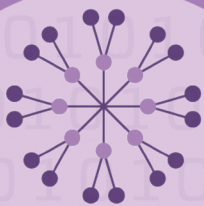


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WILL INTERNET PLATFORMS BECOME NEW STATES OF DIGITAL ECONOMY?

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Abstract

A decade ago new type of business model reinvented the way people shop online, book their holidays or order a ride. Online platforms established in the fields of commerce, entertainment and social media and made up a platform economy with new legal challenges unthinkable at that time and still underestimated.

In order to establish fully functioning Digital Single Market European Commission initiated a draft regulation which would regulate such platforms, provide legal certainty and fairness to business users within the EU. The initiative is analyzed in this article.

Keywords: platform economy, digital single market.

Introduction

The most significant platform operators are established in the United States and various countries of Asia, whereas only 4% of market capitalization is held by EU-based platforms.² However, this leaves a lot of room for innovation and business opportunities for EU corporate users using such intermediaries to sell their products and services online. For instance, European app developers share 30% of global revenue in most popular application distribution platforms.³

In previous years various challenges relating to platform economy were identified.⁴ For instance, social media platforms raise social, legal and economic risks which involve (i.) forcing decision upon users or (ii.) protection of information provided to the platform. Users barely know that platforms analyze scrolling patterns, filter private messaging, account deletion does not remove data completely. Platforms use a practice of tying with other services, personal data is not portable etc.⁵

By recognizing that business owners (vendors, service providers, sellers) do not have enough market power to negotiate on terms and agreements, European Commission

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² European Commission. Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions. Online Platforms and the Digital Single Market Opportunities and Challenges for Europe. Available at <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-288-EN-F1-1.PDF>, p.3

³ WILLIAMSON, B., CHAN Y. S., WOOD, S. A policy toolkit for the app economy — where online meets offline. Available at <https://plumconsulting.co.uk/policy-toolkit-app-economy/>, p. 10

⁴ European Commission. Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions. Online Platforms and the Digital Single Market Opportunities and Challenges for Europe. Available at <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-288-EN-F1-1.PDF>, p. 7 – 12.

⁵ GEBICKA, A., HEINEMANN, A. Social Media & Competition Law. *World Competition* 37, no. 2 (2014), p. 158-164.

suggests making platform economy a more competitive environment by limiting powers of platforms themselves. In February 2019 the European Commission published a proposal for a Regulation of the European Parliament and of the Council on Promoting Fairness and Transparency for Business Users of Online Intermediation Services (hereinafter the Regulation of the Platforms). The analyzed regulation is supposed to create fair, predictable, sustainable and trusted legal framework in a business-to-platform relationship. It is important to ensure that comparable digital services would compete on a level field. Also, policy maker seeks to ensure that online platforms act responsibly. It is true that access to information is a value and a freedom worth protecting, however some types of information (adult content, fake news, hate and crime provoking) should be controlled and access restricted for some users (children etc.⁶). Research show that search platforms tend to be concentrated or form into monopolies, therefore regulatory intervention is welcome and necessary⁷.

The proposed Regulation of the Platforms should cover a part of unfair business practices, such as unilaterally changing terms and conditions without necessary notification period, terminating business accounts without proper investigation or an effective right to an appeal and other. Such practices were not covered by existing legal acts in the fields of competition law,⁸ and consumer protection law. Guidance on Unfair commercial practices directive was also renewed recently. All of this should contribute to a trust in the platform economy. The regulation ensures that market players have appropriate transparency and appropriate redress measures.

However, how to effectively regulate something that is fast changing and evolving, such as internet-based services? The Commission recognizes this challenge and sets up rules that are rather general and principles-based. The Commission promotes principles-based⁹ measures in Digital Single Market regulation. This makes the Regulation of the Platforms a good scientific object of research since content of principles will be elaborated in scientific articles and case law.

The goal of this article is to review proposed regulation on promoting fairness and transparency for business users of online intermediation services and evaluate its main provisions. This goal is achieved by (I.) identifying main challenges business users face in the platform economy; (II.) verifying whether proposed regulation corresponds to and solves these issues.

The author identifies a set of examples which need to be resolved in the platform economy. First of all, review mechanisms are too often manipulated with fake reviews organized by competitors. This reduces trust in the platforms. Secondly, ranking practices are unclear and dependent on profiling of a customer. Lastly, business users are too dependent on changing policies, frivolous copyright claims (sometimes used in bad faith by their competitors). The European Commission conducted a survey where market players expressed their concerns regarding following problems while using intermediation services. First of all, they are deprived of access to valuable data generated in the platform. Secondly,

⁶ London School of Economics. EU Kids Online. Available at <http://www.lse.ac.uk/media@lse/research/EUKidsOnline/EU%20Kids%20III/Reports/Intheirownwords020213.pdf>.

⁷ POLLOCK, R. Is Google the Next Microsoft: Competition, Welfare and Regulation in Online Search," Review of Network Economics, De Gruyter, vol. 9(4), p. 1-31.

⁸ GEBICKA, A., HEINEMANN, A. Social Media & Competition Law. World Competition 37, no. 2 (2014), p. 149–172.

⁹ European Commission. Principles for Better Self- and Co-Regulation. Available at <https://ec.europa.eu/digital-single-market/en/news/principles-better-self-and-co-regulation-and-establishment-community-practice>.

refusal to grant market access or short-notice terms regarding conditions for market access is an issue. Thirdly, unfairly promoting platforms' own services or products. Lastly, there is a lack of transparency on remuneration, especially with listing practices and use of data.¹⁰

1. Scope of the Regulation

Platforms act as marketplaces, search engines¹¹, social media¹² and creative content outlets, application distribution platforms, communications services, payment systems, and platforms for the collaborative economy¹. The most recognized examples are Google's AdSense, eBay and Amazon Marketplace, Google Search, Facebook, YouTube, Spotify, Google Play and App Store, PayPal, and Uber or Upwork. Platforms operate in two-sided market¹³ where demand that one party has for the product is complementary to the demand that the other party has for the same product.¹⁴ In other words, a customer on one side of the market will be willing to participate to the platform activity only if it is expected that sufficient participation from the other side is.¹⁵

Some platforms provide doubtful added value to the product but rather are listing sites, such as booking.com. However competitive advantage of such platforms in comparison to local service providers is that they benefit from the economy of scale and network effect which makes the value of the service increase with the number of users.¹⁶ One should bear in mind that other types of intermediation services are extremely concentrated, such as app selling sites (dominated by App Store and Google Play). By collaborating with a platform, a business entity becomes dependent because a significant part of business inquiries come through this intermediary. Intermediaries' business model is based on selling advertisement, registration fees for business users (or sometimes - customers), transaction fees and bundling with information goods.¹⁷

The Regulation of the Platforms will be significant to online intermediation service providers¹⁸, business users and corporate website users (and their associations) as well as

¹⁰ European Commission. Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions. Online Platforms and the Digital Single Market Opportunities and Challenges for Europe. Available at <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-288-EN-F1-1.PDF>, p. 4-5.

¹¹ Google. Facts About Google and Competition, About Ads. Available at <http://www.google.com/competition/howgoogleadwork.html>.

¹² COHEN, S., NORTH, Z., PARK, D. The Opportunities and Risks Posed by Social Media for Antitrust Compliance. Available at <http://www.bna.com/the-opportunities-and-risks-posed-by-social-media>.

¹³ BORK, R., SIDAK, G. What does the Chicago School Teach About Internet Search and the Antitrust Treatment of Google? *Journal of Competition Law & Economics*, Volume 8, Issue 4, December 2012, p. 663–700, SCHMALENSEE R, EVANS, D. Markets with two-sided platforms. In: *ABA section of antitrust law (ed) Issues in competition law and policy*. p. 667–693/

¹⁴ EVANS, D. The Antitrust Economics of Multi-Sided Platform Markets, 20 *Yale Journal on Regulation*, p. 328; ROCHET, J.C., TIROLE, J. Platform Competition in Two-Sided Markets, 4 *Journal of the European Economic Association* 990 (2003).

¹⁵ JULLIEN, B. Two-sided Markets and Electronic Intermediaries. *CESifo Economic Studies*, Volume 51, Issue 2-3, p. 233-260. Available at <https://academic.oup.com/cesifo/article-abstract/51/2-3/233/306461?redirectedFrom=fulltext>,

¹⁶ European Commission. Report on the Public Consultation on the Regulatory Environment for Platforms, Online Intermediaries and the Collaborative Economy.

¹⁷ JULLIEN, B. Two-sided Markets and Electronic Intermediaries. *CESifo Economic Studies*, Volume 51, Issue 2-3, p. 233-260. Available at <https://academic.oup.com/cesifo/article-abstract/51/2-3/233/306461?redirectedFrom=fulltext>, p. 239

¹⁸ European Commission. Communication Towards a thriving datadriven economy.

specialized mediators¹⁹. In general, online intermediation service is a platform. Online intermediation services are contractual obligation aimed at facilitating the initiating of direct transaction between business users and consumers, irrespective of whether the transaction is ultimately concluded online or offline. The regulation *expressis verbis* states that it is not applicable to online advertising serving tools or online advertising exchanges which are not provided with the aim of facilitating the initiation of direct transactions and do not involve a contractual relationship with consumers. They must constitute information society services which is (i.) any service normally provided for remuneration, (ii.) at a distance (service is provided without the parties being simultaneously present), (iii.) by electronic means (the service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means) and (iv.) at the individual request of a recipient of services (the service is provided through the transmission of data on individual request)²⁰.

For instance, services would not be considered as provided at a distance if provided in the physical presence of the provider and the recipient, even if they involve the use of electronic devices such as medical examinations, consultation of an e-catalogue with the customer on site, plane ticket reservation at a travel agency. Also, services are considered not to be provided by electronic means if they have material content even though provided via electronic devices such as ticket dispensing machines, voice telephony. Lastly, television broadcasting services (including on-demand services) or radio broadcasting services are not supplied at the individual request therefore would not be applicable.

In the context of the regulation business user is any person (natural or legal) which uses online intermediation services to offer goods or services to consumers for purposes relating to its trade, business, craft or profession (Article 2). This definition would cover distributors, craftsmen, freelance service providers or any other seller using marketplace platforms. The author believes this definition also covers copyright holders who use subscription based streaming platforms such as Spotify even though consumers use such platforms as a whole – individual licensing or purchase agreement are not made while listening to a particular piece of music on such platforms.

Whereas corporate website user is a similar person but uses websites instead of solely online intermediation services (Article 2). Online search engine means a digital service that allows users to perform searches of, in principle, all websites or websites in a particular language on the basis of a query on any subject in the form of a keyword, phrase or other input, and returns links in which information related to the requested content can be found. Internet platforms have reduced or even made obsolete product research costs as there are platforms which instantaneously provide price comparison results.²¹

This is a first attempt to define what is an online platform in a legal act (not considering EC communications or other soft-law material). The definition correctly corresponds with existing legal framework and provides an adequate criterion for a platform. It is technology neutral definition and does not consider the type of services provided but rather the way

¹⁹ European Commission. Press release "Digital Single Market: EU negotiators agree to set up new European rules to improve fairness of online platforms' trading practices" available online europa.eu/rapid/press-release_IP-19-1168_en.htm

²⁰ Directive (EU) 2015/1535 Of the European Parliament and of the Council Laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, Article 1(1)(b).

²¹ GLENN, E., ELLISON S.F. Lessons About Markets from the Internet. *Journal of Economic Perspectives*, 19 (2): 139-158. Available at <https://economics.mit.edu/files/7606>, p. 141 – 146.

business is conducted. This makes the Regulation of the Platforms relevant in the years to come.

2. Individual provisions of the Regulation

Alternative dispute resolution schemes. At the moment business users have limited ability to file for a court because of a risk of retaliation (Preamble 4). This might be a correct assumption. Paypal, Amazon, booking.com, Aliexpress and other leading marketplace-platforms have internal dispute settlement procedures among consumers and vendors which made a breakthrough in small claim disputes. Such disputes are settled cheaply and fast by impartial arbitrator (or an artificial intelligence). This scheme is set by the platform operators. However, if a dispute arises between a business user and an online intermediation service operator there are no external institution to resolve a dispute. Business users are obliged to follow terms and conditions drafted by the platform operator which might involve foreign applicable law and seat of arbitration.

Jurisdiction matters have always been a topic of discussion since legislators started to regulate electronic services. Since these services make obsolete physical distances and state borders, traditional territorial (or seat of establishment) approach would not be effective. Therefore, the regulation will be applicable to platform operators without considering their establishment jurisdiction (in a Member State or outside the European Union). However other two conditions are set. First of all, business users or corporate website users are to be established in the Union. Secondly, goods or services have to be offered to consumers located in the European Union at least for part of the transaction. What this means is that a consumer has to be physically located in the Union, but do not need to have his or her place of residence in the Union. Neither has to be a citizen of any Member State. In a case goods or services are offered exclusively to consumers outside the EU the regulation shall not apply (Preamble 7). From the wording of the regulation one can notice that the transaction itself is not necessary, only an intention to sell. These conditions are cumulative, and both must be met. If a business user satisfies both conditions, it can enjoy rights granted by the Regulation of the Platforms.

The Regulation will only be applicable in case the terms and conditions of a contract between business user and platform operator were not individually negotiated. This well corresponds to a current business practice. The European Commission published survey results which showed that business users have no bargaining power therefore all contracts are signed under standard draft.²² The Regulation also requires that such terms must be drafted in a clear and unambiguous language which is comprehensible by an average business user. Such contracts must not be vague, unspecific or lack detail on important commercial issues. This would fail to provide predictability regarding business relationship (Preamble 13, Article 3).

Research show that terms and conditions are drafted in difficult legalese, 56% consumers indicated that they did not read the terms and conditions of online platforms²³, parts of text is spread across various places in the website. All of this makes it more difficult to comprehend the true meaning of rights and obligations. It is hard to make an informed

²² European Commission. Report on the Public Consultation on the Regulatory Environment for Platforms, Online Intermediaries and the Collaborative Economy.

²³ European Commission. Special Eurobarometer 447 Report "Online platforms". Available at ec.europa.eu/information_society/newsroom/image/document/2016-24/ebs_447_en_16136.pdf, p. 65.

decision which intermediation service to use if a business user cannot fully understand the contract. This has to change, and proposed regulation contributes to this. Transparency is achieved by providing general terms and conditions in a clear and easily accessible manner even in pre-contractual phase. The Regulation requires that such provisions must be available online and without a requirement to establish business account in the platform.

Speaking about legal certainty, any changes to terms and conditions have to be notified with at least 15-day notice. In all cases such notice must be reasonable and proportionate depending on specific circumstances (Article 3). Therefore, if a change in terms and conditions requires business user to redesign its processes or implement additional measures on product safety, shipping etc. notice period must be prolonged.

The regulation states that provisions annulled by a competent court, will not be binding only on the business user concerned. Non-compliant terms and conditions are not binding on a business user concerned *ex nunc* however the rest of the contract remains valid (Preamble 15). It is worth raising a question whether it was better to bind the provider of intermediation services to annul a specific provision for all users? The author contributes to a EC's chosen model as this creates less legal chaos. Even though business users do not have sufficient market power to negotiate on terms and conditions they are better informed than customers and can challenge individual clauses by their own.

Even though the Regulation of the Platforms grants various rights to business users it is understandable that a platform operator (provider of online intermediation services) should keep its right to remove particular goods or services from the platform or suspend business users' account in general (Article 4). Such grounds must be objective (Article 3(1)(c)). First of all, such decision must be properly provided for a business user in a timely manner. The regulation states that it must be done without undue delay. Secondly, such decision must be specified and elaborated (Article 4). Arguments must be informative enough for business user to evaluate whether it is worth it to challenge the decision in court. Platform operator can take such actions if it identifies items as illegal content.²⁴ In 2018 EC issued a recommendation on measures to effectively tackle illegal content online which states that provision should be made for mechanisms to submit notices. Those mechanisms should be easy to access, user-friendly and allow for the submission of notices by electronic means. Those mechanisms should allow for and encourage the submission of notices which are sufficiently precise and adequately substantiated to enable the hosting provider concerned to take an informed and diligent decision in respect of the content to which the notice relates, in particular whether or not that content is to be considered illegal content and is to be removed or access thereto is to be disabled. However, such flagging systems are manipulated by competitors by issuing false reports and giving a competitive advantage.

Ranking. Today's platform economy is based on a principle zero-sum-game where winner takes it all. That is why there are articles trying to analyze particularities of various platforms search engine mechanisms.²⁵ Consultants provide their expertise to help achieve better search results by optimizing meta-tags²⁶. Ranking is essential for good commercial

²⁴ European Commission, Recommendation (EU) 2018/334 On Measures to Effectively Tackle Illegal Content Online

²⁵ BORK, R., SIDAK, G. What does the Chicago School Teach About Internet Search and the Antitrust Treatment of Google? *Journal of Competition Law & Economics*, Volume 8, Issue 4, December 2012, p. 663–700.

²⁶ Google. Webmaster Tools, Ranking, Available at <http://support.google.com/webmasters/bin/answer.py?hl=en&answer=34432>; Google. Facts About Google and Competition, About Search, Available at <http://www.google.com/competition/howgooglesearchworks.html>. Bing Webmaster Central FAQs, at

results in the platform economy. Some claim that Google's ranking methodologies and search algorithms are unfair. Critics have focused on whether Google's ranking of its specialized search results harms competitors and whether Google excludes competitors by limiting access to search inputs.²⁷

Coding of such algorithms is a commercial secret because it is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question, it has commercial value and is subject to reasonable steps to keep it secret²⁸. Proposed Regulation of the Platforms does not infringe the Directive On the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure.

Besides, providers of online intermediation services publish press releases explaining changes in the algorithms. The regulation provides even more transparency by requiring that platform operators outline the main parameters which determine ranking in advance. First of all, it should be stated how and to what extent ranking mechanisms consider characteristics of a product, relevance of those characteristics for a consumer and design characteristics of the website used by corporate website users (Article 5).

This should contribute to a better predictability and allow business users to compare different platforms to suit their needs. The notion of main parameter refers to any general criteria, processes, specific signals incorporated into algorithms or other adjustment or demotion mechanisms used in connection with the ranking system. The information provided should also include an explanation of possibilities to actively influence ranking against remuneration (Preamble 17). Other types of searchable data include direct response to the query in a form of image, video, map destination, product or real-time news²⁹.

There are examples when a provider of online intermediation service itself offers certain goods or services to consumers through its own online intermediation services or does so through a controlled business entity (Article 6). In part such practices are captured by competition law. Preamble 19 of proposed regulation states that such competition is allowed per se. In such situations platform operator must act in a transparent manner and provide a description of any differentiated treatment (legal, commercial or technical) that it might give in respect of goods or services it offers itself. This covers practices such as providing access to any personal or other data which online intermediation service providers collects from its users or which is generated through the provision of those services, ranking or any remuneration charged for the use of a platform and conditions for use of directly connected or ancillary services.

Use of data. It is a cliché to say that data is the currency of digital economy. Value of data is acknowledged in the Regulation preamble 20. General Data Protection Regulation sets strict rules regarding use of personal data. However, it is applicable only to natural

8, available at <http://www.bing.com/toolbox/home/>; Bing. How Bing Delivers Search Results. Available at <http://onlinehelp.microsoft.com/en-us/bing/ff808447.aspx>

²⁷ BORK, R., SIDAK, G. What does the Chicago School Teach About Internet Search and the Antitrust Treatment of Google? *Journal of Competition Law & Economics*, Volume 8, Issue 4, December 2012, Pages 663–700.

²⁸ Directive (EU) 2016/943 of the European Parliament and of the Council On the Protection of Undisclosed Know-how and Business Information (Trade Secrets) Against Their Unlawful Acquisition, Use and Disclosure.

²⁹ Google. Microsoft and Experts Agree: Search Is Evolving Beyond Links. Available at <http://googlecompetition.blogspot.com/2012/09/microsoft-and-experts-agree-search-is.html>

persons and not business users. Eurobarometer survey in 2016 on online platforms showed that 72% also considered that online platforms should be regulated to limit the extent to which they display different results to users based on the data collected about their activities.³⁰ The Regulation of the Platforms sets that business users are provided with a clear description of the scope, nature and conditions of their access to and use of certain categories of data in a proportionate manner. Platform operators have an obligation to provide business users with a clear description of the scope, nature and conditions of their access to and use of certain categories of data.

The regulation sets minimum standards what information must be provided. That is whether platform operator has access to personal or other data which is provided for the use of the platform or which is generated through the provision of those services. Also, whether business user has access to any data provided by that business user in connection to his or her use of services. Lastly, whether business user has access to data (including in aggregated form) generated by other business users and consumers.

Most favorable notion. In 2015 a coordinated investigation against booking.com was made by the French, Italian and Swedish competition authorities. They analyzed price parity clauses which required hotels to offer the same or better room price on the platform in comparison to their own websites or other mediums whether online or offline. The platform argued that there is high risk of free-riding by using platform's infrastructure for promotional reasons³¹ but making a reservation without an intermediary. The case was closed by accepting commitments that hotels can offer better deals to loyalty card holders or via offline channels or walk-in bookings.³²

The proposed regulation states that in some situations a practice to restrict business users to offer goods or services under different conditions through other means than the platform itself (a form of exclusiveness) is allowed. Such restriction should be based on published economic, commercial or legal consideration of for such restriction. First of all, article 8 restricts providing goods or services under different conditions. It is not important whether such conditions are better (i.e. cheaper) or worse for the consumers. This happens when business users have multi-channel sales practice and uses various platforms or his or her own website for sales, business inquiries or reservations. If intermediary is avoided, business user usually received better profit margin as no commission payment is grabbed by the platform. Providers of online intermediation services are interested to collect not only payments, but also collect data of the transaction itself.

Business users might be interested in avoiding such restriction. It can be done by offering some services or goods through one medium, and other through the other. The regulation only allows this restriction to apply for the same goods and services (Article 8). For instance, a hotel may dedicate separate suits to be offered on booking.com and other rooms to be offered for walk-ins. However, this norm is more understood as a transparency obligation rather than setting new requirement.

Internal complaint-handling system. A significant novel in the legal background is article 9 of the regulation which sets up a requirement for intermediation services to set up

³⁰ European Commission. Special Eurobarometer 447 Report "Online platforms". Available at ec.europa.eu/information_society/newsroom/image/document/2016-24/ebs_447_en_16136.pdf, p. 40.

³¹ CAILLAUD, B., JULLIEN B. Chicken & egg: competition among intermediation service providers. *Rand J Econ* 34, p. 309–328.

³² COLANGELO M. Parity Clauses and Competition Law in Digital Marketplaces: The Case of Online Hotel Booking. *Journal of European Competition Law & Practice*, Volume 8, Issue 1, 1 January 2017. Available at <https://academic.oup.com/jeclap/article-abstract/8/1/3/2890729>, p. 3–14.

an internal dispute resolution system. This should provide business users with an immediate, suitable and effective redress possibilities. Such system should resolve a meaningful part of disputes. The procedure should be more result oriented, flexible and address individual complaints. Moreover, the overall results of disputes resolved ought to be published annually. This raises some doubt why would the same entity change its decision? It is clear that decisions of the same operator will be questioned during such procedures. Then the same operator will be resolving a dispute. This creates a conflict of interest and biased decision making. It is worth noting that small enterprises as stated in Recommendation 2003/361/EC are exempted from this provision. Therefore, such scheme should be considered as medium for cooperation rather than judicial appeal system. Business user will have an opportunity to explain him/herself especially regarding decisions on removing supposedly illegal content.

Mediation. Business users hesitate to file for a court against a platform operator. They fear that either such behavior could lead to a complete retaliation, or contractual jurisdiction is not suitable for them. Therefore, the Regulation of the Platforms also suggests parties to solve their dispute in mediation sessions (Article 10). Platform operators should a priori name mediators with which they trust and commit. Costs of mediation should be covered by the providers of online intermediation services at least by a reasonable proportion of 50 per cent or more of total costs. Such settlements will require specific competence of the mediators who have deep understanding of peculiarities of online intermediation services and business users. Therefore, the Commission is encouraged to establish specialized organizations which would unite such experts.

Moreover, associations and public bodies representing business users or corporate website users are granted a right to file for a court on behalf of a business users itself in a form of collective interest or in the general interest. Codes of conduct are also encouraged. Such documents should be drafted with stakeholders involved and consider specifics of different size enterprises and features of the sector concerned.

Conclusions

Regulation on promoting fairness and transparency for business users of online intermediation services provides a few new rights to business users thus protecting EU-based entrepreneurs against US-Asia based online intermediation service providers. Such rights are described in abstract, principle-based approach as it is common for Digital Single Market legal acts. If adopted the regulation should make European Union a more attractive jurisdiction for e-commerce vendors to establish here. However, this initiative also shows that European Union have lost the competition in the online intermediation service providing market.

The Regulation does not tackle the most troublesome business practices faced by business users, but rather sets an approach so solve those disputes internally or using mediation. If passed, these legal relations probably will not change for the years to come. Therefore, the author wishes the regulation would be more ambitious and put platform operators under stricter obligations. Regulation also lacks detail regarding how active must be an online intermediation service provider to ensure product safety and removal of illegal content. Such and other requirements will be set in other legal acts as this regulation is not comprehensive. It is clear, however, that attention to platforms will continue to increase and legal regulation will become more defined stripping down state-like authority eventually.

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