

Platform to Business Regulation – Now in Force

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Since 12 July 2020, the [Platform to Business Regulation](#) has been directly applicable in the UK and all EU member states. However, with Brexit worries and the COVID-19 crisis having an ongoing impact on business in the digital sector, the new rules have passed many by. Now is the time to ensure compliance.

The Regulation applies to online platforms (examples include e-commerce marketplaces, app stores, comparison websites and social media platforms) and search engines that provide their services to business and corporate users established in the EU/UK, no matter where in the world the operator of the online platform or search engine is located.

The main objective of the Regulation is to ensure that providers of platforms and search engines treat their business customers more fairly.

Notable Rules of the Regulation: Differentiated Treatment and Rankings

Differentiated treatment.

In recent years, there has been an uptick in operators of online platforms and search engines promoting their own goods and services over those of their business users. This differentiated treatment is a key focus of the Regulation because it can be harmful to the economic interests of users, especially those that rely heavily on e-commerce sales. Under Article 7 of the Regulation, online platforms and search engines must now set out in their contracts with business users a description of any advantage given to their products.

Rankings.

The Regulation also seeks to address ‘rankings’ (the relative prominence of goods or services offered on an online platform, or the prominence of search results given by a search engine). We all know how important rankings are when it comes to boosting the online visibility of a business. However, the Regulation calls for more transparency for traders when it comes to how rankings are determined. Article 5 is designed to ensure that business users of platforms and search engines understand how a ranking mechanism works in order to optimise their digital presence.

What Actions Should Operators of Online Platforms and Search Engines be Taking?

Online service providers must now amend their T&Cs to comply with the Regulation:

- Include a description of any advantage given to their products (differentiated treatment, Article 7)
- Transparency on ranking determination (Article 5)

Articles 5 and 7 apply to search engines. The burden is heavier for platform providers, who are now banned from engaging in certain unfair practices, for example, suspending or terminating a seller's account without good reason. In addition to the above, platform providers must:

- Provide a minimum of 15 days' notice for changes to their T&Cs and permit business users to terminate the contract if they object to the proposed changes
- Provide a minimum of 30 days' notice to terminate the service, plus explain why
- Explain IP and data ownership rights
- Use terms that are clear and intelligible
- Establish a complaints handling system and offer a mediation option

Failure to comply with the above provisions (which are found Articles 4, 8 – 12) may result in terms and conditions being declared null and void, business users taking court action against online platforms for damages, and regulators (such as the Competition Markets Authority) issuing proceedings.

The Regulation is part of the EU's 'single digital market' strategy, on which we have commented with respect to the [Geoblocking Regulation](#) and the public policy / competition law [approach](#).

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