

CLIENT ALERT

EU Regulates Online Platforms and Search Engines

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On June 20, 2019, the EU adopted legislation imposing fairness, transparency and effective redress obligations on online trading platforms and search engines in relation to business users. [Regulation 2019/1150](#) will enter into effect on July 12, 2020. The Regulation will apply to providers regardless of where they are located if they deal with business users established in the EU that serve EU consumers.

The Regulation seeks to address the “superior bargaining power” of certain platforms and is the first direct regulation of online platforms by the EU. It may well not be the last. A panel of experts appointed by (outgoing) Competition Commissioner Vestager recently recommended bolstering competition rules with regulation in their report “[Competition policy for the digital era](#)”, a position that the [Commissioner herself](#) has publicly supported.

New Obligations

The Regulation imposes a number of transparency and fairness requirements including:

- *Self-preferencing*: Providers that are also sellers of goods and services on the same platform must disclose any advantages granted their own goods and services.
- *Ranking transparency*: Providers must disclose the main parameters they use to rank goods and services (but not their ranking algorithms which are protected trade secrets) as well as whether ranking may be influenced by payment or other remuneration.
- *MFN clauses*: Providers must state the main economic, commercial or legal reasons for any requirement that traders not offer their goods or services at more favorable conditions elsewhere (“most-favored nation” or MFN clauses).
- *Data access*: Platform terms and conditions must describe what technical and contractual access business users may or may not have to data generated through, or provided to the platform. Providers must also disclose the scope and nature of their own access to such data.
- *Terms and conditions*: Terms and conditions must be easily accessible and drafted in plain and intelligible language. Amendments require at least 15 days’ notice and cannot be retroactive. Business users must have the right to terminate if they do not accept the proposed amendments.
- *Termination rights*: A platform must give business users at least 30 days’ notice before termination and provide a statement of reasons.
- *Internal complaints handling and out-of-court dispute settlement*: Platforms that do not qualify as “small enterprises” must set up internal complaints handling systems and identify two or more mediators with whom they are willing to engage.
- *Enforcement*: Representative organizations and/or public bodies will be able to initiate judicial proceedings against platforms that fail to comply and Member States may establish penalties for violations of the Regulation.

Link with competition law

The Regulation is clearly inspired by concerns similar to those behind recent EU competition cases against several large technology and e-commerce companies. Most conspicuously, the European Commission has in recent years fined Google several billions of euros for platform-based conduct. However, the new Regulation applies without prejudice to competition law and covers online platforms and search engines regardless of whether or not they are dominant. Conduct covered by the Regulation's transparency requirements may nonetheless infringe competition law if carried out by a dominant platform, and certain terms, *e.g.*, "wide" MFN clauses, while not banned by the Regulation, may nonetheless be caught by EU rules on anticompetitive agreements.

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