the inclusion of 'fairness' as a part of the subject matter and scope of the proposal; that users of online intermediation services should have the possibility to express whether they are business users or not; more transparency (e.g. in the ranking parameters) as well as more information for the public; and to impose stricter obligations on platforms (i.e. a blacklist of unfair trading practices).

Council

The Council's position largely supporting the Commission's approach was approved at the Competitiveness Council in November 2018. However, several Member States issued a separate statement explaining that, while they support the Council's general approach, they have some reservations about introducing separate provisions on enforcement in the text.¹⁷

Compromise text

Interinstitutional negotiations resulted in a trilogue [agreement](#) between the co-legislators on 13 February 2019.¹⁸ The main points of the agreed text are as follows.

Scope of the regulation (Article 1)

The regulation will apply to 'online intermediation services' and 'online search engines' (regardless of whether they are established in a Member State or outside the EU), provided or offered to be provided to business users and corporate website users, (i) having their place of establishment or residence in the EU, and (ii) offering goods or services to consumers located in the EU. Under the regulation, 'online intermediation services' mean services that, (i) constitute 'information society services', (ii) allow business users to offer goods or services to consumers in order to facilitate direct transactions between them, and (iii) are provided on the basis of contractual relationships both between the providers and business users and between the providers and consumers. 'Online search engines' refers to digital services that allow users to perform searches of websites on the basis of a query.

This includes, in particular, 'online e-commerce market places' on which business users are active (e.g. Amazon Marketplace, eBay), 'online software applications services' (e.g. Google Play, Apple App Store, Microsoft Store), social media for business (e.g. Facebook pages, Instagram used by makers/artists), and price comparison tools (e.g. Skyscanner, Google Shopping).¹⁹ This also includes 'online search engines' that facilitate web searches (e.g. Google Search, Seznam.cz, Yahoo!, DuckDuckGo, Bing etc.).

However, the regulation does not apply to 'online payment services'; to 'peer-to-peer online intermediation services' without the presence of business users; to 'pure business-to-business online intermediation services' which are not offered to consumers; to 'online advertising tools' and 'online advertising exchanges' which are not provided with the aim of facilitating the initiation of direct transactions and which do not involve a contractual relationship with consumers. Importantly, after protracted negotiations, the compromise does not include 'operating systems' in the scope of the regulation (as desired by the Parliament's negotiators) although the Commission is asked, in a review clause, to look into the relationships between providers of operating systems and their business users.

The question as to whether the scope of the regulation is comprehensive enough is debatable. It has been argued that the regulation in its current drafting would not apply to **'underlying service-attached intermediation activities'** offered by platforms such as Uber and Deliveroo – in line with the European Court of Justice's case law. Therefore, an extension of the online intermediation services definition beyond mere 'information society services' would be desirable.²⁰

Obligations of transparency and fairness

The main obligations concern:

Transparency obligation for general terms and conditions (Article 3) and specific contractual terms (Article 8). Providers of online intermediation services are obliged to draft their terms and conditions in clear and unambiguous language, and to notify business users of any planned modifications. These modifications should not be implemented before the expiry of a reasonable notice period (in principle 15 days). The terms and conditions will not be legally binding for business

users if these conditions are not observed, and non-compliant terms and conditions will be null and void (i.e. with effects *erga omnes* and *ex tunc*). Providers of online intermediation services must also enforce a set of obligations when they agree on specific contractual terms with business users including not imposing retroactive change to the terms and conditions.

Restrictions, suspension and termination (Article 4). Providers of online intermediation services must justify their decision without undue delay in case of a restriction, suspension or termination of services for a business user. They must provide a statement of reasons for terminating (with a notice period of at least 30 days) and restricting or suspending services to business users.

Ranking (Article 5). Providers of online intermediation services and online search engines must set out in their terms and conditions the main parameters determining ranking and the reasons for the relative importance. Businesses should also be informed as to how online platforms can influence their ranking position, for example, through the payment of additional commissions. Online search engines will also need to inform consumers in case the ranking result has been influenced by an agreement with the website user.

The regulation attempts to find a **balance between the requirement for more transparency and the commercial interest** of online intermediaries and search engine providers. The text makes clear that the transparency requirement is without prejudice to [Directive \(EU\) 2016/943](#) protecting trade secrets. Providers of online intermediation services and of online search engines are **not required to disclose algorithms** nor any information that would impede their ability to act against bad faith manipulation of ranking by third parties. The Commission is requested to issue **guidelines** to provide full clarity on this issue.

Differentiated treatment (Article 7). Providers of online intermediation services and of online search engines may be in a situation where they offer goods and services to final consumers directly (or through a business they control) and at the same time provide their search or intermediation services to business users which offer similar goods and services to final consumers. Such providers of online intermediation services and of online search engines are therefore in a position to provide technical or economic advantages to their own offering, which would undermine fair competition and restrict consumer choice. To avoid such a result, providers of online intermediation services and online search engines must provide a description of any differentiated treatment which they give in relation to goods or services they provide.

Access to data (Article 9). The new regulation imposes more transparency on the use of and access to data generated in the context of the online intermediation. Providers of online intermediation services must include in their terms and conditions a description of the 'technical' and 'contractual' access of business users to 'personal data' (or other type of data, such as ratings and reviews) that such business users (or their consumers) provide for the use of online intermediation services, or that are generated through the provision of those services. Furthermore, business users must be made aware of any sharing of data with third parties, so that they have the ability to influence such data sharing and even opt out if this option is provided by contract.

Restrictions to offer different conditions (Article 10). Providers of online intermediation services are required to explain on what grounds they restrict the ability of business users to use other alternative services to offer the same goods and services to consumers under different (more favourable) conditions. The final text does not include a blacklist of unfair trading practices as requested by the European Parliament's negotiators. Platforms will still be able to impose 'most-favoured nation' clauses (i.e. which guarantee to a distributor that no other distributor will receive a better deal) if they are compliant with [applicable](#) EU competition rules.

Most-favoured-nation (MFN) or Most-favoured-customer (MFC) clauses, are contractual terms agreed between firms which usually stipulate that a seller will offer its good or service to the counterparty on terms that are as good as the best terms offered to third parties. MFN clauses are commonly used in a wide range of industries (e.g. books, movies, music, hotels, insurance and energy supply), and are increasingly scrutinised by competition authorities in many countries because of the **anticompetitive effects** they can have.²¹ The use of MFN clauses by price comparison tools and online marketplaces has been the target of a number of

antitrust enforcement cases recently in Europe. Competition authorities and courts have found some of these practices unlawful and several Member States (including France, Austria, Italy and Belgium) have introduced **legislation to prohibit** some of these practices.²²

Redress mechanisms (Articles 11-17). The enforcement of the regulation is largely left to self-regulation. Providers of online intermediation services are required to provide an internal system for handling complaints from business users which is easily accessible and allows them to lodge complaints directly with the platform. They are also obliged to provide one or more mediators for cases where complaints could not be resolved within the internal complaint-handling system. Furthermore, they are encouraged to adopt and implement sector-specific codes of conduct.

Small enterprises are **exempted** from setting up and operating such internal complaint-handling systems in light of the costs required.

Review clause

The Commission will have to assess the effect of the regulation (18 months after it enters into force and then every three years) and, in particular, assess the scope of the regulation and any possible imbalances in the relationships between providers of operating systems and their business users, which would require further legislation.

Next steps

The political agreement was approved by the Internal Market and Consumer Protection Committee (IMCO) which negotiated on behalf of the Parliament, and by the Members States' ambassadors (Coreper), in February 2019. The political agreement has been submitted for a first-reading adoption vote in the April II plenary session of the European Parliament, and thereafter should go to the Council for formal adoption, to finalise the legislative procedure.

EP SUPPORTING ANALYSIS

Eisele, K., [Promoting fairness and transparency in the online platform environment](#), Initial appraisal of a European Commission impact assessment, EPRS, September 2018.

OTHER SOURCES

[Fairness and transparency for business users of online intermediation services](#), European Parliament, Legislative Observatory (OEIL).

Williamson B. and Bunting M., [Reconciling Private Market Governance and Law: A Policy Primer on Digital Platforms](#), 2018.

[Algorithms and collusion Competition policy in the digital age](#), OECD, 2017.

Council note on [Regulations on platforms-to business relations](#), 15 May 2018.

[Resolution of 15 June 2017 on online platforms and the digital single market](#), European Parliament.

ENDNOTES

¹ [Impact assessment](#), pp. 10-21.

² ECME Consortium / Deloitte, [Study on the coverage, functioning and consumer use of comparison tools and third-party verification schemes for such tools EAHC/FWC/2013 85 07](#), 2015, p. 150.

³ [Impact assessment](#), p. 18.

⁴ Ibid, pp. 10 and 20-21.

⁵ Ibid., p. 27.

⁶ Ibid., p. 19 and Annex 8.

⁷ Ibid., Annex 8.

⁸ Bostoen F., [Neutrality, fairness or freedom? Principles for platform regulation](#), Internet policy Review, Vol. 7, Issue 1, 2018.

⁹ Zingales N., [Google Shopping: beware of 'self-favouring' in a world of algorithmic nudging](#), CPI, 2018.

¹⁰ Williamson B. and Bunting M., 2018.

- ¹¹ OECD, 2017, p. 45.
- ¹² See for instance European Commission, [Study on emerging issues of data ownership, interoperability, \(re-\)usability and access to data, and liability](#), 2017, and [Enter the Data Economy](#), EPSC Strategic Notes, Issue 21, 2017.
- ¹³ [Impact assessment](#), p. 15.
- ¹⁴ Article 13.
- ¹⁵ [Proposal for a directive of the European Parliament and of the Council on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC](#), COM(2018) 184, European Commission, April 2018.
- ¹⁶ This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.
- ¹⁷ See Council, Statement by the Czech Republic, Estonia, Finland, Ireland, Latvia, Poland and the United Kingdom, December 2018.
- ¹⁸ See European Commission, [Questions and Answers - EU negotiators agree to set up new European rules to improve fairness of online platforms' trading practices](#), 14 February 2019. See European Parliament, [Online platforms required by law to be more transparent with EU businesses](#), 14 February 2019
- ¹⁹ Recital 11 also clarifies that online intermediation services can be provided by means of voice assistant technology and that it is not relevant whether or not those transactions involve any monetary payment or that transactions are concluded in part offline. Search engine optimisation software services as well as services which revolve around advertising-blocking software are not covered by this regulation either. Technological functionalities and interfaces that merely connect hardware and applications are not covered by the regulation, as they normally do not fulfil the requirements for online intermediation services. According to the [Commission](#), the regulation also excludes online retailers, such as grocery stores (supermarkets) and retailers of brands (e.g. Nike.com), to the extent that such online retailers sell only their own products directly, without relying on third-party sellers, and are not involved with facilitating direct transactions between those third-party sellers and consumers.
- ²⁰ See P. Van Cleynenbreugel, [Will Deliveroo and Uber be captured by the proposed EU platform Regulation? You'd better watch out](#), European law blog, March 12, 2019. The author refers in particular to the Court of Justice's rulings in *Elite Taxi* (C-434/15) and *Uber France* (C-320/16).
- ²¹ For an overview, see Oxera, [Most-favoured-nation clauses: falling out of favour?](#), 2014.
- ²² See P. Chappatte, K. O'Connell and S. de Morant, ['European Union – E-commerce: Most Favoured Nation Clauses'](#), Law Business Research, 2018.

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