



Position Paper on P2B Relations

In brief

- EMOTA welcomes the current focus on ensuring a level playing field and transparency in relations between platforms and businesses like webshops.
- Platform to business transactions are generally frictionless and webshops greatly benefit from the use of online intermediaries.
- The limited friction observed in this highly competitive space results from communication and enforcement gaps. Thus, we advocate to limit intervention to a minimum to promote competition, choice and legal certainty.
- The market will benefit from a fully harmonised legal framework, helping to avoid national protectionist initiatives.
- Policy-makers should make full use of organisations like EMOTA, which bring together the entire value chain, to address some of the key issues via best practice guides.
- Enforcement at the global level will be essential to guarantee a level playing field.
- Codes of conduct should be developed by the industry to further consolidate the credibility and transparency in P2B relations and to showcase the success of self-regulation.

Background

On 26 April 2018, the European Commission published its proposal on Platform to Business Relations, which aims at promoting fairness and transparency for business users (webshops) of online intermediation services (marketplaces/platforms).

General Remarks

Online platforms are fundamental to digital trade. It is estimated that more than a million EU enterprises trade through online platforms in order to reach their customers, contributing to 60% of private consumption and 30% of public consumption of goods and services related to the total digital economy. Almost half (42%) of the small and medium companies who responded to a recent EC [Eurobarometer](#) survey said they use online marketplaces to sell their products and services.

Given the importance of online intermediaries in the e-commerce supply chain, we welcome efforts to create a harmonized legal framework around platform to business relations in the digital economy which protects the system from protectionist approaches of the individual Member States and provides for a framework which does not go beyond the minimum necessary.

We urge the European Institutions to pro-actively encourage industry initiatives addressing the policy concerns, as they would be faster and more effective if performed by relevant bodies such as EMOTA. Industry bodies can play a crucial role in the relationship between sellers and intermediaries, by disseminating information, educating users and creating best practice guides.

Scope Art. 1

- We acknowledge the scope of the proposal which targets online intermediation service and online search engines to business users and corporate website users.



- We would like to have, however, further clarifications regarding the implementation of the regulation in practice for undertakings established outside the European Union.

Rewarding clarity and transparency in P2B Art. 3

EMOTA considers that the current best practices should be set in law as the minimum requirement for P2B providers. This will allow competition to flourish, whilst rewarding the best players.

- We welcome the provisions seeking to provide clearer and easily accessible terms and conditions for the use of the service as well as establishing a flexible notice period for major changes in terms and conditions and the requirement for objective grounds for the termination of the contract
- Changes in service needs to come with a reasonable notice period of at least 15 days.
- It should be further clarified, however, that warnings for neutral or relatively minor changes should be avoided, as this would create an unnecessary administrative burden.

Enforcement and incentivizing compliance Art. 4

Online intermediaries face the complex task of ensuring their environments are “clean” and “safe” for both customers and users. This in practice means removing rogue traders and correcting compliance issues swiftly. This is a goal fully shared by EMOTA’s Members, users of marketplace services, as it benefits the entire ecosystem in terms of trust and the creation of a level-playing field.

- The framework should find a good balance between the task of intermediaries to remove non-compliant content and at the same time inform clearly on the reasons for suspension, in an individualized format.
- Intermediaries should provide clear reasons if a business user is suspended or delisted from the service, with objective grounds

Clarifying the framework for ranking Art. 5

- EMOTA has been involved in the European Commission Stakeholder Group on Price Comparison Engines and Consumer Reviews, which adopted a number of [guidelines](#) regarding best practices in price comparison and consumer reviews.
- We support in principle the provisions seeking to bring more clarity to the main elements that determine ranking in the service and how payments or advertising can influence such ranking.
- The main parameters in ranking of merchants or goods need to be communicated upfront.
- At the same time, we ask the policy makers to allow flexibility in determining rankings and to ensure that any provisions in this area do not result in an obligation for businesses to unveil proprietary information, such as “reasons for the relative importance”, which currently forms part of the transparency requirements.

Differentiated treatment Art. 6

- We support proposals that clarify how the various services around an intermediary interact, to prevent an abuse of dominant position or similar effects resulting in unfair competition for the users of the service.

Informed choices for data access Art. 7

- EMOTA welcomes the transparency and clarifications regarding the terms and conditions that online intermediation services should provide to business users, in terms of data.



- The explicit rules and legal framework help business users and intermediation services to cooperate in a transparent and clear manner and as a consequence to build relationship of trust towards the consumers.

Price parity and other restrictions Art. 8

- Sellers should be free to offer different conditions across the different channels they use.
- Our members recognise the challenges this approach brings to various intermediary services and therefore suggest a case-by-case approach to prevent competition law being undermined. Thus, the use of these clauses should be exceptional.
- The current fragmented legal landscape around such provisions is not helpful to sellers or to marketplaces.

Complaint handling and mediation Art. 9,10,11

Disputes in platform to business relations are rare. This is mainly because marketplaces function in a very competitive environment, driven by the need to satisfy its business users. However, much as in the B2C context, many of them occur out of information and communication gaps. Thus, the most effective solution is for the marketplace to address these complaints at the earliest stage possible, internally.

- A framework which incentivizes the adoption of current best practices as the standard in law, including by rewarding effective internal dispute resolution mechanism, should be adopted.
- A well-functioning internal dispute resolution mechanism benefits both sellers and marketplaces, resolving any disputes at the earliest stage, avoiding addition costs and penalties
- Industry bodies, such as EMOTA, should be involved in developing and facilitating the best practices and certifications in complaint handling P2B.
- This is why we suggest for retailers to first seek a solution in internal complaints mechanism before addressing a mediator, which will involve considerable costs and time efforts for both parties.
- The functionalities of complaint-handling system should not be too prescriptive to give flexibility to providers to make use of best practices, including producing and analysing statistics.
- We broadly support establishing a framework for online mediation services as well as making use of specialized mediators dealing with out of court settlements, whilst ensuring clarity between this proposal the revision of the UCPD and CRD.
- We ask for further clarifications regarding the proportion of the total cost that has to be borne by the providers in cases of mediation should be given.
- The obligation to annually publish how effective the complaint system is should be not be overly prescriptive and burdensome (especially for SMEs) but focus on aggregate data which the companies have at their disposal to further improve the complaint handling mechanisms.

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