Online Platforms:

Contrasting perceptions of European stakeholders

A qualitative analysis of the European Commission's Public Consultation on the Regulatory Environment for Platforms

FINAL REPORT

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Abstract

This report analyses the answers to 8 open questions in the European Commission's public consultation on platforms. Themes included the definition of platforms, platforms' treatment of suppliers and customers, constraints platforms face when expanding their business in the EU, and their handling of consumer data.

Executive Summary

The European Commission's public consultation on platforms has generated a very large number of responses from a wide variety of European stakeholders. Across this diverse stakeholder grouping, a number of key themes emerge, which include:

(1) The definition of online platforms was contested and seen as too broad, and many respondents were concerned that such a definition would lead to further regulation which in turn would risk complicating an already complex regulatory landscape. There is perceived partial overlap between the role of platform and that of online intermediary. Many respondents disapprove the creation of a new legal status for online platforms, to focus on the specific activities that online platforms do and better enforce existing regulation, as well as to clarify their domains of application.

(2) When identifying problems, stakeholders showed a greater degree of diversity and contrasting views.
   a. Businesses and associations of businesses were primarily concerned with platforms dominance leading to competition and fair-trading issues, copyright/IP rights protection, and to some extent the fairness of rankings and neutrality of online search results. A number of business respondents would like to see online platforms taking more responsibility for the user-generated content they provide access to.
   b. Associations of consumers and individual citizens were mostly concerned with data protection, and the difficulty to enforce consumer rights.
   c. Civil society associations were mostly concerned with issues related to privacy, anonymity, and censorship. They are concerned with online platforms' "taking down" of user-generated content, which they attribute to online platforms being overly responsive to contestation of posted content by either governments or by private entities, and which they see as an arbitrary form of censorship threatening free speech and diversity of views.
   d. There were some common broad themes around concerns for illegal, criminal and fraudulent online activity, and the difficulty of enforcing existing legislation.
   e. Contrasting views emerged however between businesses and civil society respondents around the question of liability of online platforms on the user-generated content they provide broad access to. While business respondents tend to want to increase the responsibility of some online platforms for the content they publish and the potentially illegal activities they indirectly facilitate, civil society respondents warn of the potential censorship implications.

(3) Respondents reprised these themes when addressing what additional information online platforms should display and in which format. The main theme was increased transparency to help build trust and mutual confidence.

    a. Businesses and associations of businesses suggested clear display of online platforms' compliance with IP rights, clarity over usage of data, transparency / traceability of online service operators.

    b. Associations of consumers and individual citizens suggested displaying display of information on how personal data is monetized by online platforms, clearer terms and conditions, and clearer display of what remedies are available to consumers.

    c. Civil society associations suggested clear displays of the criteria for de-listing content, better information on how user at is tracked and where data is stored, and display of controls to ensure child protection.

    d. Think tanks recommend clear displays of distinction between professional and non-professionals operating on online platforms.

    e. Common themes included displaying the extent which sponsored content is included in generating search results, and better information on reviews.

    f. Types of formats commonly suggested for additional displayed information included the use of icons and pictograms, and layered summaries instead of lengthy texts.

(4) Online platforms' use of information and data is a cause for concern for consumers and citizens, as personal data is used in ways than are not transparent. However, the General Data Protection regulation seems to reassure businesses.

(5) Online platforms identify common constraints to their expansion to new markets in the EU, around non-harmonized sets of complex regulation across EU countries, and application of current EU directives which are not consistent enough within the EU. There is broad support for the Digital Single Market initiative.

(6) Online platforms consider they treat suppliers fairly, and identify various means by which they do. They point to the natural alignment of business incentives and the regularly efficient business terms and practices, including open communication, transparency, compliance with rules, help desks, and efficient APIs allowing customisation.

(7) Access to data on online platforms: A number of respondents in these categories recognize that data is a key resource in the digital economy, and the economic potential of innovative data-driven businesses. A number of respondents express concerns over too much regulation in this area. Some online platforms in particular oppose mandatory portability of data. However, some businesses and consumers welcome an open repository of personal data, subject to consents, that would act as an "open platform".

I.   Introduction

This report presents the results of the qualitative analysis of the open responses to "Social and Economic Role of Online Platforms" section of the European Commission's public online consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy.

The following eight (8) open questions analysed in this report are:

(1) Please explain how you would change the definition of "online platform" [from the definition provided in the consultation].
(2) Please list the problems you encountered, or you are aware of, in the order of importance and provide additional explanation where possible [following the question: "Have you encountered, or are you aware of problems faced by consumers or suppliers when dealing with online platforms?"].
(3) Is there any additional information that, in your opinion, online platforms should be obliged to display?
(4) What type of additional information in and what format would you find useful? Please briefly explain your response and share any best practice you are aware of.
(5) Please share your general comments or ideas regarding the use of information by online platforms.
(6) If you own/develop an online platform, what are the main constraints that negatively affect the development of your online platform and prevent you from extending your activities to new markets in the EU?
(7) How do you ensure that suppliers of your platform are treated fairly?
(8) Please share your general comments or ideas regarding access to data online platforms.

The "Online platforms" section of the questionnaire contained a total of 27 closed, 4 semi-open, and 21 open questions.

II.   Methodology
Description of the data
The respondents answered the online consultation either directly through on the online consultation survey, complemented in some cases through sending answers via the "Functional Mail Box", sometimes accompanied by position papers.
The respondents self-identified into distinct categories:

(1) A business, including suppliers using an online platform to provide services
(2) An association or trade organization representing businesses
(3) An association or trade organization representing consumers
(4) An association or trade organization representing civil society

(5) An online platform

(6) A research institution or Think Tank

(7) A public authority

(8) An individual citizen

(9) Other

This report analyses all the responses from the categories (1) through (6) and (9). The Commission did not request responses from public authorities to be analyzed. A rapid analysis of the responses from "individual citizens" was also undertaken although a comprehensive analysis of this category would require more time given the volume of data to be processed.

Among the "other" respondents, a significant number of respondents had wrongly classified themselves, as their self-description indicated that they were businesses or various types of associations. Whenever the origin of these respondents was clear, these responses were reclassified according to their appropriate categories.

General comments on the sample composition

The sample of responses contains 1006 replies through the EU survey and 31 replies through the Functional Mail Box (FMB). The sample cannot be considered a representative sample of all European businesses, associations or citizens, for the following three reasons. The distribution of categories of respondents, as they self-reported, can be found in Table 1.

Table 1: Number of responses per category (as self-reported)

	Number of replies via EU survey	Number of replies via FMB
An individual citizen	410	0
An association or trade organization representing businesses	185	7
Other	149	1
A business, including suppliers using an online platform to provide services	119	6
An association or trade organization representing civil society	36	5
An online platform	43	0
A research institution or Think Tank	29	5
A public authority	23	3
An association or trade organization representing consumers	12	0

A deeper examination of the respondents which self-reported as "other" revealed that most of these respondents misclassified themselves: in fact, among 149 "other", there were: 32 businesses, 51 associations or trade organizations representing businesses, 5 associations or trade organizations representing civil society, 3 associations or trade organizations of consumers, 2 public authorities, 3 online platforms, 52 citizens, and 1 other. The analysis of the responses was done on the basis of the corrected set of allocated responses, as reported in Table 2.

Table 2: Corrected number of responses per category

	Number of replies via EU survey	Number of replies via FMB
An individual citizen	462	0
An association or trade organization representing businesses	236	7
Other	1	1
A business, including suppliers using an online platform to provide services	151	6
An association or trade organization representing civil society	41	5
An online platform	46	0
A research institution or Think Tank	29	5
A public authority	25	3
An association or trade organization representing consumers	15	0

First, there is an evident self-selection of respondents' organizations which have a strong incentive to influence the decision-making process of the European Commission, as attested by the over-representation of a select group of industry representatives or members including music, taxis, hospitality, luxury goods, telecommunications, whose business model is strongly impacted or disrupted by the business practices of a subgroup of online platforms.

Second, it is also evident from the content of the responses from "businesses", "individual citizens" and "others", as well as from the websites of a number of associations, or subsidiaries of businesses, that in a number of cases a deliberate orchestration of responses by associations or businesses has occurred, whereby these had encouraged their subsidiaries or members to respond "en masse" following guidelines on how to respond to the EU online survey, resulting in

either word-for-word or extremely similar textual answers in repeated sets of responses. The number of these additional responses might reflect how strongly some constituencies feel about online platforms, but may be disproportionate relative to their economic weight.

Third, a significant number of responses are from "anonymous" respondents. The anonymity of such respondents makes it difficult to ascertain when it is the case that these anonymous respondents belonged to associations who have already responded, leading to potentially significant numbers of duplicated responses (for which there is some evidence) and further noise in the sample.

Last, it is difficult to ascertain the appropriateness of the sample composition because at no point did the survey designers indicate a desired composition of the survey sample for the purpose of the survey main research questions.

Methodological approach for data analysis: qualitative rather than quantitative

For these reasons a direct quantitative analysis, i.e. simply tallying responses, would lead to heavily biased and therefore misleading results.

Given the limitations of the sample, the best use of the data is a qualitative analysis of the textual responses, aimed at identifying themes and patterns in the data.

The advantage of a rigorous qualitative approach, focusing on the open and semi-open answers, is that it can exploit the richness of textual answers to identify repeated themes that cut across answers. It can also reveal patterns of responses from categories of respondents. It is therefore valuable as a tool to identify themes of concern and of importance to respondents, and situate them in the context of respondents' own framing and expressed experiences. The methodology used for data analysis is detailed below.

Data analysis

The following method was systematically applied across all sets of questions. It was an iterative method comprising of several steps:

- Reading the entirety of responses pertaining to each Question.
- For each question, identifying 1st order concepts: these are specific concepts which are expressed by respondents in their own words using similar wordings and/or convey similar ideas, and which appear throughout a number of responses. Examples include, for Question (1) ["How would you change the definition?]: Definition too broad; Definition not specific enough; Internet Service Providers should be included;

Operating systems should be included; Open or non-commercial platforms should be excluded; How does the definition relate to previous definitions such as Internet Society Services

- Re-reading the responses and coding these 1st order concepts whenever they appear.
- Generation of 2nd order themes: these are the themes which the researcher generates as she identifies commonalities and differences across thematic groupings of 1st order concepts. They are not expressed as such by respondents, but characterize a deeper, common meaning pertaining to logical groupings of 1st order concepts. Examples include for Question (1): Scope of the definition; Overlap with existing definitions.
- Re-reading the responses and coding these 2nd order themes whenever they appear.
- Generation of aggregate dimensions: These are dimensions that tie together several 2nd order themes. Examples for Question (1) include: Clarifying purpose of the definition; Confusion with existing regulations; Recommendations for processes to achieve better regulation.
- The collation of the systematic write-up of 1s order concepts, 2nd order themes, and aggregate dimensions for each question, constitutes the final analysis.

III.   Results

Question (1): Please explain how you would change the definition of "online platform" [from the definition provided in the consultation].

The systematic analysis of respondents' responses for this question has revealed concerns and suggestions that cut across the categories of respondents, about (1) Scope of the definition, (2) Purpose of the definition, and (3) Suggestions for not only a better definition but a better regulatory approach.

It is important to note that the concerns raised about definitions were shared across the categories of respondents. There were no obvious divergences of views, which are more apparent in the responses to subsequent questions.

Scope of the definition

Most of the answers to open questions indicate that the scope of the current definition proposed in the survey is inadequate, for the following reasons:

(1) It is too broad and not specific enough
(2) It should include other types of platforms which are currently excluded from the definition
(3) Or, alternatively, should exclude certain types of platforms or examples which are presented in the definition.

Common themes ("1st order concepts") associated with these Scope concerns include:

- Too many disparate types are included in this "overly broad definition"
  - A number of respondents thought this broad definition would encompass all internet activities and services
- Why just "online" platforms?
  - A number of respondents indicated that the broad definition merely reflects the role of market intermediaries – in which case they question why a special treatment for online intermediaries is required, as opposed to all other kinds of platforms, including offline intermediaries. A representative example of this concern is: "as far as we know, there is no definition for offline platforms, so why should there be for online platforms"?
- Disagreement about who should be included (indicating a correlation with respondents' business models/ orientation):
  - Internet Service Providers (ISPs): a number of respondents indicated they should not be excluded, and/or express they do not understand the rationale for excluding them
  - Operating Systems (such as iOS) as well as App Stores : a number of respondents indicated they should not be excluded, and/or express they do not understand the rationale for excluding them
  - Netflix and other content providers: a number of respondents indicated that Netflix should be excluded
  - Various other suggestions for what should be included: advertising exchanges, credit cards/payment services, Cloud services, Internet-of-Things, ISPs who would bundle content services
- Proposed axes of further differentiation within the broad category of platforms: Respondents indicate that the definition should allow distinct subcategories such as:
  - B2B vs B2C ; C2C; C2B[1], or combination thereof. Some propose to exclude one or more of these categories
  - Platforms that act as a "passive conduit" versus those that are more "active" or have "editorial control over content": this often repeated suggestion is related to the recurrent concern about liability, as the current proposed definition does not allow to differentiate between those actors who have a responsibility over content and other more passive hosts / conduits (see comment later about Internet Society Service provider and their liability)

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[1] B2B = Business to Business; B2C = Business to Consumer; C2C = Consumer to Consumer; C2B = Consumer to Business

- Platforms that simply link individuals, versus those that link professional or commercial organizations, indicating overlap with the "sharing / collaborative economy". Taxi companies (disrupted by Uber) and hospitality companies (disrupted by Airbnb but also sites such as TripAdvisor) in particular oppose this.
- Some propose to separate ex-ante "legal" operations from "illegal" operations.

Purpose, feasibility and regulatory implications of the definition

Looking beyond the descriptive set of suggestions as to what to include and what to exclude from the definition, I have uncovered an underlying set of deeper concerns which runs through the responses, "2nd order themes". These themes include concerns about the purpose of the definition, how feasible or worthwhile it would be to have a "good definition", and the implications of the definition with regard to regulation.

- Questions about the purpose of such as definition and requests for more clarity about it:
    - Many express concern about the lack of clarity and explanation as to why a definition for online platforms is needed. A characteristic comment: "It is very difficult to assess the utility of any definition without knowing its purpose".
    - Many businesses or associations of businesses assume and/or express concern that this definition is presented in order to legislate online platforms as a distinct category
    - A number of associations of civil society indicate they welcome the general attempt to define online platforms as they do welcome regulatory scrutiny onto online platforms
- Is the attempt to define online platforms feasible and/or worthwhile?
    - Doubts as to whether any definition of platforms is feasible
        - As it would not be "future-proof" nor robust: a number of respondents express that in the highly dynamic economic and technological environment characterizing internet businesses, any definition would have to be revisited too often to provide a useful basis for a stable regulatory framework
    - Doubts as to whether attempting to create such a definition is a worthwhile endeavour
        - Some express the view against all kinds of ex-ante regulation on online platforms and see the attempt to characterize them as a separate entity as something inherently leading the way to regulation, which they oppose in principle

- Some point to an implicit assumption conveyed by the survey: that online platforms are a subset of all online content and should be treated distinctly
- Some point to that as a basis for regulation, attempting to define platforms is the wrong way to start, as they indicate that platforms are merely a business model, rather than a sector, and as such might not be amenable to being regulated as such

- Implications for regulation: Concerns and warnings about overlap with other existing definitions, which would lead to possible confusion between a platform regulation and other, partially overlapping, sets of existing regulations
  - Many indicate that it is not feasible nor worthwhile to attempt to formulate a "one-size-fits-all" regulation based on an overly broad definition
  - Many refer favourably to the ISS (Information Society Service provider) category defined in the E-Commerce Regulation, and express concern or lack of understanding as to how the proposed definition for online platform differ from the existing ISS definition, and why it is needed at all.
    - Many express concerns that this new definition of an online platform category and the ensuing possible regulation might disrupt the exiting liability regime. The question of liability is recurring, and for some respondents it seems to have been already addressed in the case of ISS intermediaries.
  - Concerns about creating "'overlapping rules" and "confusing regulation":
    - There is already existing regulation, some of it sector-based (E-commerce regulation, Telecommunications, Audio Visual), some of it issue-based (data privacy, copyright), some of it associated with identified roles (for example Information Society Service provider)
    - A characteristic comment relates to concern over "confirming a new definition leading to new regulation which would lead to additional regulation of already-regulated entities"
    - Another characteristic concern is that "generic concerns about platforms overlap with wider issues, including privacy and security, copyrights and privacy, competition, consumer rights and more. Regulation on platforms risks therefore overlap with existing rules at many levels" [...] "Creating overlapping or conflicting legislation must be avoided as it would lead to legal uncertainty".
    - Suggestions that "any new EU-level legislation relating to platform should be without prejudice to the application of copyright and other existing laws depending on the specific activities and particular facts"

- Concerns regarding lack of clarity about scope of application of new regulation applying to hybrid types of businesses which may well fall within several overlapping characterizations

Survey Suggestions: Focus on regulating around activities and issues rather than platform status

Further analysis of the underlying dimensions that cut across the "2nd order themes" highlights a number "aggregate dimensions". These are the main concerns and concrete suggestions around the definition question, which rally clusters of respondents across categories. They include:

- Desire for a level-playing field for service providers of similar services, whether they are offline or online
  - Desire for clear and consistent regulation
  - Calls for better enforcement of existing rules
- Lack of appeal and lack of persuasive power of a regulatory approach that instigates a new type of regulation on the basis of a new unclear and contested "identity" or "status" of platforms.
- A preferred approach presented, which rallies respondents across all categories, is to regulate around "activities" which businesses undertake, rather than focusing on "platform" status and which are likely to map better with existing regulations
  - Examples of activities could be: search engines, aggregators, content providers
- In parallel, another preferred approach is to identify issues (as in copyright issues, data protection issues, consumer rights) which firms might find themselves contravening, and then assess whether existing regulation does not resolve the problem. One characteristic comment noted: "Before seeking to provide a definition, the EC should clarify what public concern need to be addressed, including if any cannot be dealt with under existing legislation"
- A key cross-cutting theme is the question of the responsibility and liability of platforms, and the extent to which existing regulation addresses this issue.
  - Views differ across respondents on whether it does (as some indicate that a few online platforms abuse the protection from "internet service intermediaries" whereas they are really engaged in the distribution of content), but the question of liability is recurrent.

Question (2): Please list the problems you encountered, or you are aware of, in the order of importance and provide additional explanation where possible [following the question: "Have you encountered, or are you aware of problems faced by consumers or suppliers when dealing with online platforms?"].

Contrary to the pattern of responses to the Definition question, where the concerns identified were shared across respondents' categories, here there were clusters of issues which were of greater concern to specific categories of respondents. The first order concepts consisted in the list of all possible problems that werementioned in their own words by the respondents. The second order themes were generated in identifying the commonalities across these problems

The problems (2nd order themes) identified can be regrouped into the following categories (aggregate dimensions):

	Consumer protection: issues affecting consumer rights
	Competition: issues affecting the ability of businesses to compete fairly
	Fair trading: issues affecting businesses in their commercial dealings with online platforms
	Issues affecting **citizens and civil liberties**

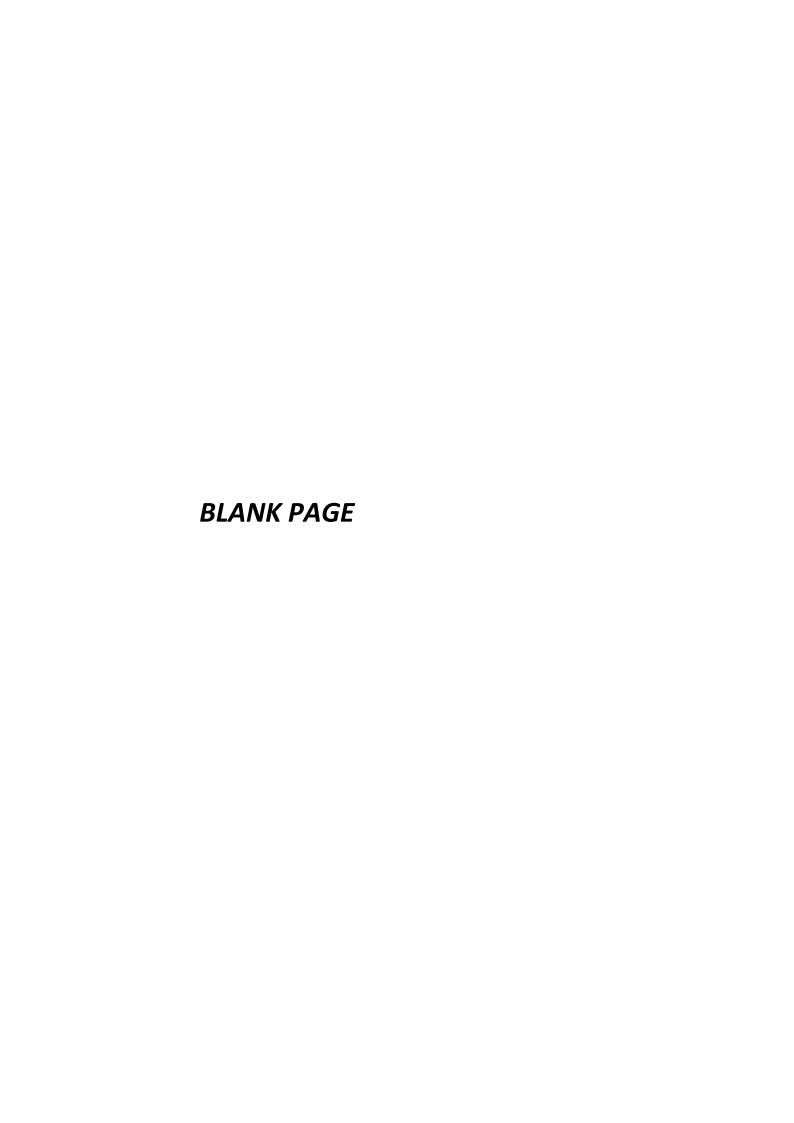Tables 3 and 4 indicate the problems primarily encountered by various categories of respondents.

Table 3: Problems primarily encountered by businesses

Problems encountered	Rights infringements		Inconsistent regulation		Unfair trading practices		
	Fraud / counter-feiting	Piracy / copyright / intellectual property rights infringement	Lack of level-playing field	Lack of consumer protection	Lack of choice	Unfair licensing / parity clauses	Online search specific: lack of transparency and non-neutrality of rankings
A business, including suppliers using an online platform to provide services	🟥	🟥	🟥	🟥	🟥	🟥	🟨
An association or trade organization representing businesses	🟥	🟥	🟥	🟥	🟥	🟥	🟥
An association or trade organization representing consumers	🟥	🟨	🟩	🟨	🟩	🟥	🟨
An association or trade organization representing civil society	🟨	🟨	🟩	🟨	🟩	🟩	🟨
A research institute or think tank	🟥	🟥	🟨	🟨	🟩	🟨	🟨
An online platform	n/a	n/a	n/a	n/a	n/a	n/a	n/a
An individual citizen	🟨	🟩	🟩	🟨	🟩	🟩	🟩

🟩 Low concern   🟨 Moderate concern   🟥 High concern

Table 4: Problems primarily encountered by consumers and citizens

Problems encountered	Consumer rights					Data Protection				Regulatory Enforcement	
	Lack of access	Difficulty to switch	Lack of enforcement	Lack of consumer protection	Consumer data protection	Lack of transparency on personal data collection and use	Lack of respect for data privacy / misuse of personal data	Anonymity / right to be de-listed or forgotten	Censorship / freedom of expression	Contract enforcement	Illegal / criminal activity
A business, including suppliers using an online platform to provide services	Moderate	Moderate	Moderate	Moderate	Moderate	Little	Little	Little	Little	Moderate	High
An association or trade organization representing businesses	Moderate	Moderate	Moderate	Moderate	Moderate	Little	Little	Little	Little	High	High
An association or trade organization representing consumers	High	High	High	High	High	High	High	Little	Little	High	High
An association or trade organization representing civil society	Moderate	Moderate	Moderate	Moderate	High	High	High	High	High	Moderate	Moderate
A research institute or think tank	Little	Little	Little	High	High	High	High	High	Little	High	Little
An online platform	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
An individual citizen	Moderate	Moderate	Moderate	High	High	High	High	High	High	Moderate	Moderate

Legend:
- Green: Little concern
- Yellow: Moderate concern
- Red: High concern

- Consumer protection issues (purple)
- Competition issues (blue)
- Fair trading issues (pink)
- Issues affecting citizens and civil liberties (green)

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Fraud, counterfeiting, piracy, and copyright / intellectual property rights infringement

A number of businesses express concern about the role of platforms in the widespread selling of illegal copies / fake products on fraudulent websites – a phenomenon whose reach has been vastly expanded through internet e-commerce. While this problem is not specific to online platforms, this problem is seen by many business respondents as aggravated by the combination of the expansive reach and the behaviour (the lack of taking responsibility / lack of liability) of online platforms regarding content accessed through the platform.

- Who is harmed:
  - Consumers are allegedly harmed, as:
    - They are misled as to the legality or quality of the good
    - They have no means of redress for the illicit good they have purchased
    - They often download malware and viruses unknowingly
  - Businesses claim to be harmed, as their IP rights / trademarks /copyrights are misused and their brands negatively impacted.
    - Specific cases of creative industries, where platforms facilitate user-uploaded content which breaches content holder rights.
- Role / implication / involvement of platforms in this harm:
  - Some businesses, particularly from industries that have suffered from piracy, counterfeit, and copyright infringements (e.g. music, images, luxury goods) indicate that online platforms, "who have no obligation to ensure the traceability of the trader who put the counterfeited good on the platform", "nor are they liable for the selling of illicit products on their platform", "do not take enough responsibility", as they do not "engage enough" or "proactively enough" with rights holders in the fight against illicit goods.
    - Industry-specific concerns and allegations: Music industry: Online intermediaries and content aggregators websites, specifically those who provide access to embedded contents and hyperlinks, are claimed to be creating problems to content-creators as the right-holders' consent is not obtained before their work is made available online.
    - Industry-specific concerns and allegations: Video gaming industry: concerns about pirate sites and their association with fraud and malware
  - These business respondents suggest that online platforms are mostly interested in increasing traffic to their website, irrespective of the legality of the activity, and

that therefore the incentives of platforms are not well aligned with those of rights holders or those aiming to fight fraud.

Inconsistent regulation for similar services

A number of businesses claim that there is a problem stemming from the fact that entire sectors that are subject to sector –specific rules now in fact compete with online platforms in these same sectors, yet those online platforms are not subjected to the same regulations. Examples include media services (regulated under the Audio Visual Media Service Directive AVMSD); telecommunications and taxis.

- Who is harmed:
  - Businesses claim that consumers are harmed as
    - "Protection standards" differ depending on whether consumers consume similar services through online platforms vs. through dedicated services. For example consumers are "not provided with the same level of protection whether they catch a video via an online platform or an audiovisual media service". Most of these claims about consumer protection standards emanated from businesses that operate in these disrupted sectors.
  - Think tanks and research institutions are concerned for
    - Citizens and consumers / minors / citizens due to their inconsistent protection and the lack of liability of online platforms for content provided through online platforms
    - Businesses in content-creation industries due to the lack of clarity around the proper application of the legislative framework
  - Businesses claim to be harmed by
    - Operating in regulated services sectors that are being disrupted by online platforms claim that, as online platforms have become "a substitute of traditionally dedicated services", yet are not subject to similar regulatory constraints, this constitutes a form of unfair competition.

Perception of unfair trading practices

This set of issues combines businesses' claims of unfair competition and of unfair commercial treatment as suppliers or buyers to online platforms. The problems encountered, expressed through various symptoms, all stem from the perceived abuse of a

strong bargaining power imbalance across the supply-chain between a small number of dominant online platforms and less powerful businesses. These problems are made worse by the fact that online platforms play a dual role vis-a-vis other businesses: some online platforms do not only transact with them in a capacity of supplier/buyer, but they also compete with them on vertical markets. This is why it is difficult to disentangle competition issues from supplier-buyer trade issues, as the two overlap and interact.

- Dominant platforms: In the view of many business respondents, a small number of online platforms have become dominant, "controlling critical access points"(such as operating systems, app stores, and popular apps) and abuse their dominance in harmful ways

    o Businesses claim to be harmed by

        ▪ Lack of choice for suppliers/buyers who transact with these platforms

        ▪ Unfair licensing or unfair terms, due to low bargaining power for businesses

            - whose online visibility depends on these platforms

            - or, as in the music industry / song writers and composers, who feel forced to accept unfair licensing terms from online platforms, which, if these terms would not be accepted, "threaten to simply not license at all and rely instead on "Safe harbour".

            - Unfair "parity clauses" which service providers feel compelled to accept, as in when in the past Booking.com required the hotels to always offer Booking.com the same or lower rates than offered through other sales channels. Such parity clauses have been found to have a detrimental effect on competition.[2]

        ▪ Lack of transparency

            - on platform tariffs : "intermediation rates vary from 5% to 30% of the final price", including "20% for Uber and Airbnb"

            - on use of data: this gets echoed in the section "data protection issues below)

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[2] Booking.com settled in 2015 with France, Sweden and Italy's competition authorities, but the German competition authority filed antitrust charges against Booking.com prohibiting the continued use of "best price" clauses.

- makes it hard to challenge due process, for example in the case of discrimination (cases of Airbnb), or Uber drivers being de-activated on the basis of customers' review

  ▪ Online platforms use of consumer data

    - Some businesses frame the issue as "data as currency"

    - Online platforms not sharing access to consumer data with businesses

      • Some businesses find that when consumers book or connect to their services through an online platform, that platform does not share consumer data with the service provider. This is perceived as unfair by such providers.

  o Businesses claim that consumers are harmed

    ▪ Lock-in of consumers in "vertical silos" with lack of "interoperability" (this reflects claims from booksellers about eBooks, but also from telecommunication operators)

- Online search and comparison website platforms raise specific concerns:
  o Contested neutrality of online search results, and resulting alleged harm:

    ▪ Associations of businesses claim to be harmed, claiming that they do not trust the neutrality or validity of search results by online search engines and/or comparison website platforms, such as Google, or travel and hospitality websites, claiming that the services being most visible on search results reflect the private incentives of search engines as part as their non-search business activities. Accusations against online search platforms is that they end up favouring in the search results :

      - Their own vertical market offering over external suppliers /SMEs, and do so in a non-transparent way.

      - Or those of platform-favoured vendors who pay them the highest fees, as opposed to neutral or fair search, , and do so in a non-transparent way. A number of respondents indicate Google search as well as online travel agencies (TA) as having such problems.

  o Lack of transparency / opacity of how results are obtained

- ▪ Research institutions and think tanks claim that consumers and citizens are harmed by the lack of transparency on:
  - Which parts of search results are sponsored content.
- ▪ Associations of consumers are concerned about:
  - False reviews, paid reviews (skewing results)
  - Lack of clarity of criteria for ranking and customer satisfaction

Consumer rights issues

Individual citizens, consumers, and associations of consumers are concerned about:

- Lack of access to commercial services delivered by platforms, due to:
  o Geo-blocking: Refusal from some platforms to ship goods to some countries
- Difficulty to switch to other platforms providers
  o
  o Example: "I could not move my user data in an open format to move my business to a different service"
- Lack of enforcement of consumer protection rights
  o Overly complex "Terms and Conditions"
  o Difficulty to complain for faulty services
  o See section below on "Difficulty to enforce existing regulation"
  o See section above on "Fraud and Counterfeiting"
- Consumer data protection issues
  o See section below on "Data protection issues"

Data protection issues

Think tanks and research institutions, as well as associations of consumers, and associations of civil society, focus more than businesses on this set of issues. They share the following concerns about some online platforms' behaviours:

- Lack of transparency about personal data collection
  o Unclear and overly complex "Terms and Conditions"
  o Unclear and non-transparent exploitation of personal user data for commercial purposes, as when personal data is sold to third-parties
  o Concerns about "online tracking" and "profiling", concerns about "too much" personal data being collected, and "long data retention policies"

- Lack of respect for data privacy, misuse of personal / sensitive data, and security data breaches
  - Weak respect for data security and data privacy
    - Some associations and citizens are concerned that online platforms are "forced to comply to harmful legislation" to share user information (see Anonymity below). Associations and citizens concerned about "government mass surveillance"
  - Some associations frame the issues as rights to privacy and "rights to encryption"
    - Poor or non-implemented security protocols and measures
    - Not possible for users to delete their own user data
- Anonymity / Right to be forgotten / rights to be "de-indexed"
  - These are contested issues, raising concerns, on the one hand on whether there is not enough provision of these, or whether these rights are being abused
- Censorship / freedom of expression issues, as when online platforms are seen to "unilaterally" and "arbitrarily" decide to "block" or "take down" content
  - Examples of book selling platforms de-listing e-books, representing for some associations "a danger for cultural diversity and freedom of expression"
  - Examples of blocked content, for political reasons, as when "videos which provoked strong reactions in the Middle East" were blocked in these countries following "informal requests from governments in these countries without court judgment"
  - Examples of content being taken down by online platforms due to allegations of copyright infringement by content holders, but here, the associations claim that copyright was not infringed yet the platform decided to take the content down.

Difficulty to enforce existing regulation

The complexity of the regulatory framework and the lack of enforcement are seen as a problem for consumers, businesses and platforms

- Difficulty to enforce regulation: Which laws apply? This set of issues refers to the fact that some respondents argue that in a number of cases it is difficult to assess with regulation should apply
  - Location:

- - "It is almost impossible for users, partners, and platform maintainers to apply fragmented national laws to situations where both the creation and the use are transnational"
  - o Difficulty to enforce rights because of lack of information about consumers;
    - Inability for some online suppliers (e.g., content creators) to respect consumers rights as in the case where "content creators do not have enough information to handle consumer complaints about their products, as part of the information required to process these complaints might be in the hand of distribution platforms"
  - o Tax:
    - A number of respondents claim that some online platforms do not pay national tax
  - o Industry specific regulations
    - A number of respondents claim that online platforms which for example deliver content should abide by the same directives that apply to video and media

- Illegal / criminal activities associated with Some types of online websites / activities which conflate several problems:
  - o Illegal websites: gambling, sharing content without pay, porn
  - o Which at the same time: do not pay tax, constitute fraudulent activities, and infect consumers with "malware" and "viruses"

Labour rights

A small number of associations for civil society and individual citizens indicate concern about:

- Unprotected rights of workers in online tender for work assignments, which exclude workers from social security systems
  - o Example: UNI Europa (European Services Worker Union, 7 million members across Europe) and TCO (TCO is a professionals union in Sweden) provided the same answer word-for-word): UNI Europa and TCO are concerned about "the rising number of so-called crowdsourcing platforms. Such platforms allow companies or individuals to recruit labour flexibly, cheaply, and without territorial restrictions. So-called requesters publish online tenders for work assignments for which job seekers can apply. Workers winning contracts on crowdsourcing portals usually operate as freelancer, an employment status exempting them from standard employment legislation and the rights to information, consultation, and co-determination that

employee status grants. UNI Europa considers it necessary to empower such workers vis-a -vis platform operators in particular, as their wages and working conditions are heavily influenced by the terms and conditions that are applied on such platforms and are, at present, unilaterally imposed by platform operators."

Question (3): Is there any additional information that, in your opinion, online platforms should be obliged to display?

Most respondents across all categories, excluding platform respondents, recommend greater transparency and application of EU directives in order to increase trust in online platforms

Businesses and associations of businesses express a common set of recommendations:

Ranked in order of frequency mentioned:

- Indication of copyright compliance e.g., images on site, rights holders origins [B2B]
- Better information about how consumer data is used and sold, and highlighting how and when user data is being tracked [B2C]
- Improve traceability, through clearer contact information, including registration and business licences [B2B & C]

In much lesser frequency, other recommendations were made:
   o More transparency about promotional activity, which can influence search results [B2C]
   o More transparency about "price guarantees" also called "parity clauses", e.g., on OTA (online travel agencies, i.e., travel and hospitality platforms), as when "a parity clause that insists the supplier cannot give a cheaper price to another OTA, or indeed feature a cheaper price on their own website".
   o Better information about security rating of systems supporting service provision/data protection [B2B]

Interspersed with these responses there are some recurring observations:

- Avoid over-regulation, particularly if to compete with USA
- Any new rules must be applied horizontally, i.e., online and offline
- Regulations must increase consumer confidence
- See better enforcement, e.g., Article 5 of e-Commerce Directive
- Improve consumer trust, by making it easier for consumers to complain.

Think Tanks recommend:

In no particular order (Small sample, little consensus within the sample):

- Display the extent to which sponsored content is included in generating search results and in the ordering of their appearance
- The requests for disclosures should not be the same for all originators of data: Care not to confuse "professionals" with "non-professionals" operating through platforms, as in the case of airbnb where respondents indicate that a number of suppliers to the platforms are indeed professional hospitality who operate multiple rentals which they own.
- Consumer data protection (display clearer info)
- Clearly enable users to switch-off tracking
- Display clear criteria for content likely to be de-listed

Civil society organisations recommend:

In no particular order (Small sample, little consensus within the sample):

- Clearly justify information required by consumers.
- Data protection laws should be equally applied online and offline, including indication of where data is stored
- Show clearly what remedies are available to consumers
- Display information and controls to ensure child protection
- Ownership/contact info to be shown
- Clear signs for platform inter-operability
- Compliance with Article 5 of e-Commerce directive.

Consumers' organisations recommend:

In no particular order (Small sample, little consensus within the sample):

- Display the extent to which sponsored content is included in generating search results and in the ordering of their appearance
- Display information to allow authenticity of reviews/feedback
- Access to info about platform business model, i.e. monetisation of personal data
- Apply existing EU Directives properly, as above
- Clearer signalling of data protection and data storage (location)

Question (4): What type of additional information in and what format would you find useful? Please briefly explain your response and share any best practice you are aware of.

Answers to this question reprise the themes of the previous question across all the respondents In addition, some respondents express concern that information should be easy to understand and recognize that lengthy texts which are subject to frequent changes are not helpful.

- Presenting the information in short and readable way
- Suggestions include of using icons and pictograms, instead of lengthy texts
- Summary of key points instead of long Terms and Conditions, filled with "legalese"
- "Layered" content with hierarchical presentation

Question (5): Please share your general comments or ideas regarding the use of information by online platforms.

The responses to this question reprised in a large measure the answers to earlier questions on problems. Common themes across respondents included concerns about misuse of personal data. But there were also a number of responses which identified data and in particular aggregate data as a key resource for product / service innovation in the digital economy.

Businesses and associations of businesses

- A number of businesses express confidence in the General Data Protection Regulation
- Some express concerns about "automatic filtering" and "recommendation algorithms" which select out content and creative work and favour "blockbusters", creating less diversity

Associations of consumers, associations of civil society, and think tanks:

- More transparency is needed on the use of personal data
- Stronger constraints are needed on the commercial use and the transfer of personal data
- Concerns about the data which online platforms allow to be "harvested" by government agencies.

Individual citizens:

- "Information about a person should be his/her property"
- Some would like" an annual statement of [their] personal data used and in which context the data was used
- Some suggest that aggregate data is a key resource for innovation, and suggest that it could be made "open source"

Question (6): If you own/develop an online platform, what are the main constraints that negatively affect the development of your online platform and prevent you from extending your activities to new markets in the EU?

There were a number of common themes across the responses. However, the small sample of responses so difficult to draw broad conclusions.

Some respondents preface their response by noting that there are different types of online platforms (each with its own challenges): search, social networks, apps, auction or sales. This implies that not all platforms will face similar constraints depending on their business model.

The responses, ranked in order of frequency, include:

- Legal issues: complex and non-harmonized sets of laws, such as intermediary liability law, intellectual property law, data protection laws, consumer protection law, national laws and exceptions. Many want common (harmonised) EU rules and laws or for home-state rules to be designated the lead within the EU

- Application/enforcement of existing Directives should be more consistent across the EU

- Facebook, Google, booking.com all support the Commission's digital single market agenda – all note fragmentation is a major problem e.g. when compared with the USA – hence need for harmonization of rules and regulations

- Online/offline legal rules also need harmonization, e.g. post, waste, labelling

- Several want easier data exchange in the EU and better interconnection, to be able to generate economies of scale/network effects

Others mention:

- VAT (harmonization)
- User data and data protection (harmonization)
- Complexity of dealing in multiple languages and inadequate translation engines

- Need to avoid legal uncertainty
- Some mention that Google's dominance affect their ability to develop and expand. Examples include when Google search results present preferential display of their own services, for example because of the results prominently featuring a map which indicates Google+ local reviews results in priority, thereby obfuscating other potentially more relevant results (TripAdvisor, Yelp).
- USA rules on music differ, which are claimed by some to be more favourable to online music business development

Question (7): How do you ensure that suppliers of your platform are treated fairly?

There were a number of common themes across the responses. However, the small sample of responses so difficult to draw broad conclusions.

The responses, ranked in order of frequency, include:

- Offer fair terms and conditions, as transparency of relations help underpin trust with suppliers
- Regularly maintain the alignment of incentives of platforms and their suppliers through regular feedback and service quality improvements
- Avoid competing with suppliers or allow switching to other suppliers
- Fair treatment is provided by some online platforms when they do not force suppliers to standardise their offering, but instead, allowing them to customise and differentiate their offers (e.g. hotels, homes to let)
- Reward successful or reliable suppliers (e.g. with star awards)
- Provide efficient help desk, e.g. to customise website, or provide on-line support services
- Actively help protect IP or copyright, and comply with regulations

Question (8): Please share your general comments or ideas regarding access to data online on platforms.

A number of respondents in these categories recognize that data is a key resource in the digital economy.

Businesses, consumers, think tanks:

Respondents in these categories make the following suggestions:

- Some express concern that over-regulation around data could hamper competition in innovation in the digital economy
- Data-driven innovation can be an engine of growth for Europe
- Some suggest that online platforms should not act as "gatekeepers" or hold all this data just for themselves, but instead that data could be used as "open platforms" by many to innovate.
    - o Instead, suggestions are made that online platforms should share it to create "holistic profiles of interests and behaviours", - subject to appropriate consumers' consent
    - o Some citizens suggest that such data repositories should be made "open source" to facilitate innovation on new products and services.
- Fight against fraud:
    - o Metadata about who owns sites should be available, and would be helpful in the fight against fraud and crime.
- Transparency:
    - o Consumers should be made aware of data transfer and cession of their data.

Online platforms:

- Data-driven innovation
    - o Data-driven innovation can be an engine of growth for Europe, and new business models involving data are creating value
    - o Some suggest that data analysis has always been a fundamental part of business operations, whether online or offline.
- Data portability
    - o Some suggest that "data portability is a good thing but "should not be mandatory"
        - They note that it is "not mandatory for offline platforms"
        - They suggest that any new regulation that would make data portability mandatory would create costs (for incumbents as well as for new start-ups) without clear benefits.

IV.   Conclusion

Online platforms have become an increasingly important arena for Europeans' social and economic wellbeing. By making use of advances in technology and global connectivity, online platforms facilitate fundamental and basic activities such as buying, selling, creative expression, and access to tools and resources. Private companies have created and control the functioning of online platforms. The value they provide to millions of users has resulted in an increase in public scrutiny and expectations. This EC consultation has revealed a variety of stakeholder perspectives on online platforms.

The survey indicates that respondents recognize online platforms to be an important driver of economic activity and growth in Europe. Most respondents welcome the Commission's efforts in helping to foster the European digital single market. The behaviour of a small number of online platforms is identified as problematic, revealing contrasting stakeholders' perspectives: businesses and their representative associations highlight dominance over suppliers, while consumer and civil society associations emphasize what they perceive as a lack of care and transparency in the treatment of consumers' data. In addition, representatives from industries whose business models are disrupted by online platforms express concerned about competition issues and ensuring a level-playing field. While a small number of respondents call for more regulation, a large number of respondents from across social and economic categories indicate a preference for more rigorous and consistent enforcement of existing Directives across the EU member states rather than additional platform-specific regulation.

The contrasting views expressed by various stakeholders in this report reflect the diverse set of incentives and value systems which exist also in the off-line world. The differing underlying logics sustaining these views (for example, the extent to which the protection of property rights may come at the expense of preserving free speech) are not specific to online platforms. These contrasting perspectives reflect the respective weights different stakeholders associate with identified problems, , whether it is fraud, illegal activities, abuse of dominance, or lack of respect of various rights (intellectual property rights, consumers' rights, or data protection) by various entities. These contrasting views also point to familiar societal trade-offs, which are not specific to online platforms: securing property rights, increasing safety for citizens, guaranteeing freedom of expression, providing access to essential services to consumers, while ensuring business incentives for private investment in innovation.

The liability of online platforms is of particular importance, and the way in which it needs to be addressed is contested across respondents' categories. A potentially relevant distinction for questions of responsibility and liability seems to bear on the extent to which any given platform acts as a "passive conduit", i.e., simply connecting users (which would tend to suggest that if it is the case it might not be held responsible for the activity that happens "on the platform"), versus the extent to which it plays an active role in the activities that happen through the platform. A case-by-case approach based on the principle of responsibility as proportional to the extent of "curation" and customization of content could be a fruitful way forward for European regulators.

Finally, the globalized nature of the digital economy suggests that the European Commission would be advised to recognize the limits of EU-local regulation and work even more closely with international counterparts to harmonize regulatory approaches and enforcement worldwide. Further, it is advisable for the EC to work collaboratively with the few dominant private platforms and take the lead in articulating the direction for a win-win collaboration which aims to pursue the public good while preserving private platforms incentives to invest and innovate – who will want to reciprocate in order to ensure that their business in Europe is not hampered and Europe's long-term competitiveness is not disadvantaged.

References for further reading

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European Commission

Online Platforms: Contrasting perceptions of European stakeholders

A qualitative analysis of the European Commission's Public Consultation on the Regulatory Environment for Platforms