



Regulation for promoting fairness and transparency for business users of online intermediaries (P2B)

Brussels, 08 January 2019

As representatives of hundreds of thousands of SMEs and large European companies, both users and operators of online intermediaries, we are deeply concerned by the position of the European Parliament on the draft P2B Regulation. **We call on the EU legislators to ensure that the outcome of trilogues remains proportionate, principle-based and grounded in evidence to produce a Regulation that considers industry and other stakeholders.**

We support the approach initially taken by the European Commission, confirmed and improved by the Council of the EU, which focuses on reinforcing trust, predictability and legal certainty in the online platform economy. In stark contrast, the compromise amendments of the European Parliament drastically depart from the European Commission's original intentions and goals for the Regulation. They go far beyond the draft Regulation's scope and its focus on transparency and redress, without any supporting cost-benefit analysis or evidence of systemic harm for either consumers or business users.

Instead, the following requirements will have negative unintended consequences; they will undermine business user and consumer trust, jeopardise legitimate business models and reduce investments for start-ups connected to the platform economy. **This will ultimately raise barriers to the growth of new European platforms and represent a large step back to the creation of Europe's platform champions.**

Introducing market fragmentation and legal uncertainty:

- In order to protect the cross-border dimension of the online platform economy, the legislators should strive to ensure maximum levels of harmonisation. Space given to new national rules will only lead to further market fragmentation, undermining the achievement of the Digital Single Market. Furthermore, the introduction of public enforcement by both legislators should not lead to fragmented interpretation and imposition of financial penalties.
- The inclusion of an undefined concept of '*fairness*' in various articles of the draft Regulation will introduce high-levels of legal uncertainty. The lack of a common legal tradition around '*fairness*' across the EU will lead to litigation-heavy enforcement, very different interpretations in courts and thereby market fragmentation. This will benefit larger intermediaries and business users over smaller ones.

Limiting legitimate business models and innovation

- The outright ban of commercial practices, without any evidence of harm, and the introduction of vague restrictions on the commercial use of data generated on the intermediary services set very concerning precedents. They will for example deprive growing companies from sound business practices, introduce legal uncertainty around liability and encourage free riding. Existing competition law on abuse of market power or dominance is well equipped to address specific harmful practices and limits intervention to cases of market failure
- The extension of the scope to operating systems are technical platforms which do not intermediate between consumer and third parties, stand to limit technological development that enable innovation across the digital economy and undermine hardware security, to the detriment of all users. Similarly, requirements on online search engines beyond ranking transparency will be disproportionate given the lack of contractual relationship with indexed websites.

Limiting the role of platforms in protecting its users:

Beyond ensuring predictability for business users, an intermediary's terms of service are also developed to protect its users', both business and end-users, customer experience and trust in the online platform economy. However:

- The introduction of a notice period before an intermediary can remove content will undermine the effectiveness of its terms or services. Intermediaries will have to keep content and allow behaviour that contravene these terms to the detriment of end-users and of the business users that play by the rules.
- Excessive transparency requirements linked to suspension/ termination and ranking will undermine an intermediary's ability to combat fraud and manipulation by making it easier for rogue actors to game the system. In this context, it should be explicit that no trade secrets shall be revealed by platforms while complying with ranking transparency obligations. We recommend a clear reference be made to the protections offered under the EU Trade Secrets Protection Directive. We do support text that 'platforms will not be forced to reveal any information that would result in the enabling of deception of consumers through the manipulation of search results'.

We urge European decision-makers to avoid any unwarranted extension of the draft Regulation and its requirements in a way that risks impacting user trust and investments in the platform economy. Instead, the European institutions have the opportunity to increase transparency and predictability in platform economy while ensuring legal certainty, continued consumer trust and growth opportunities for European players.

The following associations have signed this letter:

- ACT - The App Association actonline.org
- Allied for Startups alliedforstartups.org
- Computer & Communications Industry Association ccianet.org
- Confederation of Industry of the Czech Republic spcr.cz
- Developers Alliance developersalliance.org
- DIGITALEUROPE digitaleurope.org
- EDiMA edima-eu.org
- EuroCommerce eurocommerce.eu
- KIGEIT kigeit.org.pl
- Leads Origins LeadsOrigins.com
- Nederland ICT nederlandict.nl
- Startup Poland startuppoland.org

- Roma Startup romastartup.it
- techUK techuk.org
- TECH IN France techinfrance.fr
- Technology Ireland – Ibec technology-ireland.ie
- The Aleph Report thealeph.com
- ZIPSEE – Cyfrowa Polska zipsee.pl