



Permanent Representation  
of the Republic of Poland  
to the European Union  
in Brussels

# P2B Business impact in practice – what to expect

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# Importance of Platforms for European SMEs

- **European SMEs generate 7%** of their turnover from web sales
- **A large group of European SMEs** use online channels when selling abroad
  - **NL: 60%**                      ➤ **BE: 42%**
  - **GER: 57%**                    ➤ **PL: 32%**
  - **IT: 50%**                        ➤ **FR: 22%**
- SMEs profit directly from platforms that can innovate and adapt to a changing marketplace
- P2B Regulation should be clear in order to create legal certainty and secure further digitalization of SMEs
- Transparency is in general positive
  - but must be balanced between fair entrepreneur's rights and consumer rights/protection

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- The Impact of P2B on industry and innovation-

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# The main impacts P2B could have on Industry and Innovation

## Transparency Requirements can do more harm than good:

Under the current proposal the transparency requirements would have platforms list out every detail of how their ranking system works. Although transparency is critical and essential for customer and business users trusts, too much transparency can lead to malicious actors utilising the available information in order to manipulate ranking results. For example, some fraudulent companies have been reported to employ staff to 'search and repeat' for their specific products as that will push up their product to top of the list – effectively abusing the system, therefore the more information available on the ranking requirements the easier it will be for manipulation. This will ruin any chance of an SME product being fairly ranked on a platform.

## How do the 28 EU Member States define 'fairness' and 'proportionate':

Throughout the P2B text legally Online Platforms must operate with undefined terms such as '*fair(ness)*' and '*proportionate*'. By having these undefined terms, this will cause serious fragmentation throughout the EU – one Member States perspective of '*fairness*' may differ from another. Therefore, this will lead to a litigation and heavy Regulation and this will only benefit the Online Platforms with the financial resources with the individual App Developers while SMEs will be unable to innovate.

## Operating Systems wrongly in the P2B scope:

The goal of P2B was to address platforms that facilitate transactions and intermediate between businesses and consumers (i.e. marketplaces). Operating Systems, therefore, do not logically fit into P2B. This broadening of the definition will now include new generation of cars with integrated OS, European automakers will fall into scope of the Regulation. In more practical terms modern cars would not be allowed to display their maps in their cars because they would have to accommodate mapping services of potential competitors. We understand the Commission proposes more transparency around functionalities of OS in Article 6. This is once again a patchy solution as it could lead to the disclosure of security/ privacy sensitive elements of OS that have little relevance to third parties. This is not sufficiently thought through and should be rejected by Council.

## The internet never forgets:

Under the European Parliament draft, online intermediaries should provide business users with anonymised rating and reviews or any other anonymised and aggregated data related to their rating and review upon request. However, this is not practical as reviews and ratings of products are public. For example, if someone was not happy with a product, they would go onto the online intermediaries' website and write a public review. Therefore, once a business user has received the anonymised review, they can simply conduct an online search of that received anonymised review and then they will be directed to the public (non-anonymised) review.

# COMMENTS TO P2B

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- **WE WELCOME COUNCIL'S GA AS MORE BALANCED AND ENFORCEABLE**
- **We should avoid complex and difficult provisions with unknown implications:**
- Art. 12a /or EP art. 12a and 12b/: *Enforcement* is important for every legislation, but in contractual relations (and freedom/independence) it shall mean comprehensive alternative solutions, suitable for companies' needs, WITHOUT the obligation for creating extra/additional national legislation (and/or additional tasks for public bodies) to implement the provisions, because the aim is to avoid further fragmentation that could harm Digital Single Market.
- EP Art. 6a and Annex I – *Unfair trading practices* – P2B should NOT be a „vessel” to impose such horizontal and general bans in the contracts between the companies.
- *Operating systems* (EP: art. 1(2aa), art. 2(3a) and 2(3b), art. 2a) – this broad notion leaves too much room for unnecessary misinterpretation, lack of legal clarity and certainty, it is NOT technologically neutral.
- [Art. 7 – *Access to data* – platform Customer already had access to own data, but doubts arise on the scope that brings no added value to the business user, internal access to data generated within a transaction is questionable on the scope within explicit consent may reduce effective Customer service]
- **THERE ARE HOWEVER 3 POINTS THE EUROPEAN PARLIAMENT HAVE RAISED:**
  - Art. 2: facilitating the initiating of direct transactions – the scope should be less vast as there are platforms that provide info but does not directly facilitate sales: i.e. What to expect, vivino, daily motion. Council has mentioned it in its proposal.
  - Art. 4: termination and suspension of accounts – detailed exception list would be beneficial for consumers that would not have to wait 15 days for unfair seller or user to stop their activity or application that violates users rights without notice
  - Art. 5 (4) on trade secrets – their protection is crucial both from platform and customer perspective whose data shall be well protected to avoid their misuse i.e. Spam, disinformation, dangerous content, false banking and insurance apps



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# Discussion