



Electronic Retailing Association Europe  
The Association for the Multi-Channel Home Shopping Industry

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Belgique  
Attention: Competitiveness Council Ministers  
Minister Schramböck

24 September 2018

## Industry Letter to EU Competitiveness Council Ministers

Dear Minister Schramböck, Dear Ministers,

### **Platform-to-Business Regulation: A unique opportunity to rebalance the playing field in Europe**

We write to you as leading European businesses and industry representatives to express our support for the proposed Platform-to-Business (P2B) Regulation<sup>1</sup> and to urge you to enact a meaningful and targeted instrument that goes beyond transparency and establishes minimum standards of fairness for the European platform economy.

**The Commission proposal for a P2B Regulation recognises the systemic nature of unfair business practices by certain online platforms and the serious harm they inflict on innovation, competition and consumer choice. The current proposal focuses on transparency, but targeted measures to prevent unfair practices by platforms are needed if the legislation is to promote sustained digital growth.**

Online platforms that mediate transactions between independent businesses and consumers play an essential role in the global economy, accounting for around 60% of private consumption of digital goods and services<sup>2</sup>. Today, a small number of powerful platforms have become the primary gateways for online market access. Millions of European businesses depend on them to reach their consumers.

Our collective experience is that certain platforms frequently abuse their privileged position to impose unreasonable terms and conditions on their business users. Their sheer scale affords them disproportionate bargaining power, preventing businesses users - large and small - from challenging unfair conduct with any meaningful results. Instead of being gateways that facilitate access, these platforms use their privileged position to become gatekeepers to the digital economy.

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<sup>1</sup> Commission proposal for a regulation on promoting fairness and transparency for business uses of online intermediation services, 26.4.2018

<sup>2</sup> COMMISSION STAFF WORKING DOCUMENT, Proposal for a Regulation of the European Parliament and of the Council on promoting fairness and transparency for business users of online intermediation services, 26-4-2018

Examples of unfair business practices we have encountered include:

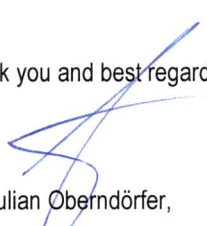
- Discrimination by platforms in favour of their own services, to the detriment or exclusion of competing independent third-party services;
- Unilateral, sudden and frequent changes to terms and conditions, without any possibility for the business user to negotiate;
- Intrusive and unjustified interference in the commercial relationship between business users and their consumers, including arbitrary bans on marketing or necessary technical updates;
- Mandating the use of a particular billing system that imposes discriminatory or disproportionate fees; and
- Arbitrary restrictions on legitimate use of and reasonable access to data, including in the normal course of the provision of the service requested by consumers.

The immediate impact of unfair practices on business users can be severe, including a material loss of competitiveness, commercial viability and customers, and a reduced capacity to innovate and grow new markets. Even more important is the adverse effect on consumer's choice for online goods and services.

**Ahead of the meeting of the Competitiveness Council on 27 September, we stress that transparency alone will not rebalance the relationship between platforms and the businesses that depend on them. The P2B Regulation should prohibit the most harmful business practices, in particular those that reinforce a platforms' privileged position or unfairly favour proprietary services and which have no clear consumer benefit. This would not create administrative or cost burdens for small platforms. On the contrary, clear rules of the game would provide legal certainty and predictability in the marketplace.**

The EU has taken action to prohibit unfair commercial practices and contract terms in specific fields, and from businesses towards consumers. We urge you to seize this opportunity to go beyond mere transparency, establish a baseline of fairness for all businesses and unlock the full benefits of the Digital Single Market for European consumers.

Thank you and best regards,



Dr. Julian Oberndörfer,  
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The Electronic Retailing Association Europe (ERA Europe) is the Association for the Multi-Channel Home Shopping Industry. ERA Europe is the voice and network for businesses that offer innovative products to consumers through audio visual presentation, the internet and other electronic media, according to a recognised code of ethics. ERA Europe advocates and supports the interests of our members and their customers in Europe and the Middle East. Currently ERA Europe represents the interests of 70 European and Middle Eastern members. Please refer to: [www.era-europe.eu](http://www.era-europe.eu) for further information.