



## ACM Guidelines for

Promoting a transparent and fair online platform economy  
for businesses



## Two-pager: Guidelines for promoting a transparent and fair online platform economy for undertakings

Online platforms and online search engines are important for the success of businesses. The Platform-to-Business Regulation (P2B) ensures that businesses can make use of online platforms and online search engines to reach consumers in a competitive, fair and transparent online ecosystem. In these Guidelines, ACM provides guidance in relation to various obligations arising from the P2B Regulation to providers of online platforms and online search engines in the interest of promoting compliance with those obligations and their effectiveness.



### What are the transparency requirements for you as an online platform about?

**Periods:** If you intend to change the general terms and conditions, you must notify business users of that intention at least 15 days in advance. Where you terminate the service you provide, you must provide the respective business user, at least 30 days prior to the termination taking effect, with a statement of reasons for the termination.

**Statement of reasons for restriction, suspension or termination of the service** You must set out in the general terms and conditions the grounds for suspension, restriction or termination of the service you provide to a business user. This applies for example, if you (temporarily) remove a product or a service, close an account of a business user, or terminate the entire contract with a business user. If you decide to restrict, suspend or terminate the service, you must provide a statement of reasons. You must provide the business user with this statement of reasons on a durable medium, such as by email.

**Unequal treatment:** You must include in your general terms and conditions a description of any type of unequal treatment (e.g., different treatment of your own products compared to the products of business users) that you give or might give. You must also state the main considerations for applying, or being able to apply, the unequal treatment.

**Restrictions on using different terms and conditions on other sales channels:** If you impose restrictions in relation to the terms and conditions that business users may apply beyond your online platform when offering the same goods and services as on your online platform, you must state this in your general terms and conditions and explain why you are imposing those restrictions.

**Main parameters for ranking:** You must clearly indicate in the general terms and conditions how your ranking is determined. This means that you must set out the main parameters determining the ranking, including the reasons for the relative importance of those main parameters as opposed to other parameters.

**Handling complaints:** You must include in your general terms and conditions how business users can have access to your internal complaint handling system and how it works.



### What are the transparency requirements for publicly available descriptions for you as a provider of an online search engine about?

**Unequal treatment:** You must provide a description on any unequal treatment (of your own offer compared to other offerings) that you give or might give and make this publicly available.

**Main parameters for ranking** You must set out the main parameters that individually or collectively are most significant in determining ranking, as well as the relative importance of those main parameters.

### How can you ensure that you comply with the transparency requirements?

The following rules of thumb of ACM apply to the information that, in accordance with the P2B Regulation, must be given by providers of online platforms in the general terms and conditions and which must be made publicly available by providers of online search engines.



#### **Ensure that the information is easily available**

You must ensure that the information is easy to find, so businesses can take note of it. As a provider of an online platform, you must ensure that the information is available in the pre-contractual stage, and therefore without the need to log in anywhere. Business users must be reasonably capable of maintaining an overview of all the general terms and conditions that apply to them. If you make changes to these terms and conditions, you should make these adjustments available at least 15 days in advance on a durable medium so that the business user is able to easily save them. This period is an absolute minimum. If business users need to make technical or commercial changes due to changes in the terms and conditions, the period must be appropriately longer.



#### **Ensure that the information is drafted in plain and intelligible language**

You must ensure that the information is drafted in the language that is intelligible to businesses established in the Netherlands. You may in any event make the information available in Dutch or English



#### **Ensure that the information is specific and detailed**

You must ensure that the information you give to businesses makes it clear and predictable how you will behave or might behave in specific situations. You must, for example, include in the general terms and conditions the grounds that can result in suspension, so that it is clear in advance to a business user that certain behavior can result in suspension of their account.



#### **Ensure that the information is complete**

You must ensure that the information you give is complete. You must, for example, provide clear information on each type of unequal treatment to businesses using your service. As a provider of an online platform, you must moreover ensure that the grounds for suspension, restriction and termination of your service are set out in your general terms and conditions.

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## 1 Introduction

1. Consumers frequently make use of online platforms and online search engines to find and buy goods and services. Both are important to the success of businesses, because these services serve as gateways to reaching consumers online. Businesses that want to make use of online platforms and online search engines, are subjected to the terms and conditions that are often unilaterally determined by the providers of online platforms or online search engines. These terms and conditions for example concern how the ranking mechanism of an online search engine works or the grounds on which a business's account may be terminated.
2. Several European legislative proposals have been adopted in recent years to regulate online platforms and the broader digital economy, such as the Platform-to-Business Regulation (hereafter: P2B Regulation).<sup>1</sup> Other new European regulations include the Digital Markets Act (hereafter: DMA)<sup>2</sup>, which regulates the actions of large digital platforms that have a gatekeeper function, and the Digital Services Act (hereafter: DSA) to ensure better online protection to consumers and businesses.<sup>3</sup> In these Guidelines, reference is made to relevant articles from the DMA and the DSA that touch upon the P2B Regulation.
3. The P2B Regulation includes rules that ensure that businesses can make use of online platforms<sup>4</sup> and online search engines to reach consumers in a competitive, fair and transparent online ecosystem. The P2B Regulation also has areas of overlap with existing legislation that are enforced by the Netherlands Authority for Consumers and Markets (hereafter: ACM), such as consumer law<sup>5</sup> and the Dutch Competition Act. Providers of online platforms and online search engines are required to comply with the rules laid down in the P2B Regulation with effect from July 12, 2020. Since that date, businesses may institute civil proceedings if they believe that a provider of an online platform or online search engine is not adhering to the rules laid down in the P2B Regulation.
4. In the Netherlands, the Minister of Economic Affairs and Climate Policy (EZK) has submitted a bill designating ACM as the enforcer of the P2B Regulation.<sup>6</sup> ACM has conducted a market study in preparation for this potential future task. In the market study, ACM examined how providers of online platforms and online search engines deal with the rules set out in the P2B Regulation and to what extent there are any problems that may be encountered.
5. ACM believes it is important to ensure proper compliance with the P2B Regulation. In this regard, it is important that it is clear to providers of online platforms and online search engines how the obligations arising from the P2B Regulation are interpreted by ACM. For that reason, ACM has drawn up these 'Guidelines for Promoting a transparent and fair online platform economy for businesses' (hereafter: the Guidelines). In the Guidelines, ACM begins by focusing attention on what the rules are and why compliance is important, before giving guidance on the rules. With this guidance, ACM gives direction to providers of online platforms and online search engines, aimed at promoting compliance with various rules laid down in the P2B Regulation.<sup>7</sup> Furthermore, ACM aims to contribute to the effectiveness of the transparency obligations of the P2B Regulation with these Guidelines.<sup>8</sup>
6. An exploratory analysis conducted by ACM showed that providers of online platforms and online search engines are not always clear about how to interpret and implement the obligations arising

<sup>1</sup> [Regulation \(EU\) 2019/ of the European Parliament and the Council of 20 June 2019 on promoting fairness and transparency for business users of online brokering services \(europa.eu\).](#)

<sup>2</sup> [The Digital Markets Act: ensuring fair and open digital markets.](#)

<sup>3</sup> [The Digital Services Act: ensuring a safe and accountable online environment.](#)

<sup>4</sup> In the Guidelines, ACM uses the term 'online platform' to refer to the online intermediation service provided by a provider of online intermediation services (provider of an online platform) to business users.

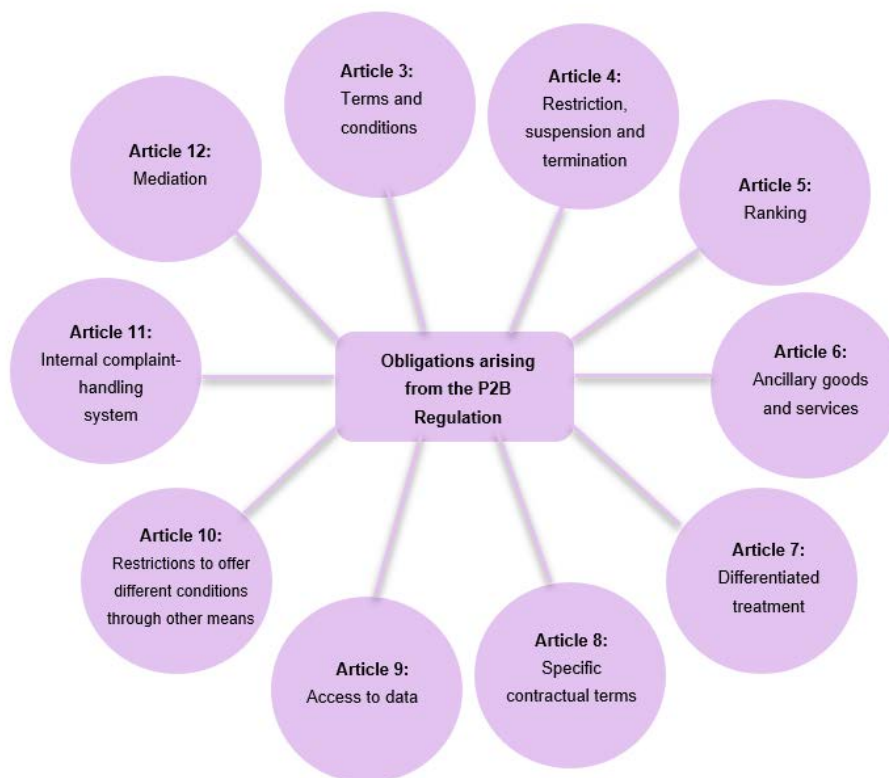
<sup>5</sup> See for example, the '[Vuiistregels voor online platformen](#)' and '[Leidraad bescherming online consument](#)' from ACM.

<sup>6</sup> The bill was submitted to the Dutch House of Representatives by the Minister of Economic Affairs and Climate Policy (EZK) in late 2022. For the status on 12 April 2023, see <https://www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?cfg=wetsvoorsteldetails&qry=wetsvoorstel%3A36285#activity-2022A09687>

<sup>7</sup> The European Commission has published various documents on the P2B Regulation, such as the Q&A and the Guidelines on ranking. ACM took these documents into consideration when drawing up these Guidelines.

<sup>8</sup> See also "The basic principles for effective transparency", the Digital Regulation Cooperation Platform; <https://www.acm.nl/en/publications/sdt-members-expand-their-collaboration-regarding-digital-regulation>.

from the P2B Regulation.<sup>9</sup> In response, ACM decided to issue Guidelines on the P2B Regulation. ACM has then published these for consultation.<sup>10</sup> The consultation responses have led to some adjustments to the Guidelines. ACM has chosen to make the transparency requirements and code of conduct set out in Articles 3, 4, 5, 7, 10 and 11 of the P2B Regulation the main focus of these Guidelines.<sup>11</sup> ACM emphasizes, perhaps superfluously, that providers of online platforms and online search engines must comply with all articles of the P2B Regulation (see **Figure 1**) that apply to them.



**Figure 1: Obligations arising from the P2B Regulation**



7. Compliance with these Guidelines is no guarantee of compliance with the respective provisions in the P2B Regulation. Compliance with the P2B Regulation is also no guarantee of compliance with associated legislation, such as the DMA, DSA, and competition and consumer law. Being transparent about certain practices under the P2B Regulation does not directly mean that such practices are always permitted under other laws and regulations. It remains the responsibility of providers of online platforms and online search engines to ensure their compliance with the legal standards under the P2B Regulation and other regulations. The ultimate interpreter of the P2B Regulation is the Court of Justice of the European Union (hereafter: CJEU).

### 1.1 Who are these guidelines intended for?

8. These Guidelines apply to providers of online platforms (in the P2B Regulation: ‘providers of online intermediation services’) and online search engines, insofar as goods and service are offered through such online platforms and online search engines to consumers in the Netherlands by businesses established in the Netherlands.

<sup>9</sup> See [‘ACM to publish guidelines regarding the rules for platform companies and online businesses’](#).

<sup>10</sup> See [‘ACM publishes draft guidelines regarding the rules for online platforms and search engines’](#).

<sup>11</sup> ACM also briefly discusses the other articles in the P2B Regulation in the Appendix.



## Providers of online platforms

9. As a provider of an online platform, you must adhere to the rules laid down in the P2B Regulation if you meet all of the following<sup>12</sup> criteria:
- 1) You offer an information society service. That means that you provide a service normally provided for remuneration, by electronic means, remotely and at the individual request of a recipient of that service.
  - 2) You enable business users to offer goods or services to consumers, with a view to facilitating the initiating of direct transactions between those business users and consumers. It is irrelevant where and whether those direct transactions are ultimately carried out. This may be online, for example, or also offline; and
  - 3) You provide your services to business users on the basis of contractual relationships between you and the business users.
10. The provision of your services to business users is an important criterion for establishing whether you must comply with the rules set out in the P2B Regulation. A business user, in this context, is a private individual acting in a commercial or professional capacity who, or a legal person which, uses your online platform to offer goods or services to consumers for purposes relating to its trade, business, craft or profession.<sup>13</sup>
11. No legal minimum applies to the number of business users that must use your online platform to require your compliance with the obligations arising from the P2B Regulation. That means that you must comply with the obligations arising from the P2B Regulation even if only a handful of business users use your online platform. This also applies if you target business users as well as private users with your online platform and you also meet the criteria in paragraph 9.
12. The P2B Regulation may also apply to online platforms that are used by cleaners or painters, for example, to bring in business. Whether this is the case depends on whether the cleaners or painters in question are business users. If, from a legal viewpoint, a relationship under labor law exists between the provider of the online platform and all the cleaners using the online platform, for example, then they are not business users and if there are no other business users that use the online platform, the P2B Regulation does not apply.<sup>14</sup>
13. Examples of online platforms covered by the P2B Regulation include<sup>15</sup>:
- Online e-commerce marketplaces on which undertakings offer goods or services, such as meals, hotel stays or clothing.
  - Online software applications services (app stores).
  - Reservation platforms for restaurants or hairdressers, for example.
  - Comparison sites, for energy contracts, flight tickets or houses, for example.
  - Online social media services, where business users offer goods and services to consumers.



## Providers of online search engines

14. Consumers make frequent use of online search engines to search for goods or services. Online search engines can therefore significantly affect the success of companies offering goods or services to consumers through websites (hereafter: corporate website users).
15. You are a provider of an online search engine if you offer a digital service that allows users to input queries in order to perform searches of, in principle, all websites, or all websites in a particular language, on the basis of a query. The input query may concern any subject, in the form of a keyword, voice request, phrase or other input. The result of the query is returned in any

<sup>12</sup> Recital 10 and article 2 (1) of the P2B Regulation.

<sup>13</sup> Article 2 (1) of the P2B Regulation.

<sup>14</sup> See, for example, Amsterdam Court of Appeal, 21 September 2021, ECLI:NL:GHAMS:2020:1680 and see also 'Commission proposals to improve the working conditions of people working through digital labour platforms', European Commission, 9 December 2021.

<sup>15</sup> Recital 11 of the P2B Regulation and [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_19\\_1169](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_19_1169)



format in which information related to the requested content can be found.

16. As a provider of an online search engine, you must comply with articles 5 and 7 of the P2B Regulation.

### Exceptions

17. If you provide one of the following services, the P2B Regulation, and hence these Guidelines, do not apply to that service<sup>16</sup>:
- Peer-to-peer online intermediation services without the presence of business users.
  - Pure business-to-business online intermediation services which are not offered to consumers.
  - Online advertising tools and online advertising exchanges which are not provided with the aim of facilitating the initiation of direct transactions and which do not involve a contractual relationship with consumers.
  - Search engine optimization software services or services which revolve around advertising-blocking software, as they are not provided with the aim of facilitating the initiation of direct transactions and do not involve a contractual relationship with consumers.
  - Technological functionalities and interfaces that merely connect hardware and applications (e.g., mobile operating systems), as they frequently<sup>17</sup> do not meet the criteria in paragraph 9;
  - Online payment services, since they do not meet the criteria in paragraph 9.

## 1.2 Reader's guide

18. In chapter 18 of these Guidelines, ACM focuses on the importance of transparency regarding certain practices or conditions stipulated by providers of online platforms in the general terms and conditions. Additionally, it highlights the statutory rules arising from the P2B Regulation that apply to the general terms and conditions. Finally, ACM provides guidance to providers of online platforms which can be taken into account when drafting general terms and conditions.
19. In chapter 3, ACM reviews the information that providers of online platforms must provide in relation to the restriction, suspension and termination of their services to business users. ACM also provides online platforms with guidance on the drafting of the statement of reasons that must be provided to business users in the event of restriction, suspension or termination.
20. In chapter 4 ACM explains the importance of transparency in relation to ranking by providers of online platforms and online search engines. ACM also gives providers of online platforms and online search engines guidance on drawing up the description of the ranking. ACM also focuses on the European Commission's Guidelines on ranking.
21. In chapter 5, ACM explains the transparency obligation that applies when a provider of an online platform or online search engine gives or might give unequal treatment. ACM offers providers of online platforms and online search engines guidelines for drafting the description of unequal treatment.
22. In chapter 6, ACM explains the transparency obligation that applies in case of restrictions on the ability of business users to apply different conditions beyond the online platform. ACM also gives guidance for drafting the grounds that providers of online platforms must provide when applying restrictions.
23. In chapter 7, ACM explains the rules with which an online platform's internal complaint handling system must comply to. ACM also gives online platforms guidance on how to comply with the rules that apply in relation to handling complaints.

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<sup>16</sup> Recital 11 of the P2B Regulation.

<sup>17</sup> Ibid.: 'However, such functionalities or interfaces can be directly connected or ancillary to certain online intermediation services and where this is the case, the relevant providers of online intermediation services should be subject to transparency requirements related to differentiated treatment based on these functionalities and interfaces.'



24. Finally, the Appendix briefly considers the obligations that follow from the remaining articles of the P2B Regulation for online platform providers, on which ACM does not provide guidance on in these guidelines.



## 2 General principles of the general terms and conditions

25. Are you a provider of an online platform? Then article 3 of the P2B Regulation applies to you. The general principles and guidance for the general terms and conditions that are discussed in this section apply to you. This section focuses in particular on (relevant parts of) paragraphs 1 and 2 of article 3 of the P2B Regulation.

If you are a provider of an online search engine, then the rules that are explained in this chapter do not apply to you.

### 2.1 Why is transparency in the general terms and conditions important?

26. Transparency in the general terms and conditions improves predictability for business users. This ensures that business users have better information for determining whether, and in what way, they wish to use an online platform. At the same time, the transparency requirements protect the business user against unpredictable behavior on the part of providers of online platforms during the contractual relationship. This contributes to ensuring a fair, sustainable and trusted online business environment. Finally, transparency can be a means by which providers of online platforms can differentiate themselves, for example in terms of user-friendliness.

### 2.2 What requirements does the P2B Regulation set for general terms and conditions?

27. The P2B Regulation sets requirements in terms of the form, content and availability of the general terms and conditions.<sup>18</sup> The P2B Regulation stipulates that you, as a provider of an online platform, must include information on various subjects in your general terms and conditions.<sup>19</sup> You must, for example, inform business users of the grounds that can result in the suspension of an account and to what data, such as reviews, they have or have no access to.
28. According to the P2B Regulation, there are two requirements that the general conditions must in any event meet at all times. These requirements are discussed below.

#### General Terms and Conditions

- a. easily available
- b. drafted in plain and intelligible language

29. As a provider of an online platform, you must ensure that the general terms and conditions are **easily available** to business users at all stages of the commercial relationship. This means, among other things, that a business user, or prospective business user, must also be able to

<sup>18</sup> The DMA also sets requirements for the content of the general terms and conditions of gatekeepers of three types of core platform services (app stores, online search engines and online social networking services). Pursuant to Article 6(12) of the DMA, these gatekeepers must apply fair, reasonable and non-discriminatory general conditions for access by business users to these core platform services. To this end, the gatekeeper publishes general conditions of access, including a mechanism for alternative dispute resolution. The Commission assesses whether or not the published general access conditions meet this requirement.

<sup>19</sup> Article 3 of the P2B Regulation and '[Questions and Answers - Establishing a Fair, Trusted and Innovation Driven Ecosystem in the Online Platform Economy](#)', European Commission, version of 9 July 2020 (hereafter : Q&A), subsection 2.1.

review the general terms and conditions before entering into a contractual relationship with you. Changes in the general terms and conditions must be provided to business users on a durable medium. A durable medium is any instrument that enables business users to store information addressed personally to them in a way that is accessible for future reference, for example an email.<sup>20</sup>

30. The general terms and conditions must furthermore be drafted in **plain and intelligible language**. This means that the general terms and conditions<sup>21</sup>:

- a. must be specific, detailed and clear on important commercial matters, providing business users with a reasonable degree of predictability regarding the most important aspects of the contractual relationship, and
- b. may not be written in misleading terms.

31. In addition, you must notify business users of proposed changes in your general terms and conditions. You must give business users reasonable notice before changing the general terms and conditions. This period is a minimum of 15 days. This period must also be proportionate to the nature and scope of the proposed changes and their impact on business users.<sup>22</sup>

32. If business users must make technical or commercial adaptations, a proportionately longer notice period must be given in order to comply with the change or changes.<sup>23</sup> Two examples of technical changes are:<sup>24</sup>

- if entire features of your service to which business users had access to are removed or added.
- if business users need to adapt their goods or reprogramme their services in order to continue using your service.

33. The minimum 15-day notice period does not apply to changes in the general terms and conditions if:

- Another statutory or regulatory obligation applies, preventing you to respect the period of notice;<sup>25</sup>
- A change to the general terms and conditions is required to address an unforeseen and imminent danger related to defending the online intermediary service or services, consumers or business users from fraud, malware, spam, personal data breaches or other cybersecurity risks;<sup>26</sup> or
- the changes are editorial in nature, but do not affect the content or meaning of the general terms and conditions.<sup>27</sup>

## 2.3 ACM's guidance

34. In this subsection, ACM provides you, as a provider of an online platform, with guidance for drawing up your general terms and conditions.

35. The general terms and conditions and their amendments must be **easily available** to actual and potential business users. This will mean, in any event, that:

<sup>20</sup> The definition in the P2B Regulation is in line with the definition provided by the European Directive on Consumer Rights (Directive 2011/83/EU). The Directive on Consumer Rights defines a durable medium as 'any instrument which enables the consumer or the trader to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored'. This is further elaborated on in consideration 23, where it is stated that durable media must enable the consumer to store the information for as long as it is necessary for them to protect their interests in the context of their relationship with the trader. Such media include in particular paper, USB sticks, CD-ROMs, DVDs, memory cards or the hard disks of computers as well as emails.

<sup>21</sup> Recital 15 of the P2B Regulation.

<sup>22</sup> Article 3(2) of the P2B Regulation.

<sup>23</sup> Article 3(2) and consideration 18 of the P2B Regulation.

<sup>24</sup> Consideration 19 of the P2B Regulation.

<sup>25</sup> Article 3(4) of the P2B Regulation.

<sup>26</sup> Ibid.

<sup>27</sup> Recital 18 of the P2B Regulation.

- 1) The (up to date) general terms and conditions must be able to be found easily by actual and potential business users,<sup>28</sup> without access requiring logging in to a user portal, for example.
  - 2) Business users must be reasonably capable of maintaining an overview of all general terms and conditions that apply to them.<sup>29</sup>
  - 3) Changes to the general terms and conditions by a provider of an online platform must be provided on a durable medium (see paragraph 29).
36. As a provider of an online platform, you can choose to present the general terms and conditions on your online platform in various forms, such as manuals, FAQ pages, videos etc. However, fragmentation of the information may make it less easily available to business users. If business users must first click through several times to find a specific part of the general terms and conditions, this will quickly mean that the general terms and conditions are not easily available. To make the general terms and conditions easily available, you can consider, for example, a structured indication of the topics discussed in the terms and conditions on a core page including hyperlinks that point specifically to documents and/or web pages where those parts of the general terms and conditions can be found.
37. NB: If you do not refer to important information on a core page, this does not mean that this information does not form a part of the general terms and conditions.



#### ***Example: findability for potential business users***



A restaurant is looking for the most suitable online platform to offer its meals. To that end, the restaurant searches for the general terms and conditions of various online platforms on which meals can be offered, in order to compare them. At first, online platform X seems like a good option, as the restaurant knows that many consumers use this platform. However, the general terms and conditions cannot be found. The restaurant discovers that access to the general terms and conditions is only available after creating an account in the portal for restaurants.

Explanation: In this situation, the general terms and conditions are not easily available. The general terms and conditions must also be findable for and easily comprehensible to potential business users. In this example that is not the case, as the business user must first create an account for the restaurant portal to gain access to the general terms and conditions. You might consider adding a link to the general terms and conditions on the page where business users can create an account. Adding such a separate page, aimed solely at business users, can improve the findability of the general terms and conditions. This will enable business users to familiarize themselves with the general terms and conditions before creating an account.

<sup>28</sup> Q&A, subsection 2.7.

<sup>29</sup> Providers of very large online platforms and very large online search engines, within the meaning of Article 33 of the DSA, are required to provide service users with a concise, easily accessible and machine-readable summary of general terms and conditions in clear and unambiguous language, including available remedies and redress mechanisms. See Article 14(5) of the DSA.



**Example: clarity (or lack of clarity) concerning location changes**

A provider of an online platform amends its general terms and conditions. Business users using this online platform are informed of this through a pop-up message on the forum of the online platform that looks as follows:

*“Dear business users,  
In 30 days, we will make a number of changes to the general terms and conditions. You can find the new general terms and conditions on our website.”*

Explanation: In this case the changes to the general terms and conditions are definitely not provided on a durable medium. Moreover, business users will not be able to find what specific changes will be made, as they are not explicitly mentioned. For example, in order to make the changes to the general terms and conditions easily available, you could in a similar case consider indicating clearly what has been changed in the submitted document containing the new general terms and conditions. You could, for example, refer to the amended articles or use different colors, fonts, placement and lay-outs.

38. In order to make the general terms and conditions as effective as possible in terms of their content, as well as being written in **plain and intelligible** language, it is important to draw them up in the **language** that is intelligible to business users registered in the Netherlands. To ensure that the general terms and conditions are clear and understandable to business users, you could consider drafting the general terms and conditions in any event in Dutch or English.<sup>30</sup>
39. The fact that the general terms and conditions must be drawn up by you, as a provider of an online platform, in plain and intelligible language means they have to be **specific** and **detailed**. This means that you must draw up the general terms and conditions in such a way that the contractual relationship is reasonably predictable for business users. This means that in the (up to date) general terms and conditions, you should at least indicate what behavior you show towards business users in specific situations (if any). Where the P2B Regulation requires an understanding of the underlying considerations, you must also include them in a detail in the general terms and conditions. Your considerations must help business users understand why they are being treated in a certain way in a specific situation.



### 3 Restriction, suspension and termination

40. Are you a provider of an online platform? Then the rules in Articles 4 and 3(1)(c) on restriction, suspension and termination, as well as Article 8(c) of the P2B Regulation apply to you. This chapter is therefore relevant to you.

If you are a provider of an online search engine, then the rules that are explained in this chapter do not apply to you.

#### 3.1 Why is transparency about restriction, suspension and termination important?

41. If you decide to restrict, suspend or terminate the provision of your services as a provider of an online platform to a business user, this could have major consequences for the business user in

<sup>30</sup> Very large online platforms and very large online search engines, within the meaning of Article 33 of the DSA, are obliged to publish their general terms and conditions in all the official languages of the member states where they offer their services. See Article 14(6) of the DSA.

question. The services you provide may be crucial to their success, as they use your services to reach consumers. By making the reasons for restriction, suspension, and termination clear to business users in the general terms and conditions in advance, they will be able to predict when certain behavior might lead to one of the measures.<sup>31</sup> Being transparent about the reasons for restriction, suspension or termination means a business user can compare different online platform providers and make an informed choice for an online platform on that basis.

### 3.2 What does the P2B Regulation say about suspension, restriction and termination?

42. As a provider of an online platform, you could have legitimate reasons to decide to restrict, suspend or terminate the provision of your services to a business user.<sup>32</sup> At the same time, on the basis of the P2B Regulation, business users are entitled to a statement of reasons containing the facts or circumstances that are the grounds for your decision.

#### Rules for suspension and restriction

43. In order to guarantee proportionality, you must – provided that this is reasonable and technically feasible – first consider suspension<sup>33</sup> or restriction if there are grounds to do so, before resorting to termination.<sup>34</sup> This may involve suspension or restriction of the services provided, such as delisting a business user's goods or services (so they are no longer visible in the business user's list of offerings) or actually removing a good or service from the search results.<sup>35</sup>
44. If you wish to suspend or restrict the service that you provide to a business user, you must provide grounds for this and supply a statement of reasons to the business user before or at the moment when the suspension or restriction takes effect.<sup>36</sup>

#### Rules for termination

45. The termination of all of the services that you provide to a business user is regarded as the most drastic measure.<sup>37</sup> This might include closing an account, which prevents the business user from offering their goods or services on your online platform.
46. If you wish to terminate the service that you provide to a business user, you must provide grounds for this and supply a statement of reasons to the business user at least 30 days before the termination takes effect, unless any of the exceptions listed in paragraph 50 through 52 apply.
47. Finally, regarding termination<sup>38</sup> it is important that you must provide a description of the technical and contractual access to data that you may or may not retain after termination of the contract in the general terms and conditions. This concerns data generated or supplied by business users because they make use of the online platform.<sup>39</sup>

#### Rules for restriction, suspension and termination

48. There are also rules that apply to you, as a provider of an online platform, regardless of which of the three measures you take.

<sup>31</sup> The DSA also imposes requirements on the information that you, as a provider of an online platform, must include in the general terms and conditions about the restrictions you can impose. See Article 14(1) of the DSA. In addition, the DSA contains transparency reporting requirements that apply to providers of online platform regarding measures taken and restrictions imposed. See Article 15(1) sub c of the DSA.

<sup>32</sup> Recital 22 of the P2B Regulation.

<sup>33</sup> The DSA also contains obligations regarding suspension if illegal content is involved. See Article 23 of the DSA.

<sup>34</sup> Recital 23 of the P2B Regulation.

<sup>35</sup> Recital 22 of the P2B Regulation.

<sup>36</sup> Article 4(1) and recital 22 of the P2B Regulation.

<sup>37</sup> Recital 22 of the P2B Regulation.

<sup>38</sup> The DMA also contains obligations for gatekeepers of core platform services regarding the conditions that apply to the business user terminating the purchase of your service. As a gatekeeper you may not impose disproportionate general terms and conditions to terminate the provision of your core platform service. You must ensure that the termination conditions can be exercised without undue difficulty. See Article 6(13) of the DMA.

<sup>39</sup> Article 8(c) of the P2B Regulation.

- 1) Your general terms and conditions must include the reasons for a decision to restrict, suspend or terminate the provision of your service to business users.<sup>40</sup> If those reasons are not included in general terms and conditions, in principle you cannot take the action. You must then first amend your general terms and conditions. Moreover, the proposed changes to the general terms and conditions must in principle not be implemented before the notice period has expired (see paragraph 31).
  - 2) In the event that you decide to restrict, suspend or terminate your service provision, you must in principle provide a statement of reasons to the business user concerned,<sup>41</sup> including a reference to the specific facts or circumstances as well as the applicable reasons as set out in the general terms and conditions that led to your decision;<sup>42</sup>
  - 3) You must supply this statement of reasons on a durable medium;<sup>43</sup> and
  - 4) You must enable the business user to obtain clarity regarding the facts that led to your decision to restrict, suspend or terminate. This enables business users to raise potentially wrongful decisions through the internal complaint handling system.<sup>44</sup>
49. If you, as a provider of an online platform, decide to reconsider a decision to restrict, suspend or terminate – for example because the initial decision was taken incorrectly or because the business user was not acting in bad faith and has resolved the issue – the business user's account must be restored without delay.<sup>45</sup>

### Exceptions to notice period and provision of reasons

50. If you decide to terminate the provision of all of your services to a business user, you must provide a statement of reasons for this at least 30 days before doing so. This notice period does not apply if:<sup>46</sup>
- another legal or regulatory obligation applies, preventing you from observing the notice period;
  - you are able to demonstrate that the business user has repeatedly infringed the applicable general terms and conditions; or
  - you exercise a right of termination for a compelling reason under national legislative provisions in conformity with Union law.
51. These grounds for exception may apply if, for example, there are serious forms of illicit or inappropriate content, the safety of a good or service, counterfeiting, fraud, spam, personal data breaches etc.<sup>47</sup>
52. Finally, there are exceptional cases in which you, as a provider of an online platform, do not have to provide a statement of reasons for making a decision to restrict, suspend or terminate.<sup>48</sup> You do not have to provide a statement of reasons if:
- you are subject to a legal or regulatory obligation to not provide the specific facts or circumstances or the reference to the applicable reason or reasons; or
  - you can prove that the business user in question has repeatedly infringed the applicable general terms and conditions, leading to the termination of the provision of the entirety of the services provided.

## 3.3 ACM's guidance

53. In this subsection, ACM supplies you – as a provider of an online platform – with guidance for drawing up your statement of reasons.<sup>49</sup>

<sup>40</sup> Article 3(1)(c) of the P2B Regulation.

<sup>41</sup> Article 4(1) of the P2B Regulation.

<sup>42</sup> Article 4(5) of the P2B Regulation.

<sup>43</sup> For more information, see paragraph 29.

<sup>44</sup> Recital 22 of the P2B Regulation. For more information on the internal complaint handling system, see Chapter 7.

<sup>45</sup> Article 4(3) and recital 22 of the P2B Regulation.

<sup>46</sup> Article 4(4) of the P2B Regulation.

<sup>47</sup> Recital 23 of the P2B Regulation.

<sup>48</sup> Article 4(5) of the P2B Regulation.

<sup>49</sup> The DSA also imposes requirements for the drafting of a statement of reasons for restriction, suspension or termination. See Article 17 of the DSA.



**Guidance for the statement  
of reasons**

1. easily available
2. drafted in plain and intelligible language
3. specific and detailed
4. complete

54. Firstly, a statement of reasons must be **easily available**. This means that in any event:

- 1) you will inform the business user of the measure to restrict, suspend or terminate that will be taken; and
- 2) you will provide the business user with the reasons that are the grounds for your decision on a durable medium.<sup>50</sup> The reasons – to which you refer in your statement of reasons – that may lead to full or partial restriction, suspension or termination must be included in the general terms and conditions, to enable business users to take note of these (in advance).



***Example: accessibility of reasons for suspension***

A provider of an e-commerce platform decides to suspend certain products of business user Y. The e-commerce platform's general terms and conditions explain the circumstances under which this might occur. The circumstance at issue in the case of business user Y is not included in the general terms and conditions and does not fall under the grounds for exception.<sup>51</sup> The provider of the online platform immediately suspends three of business user Y's products without informing them.

Explanation: The provider of the online platform is not in compliance with the P2B Regulation. In this case the reasons for the suspension are not included in the general terms and conditions. It is important that providers of online platforms include all reasons that might lead to suspension in their general terms and conditions. If a reason is not included in the general terms and conditions, suspension in principle can only take place after the general terms and conditions are amended, and moreover only in the event that the business user does not comply with the revised general terms and conditions after the amendment takes effect.<sup>52</sup> In addition, in this case the provider did not disclose the decision to suspend to the business user, and did not provide a statement of reasons (on a durable medium).



***Example: saving the statement of reasons***

The provider of a social media platform wants to terminate business user X's account. They send a message including a statement of reasons for termination to the business user 30 days in advance. The business user receives the message in the business user portal of the online platform. He is not able to save the message.

<sup>50</sup> For more information, see paragraph 29.

<sup>51</sup> As stated in paragraph 50 and 52.

<sup>52</sup> A minimum notice period of 15 days applies here. This notice period may exceed 15 days, depending on the specific circumstances. See paragraph 32.

Explanation: In this specific case, the provider of the social media platform is not in compliance with the P2B Regulation, because the message containing the statement of reasons cannot be saved by the business user. A statement of reasons that can only be consulted in the business user portal may be easily available, provided that the business user in any event:

- 1) has access to this message, and
- 2) has the ability to save the message and view it at a later time.

55. Furthermore, it is important that the statement of reasons for taking a measure is **formulated in plain and intelligible language**.<sup>53</sup> It must be clear to the business user that they can no longer (fully) use the services that you provide. Moreover, the description in the general terms and conditions must help business users understand in which cases you might decide to restrict, suspend or terminate your service provision to a business user.<sup>54</sup>

56. The statement of reasons must also be **specific and detailed**. In order to enable a business user to end a possible infringement, it is important to provide specific and detailed information concerning the reasons why they are currently not in compliance with the general terms and conditions. This means that the statement of reasons must in any event explain:

- 1) Why the business user is in violation in this specific case, including the content of third-party reports<sup>55</sup> that led to the decision to restrict, suspend or terminate.<sup>56</sup>
- 2) On the basis of which specific article(s) from, or parts of, the general terms and conditions one of the measures (termination, suspension or restriction) is being taken.

#### **Example: specific and detailed statement of reasons**



A provider of a gaming platform decides to remove three products of business user X from its online platform. The games turn out to contain content that the online platform disallows, as stated in the general terms and conditions. None of the grounds for exception apply.<sup>57</sup> The provider of the gaming platform provides a statement of reasons to the business user by email one week in advance. The statement of reasons looks like this:

*"Dear business user X,*

*We have established that three of the games you offer are not in accordance with our general terms and conditions. We have therefore decided to immediately remove these three games.*

*Best regards, the gaming platform."*

Explanation: In this case, the statement of reasons in any event lacks sufficiently specific and detailed information, because:

- The provider of the gaming platform does not explain which three games are being suspended, which could make it hard for a large business user, for example, to understand which games are involved.
- The provider of the gaming platform fails to refer to the specific article(s) of the general terms and conditions that the business user is infringing in this case; and
- The gaming platform fails to indicate why these three games do not comply with the specific article or articles of the general terms and conditions. It is not clear what behavior

<sup>53</sup> See paragraph 30 and 38.

<sup>54</sup> Q&A, subsection 2.8.

<sup>55</sup> When providing the content of third-party reports, it may suffice to provide reports by, or traceable to, natural persons anonymously, in accordance with the principle of data minimization in accordance with Article 5 of the GDPR. In concrete terms, this means that the reports may be provided with personal data removed.

<sup>56</sup> Recital 22 and Article 4(5) of the P2B Regulation.

<sup>57</sup> See paragraph 52.

by the business user (in connection with the three products) has in this case led to the provider of the gaming platform's decision to suspend.

57. Finally, it is important that a statement of reasons is **complete**. This means that a statement of reasons must make reference to the applicable reasons that led to the decision.

#### *Example: Complete statement of reasons*



A provider of a travel platform decides to terminate the account of business user Z, as this business user is in violation of three articles of the general terms and conditions. The provider's general terms and conditions state that in the event of the termination of an account, the provider will provide a statement of reasons to the business user concerned at least 30 days in advance. Given the circumstances, the provider provides the business user with a statement of reasons 60 days before the account is terminated, including a reference to one of the articles of the general terms and conditions that were violated, including the reason or reasons why the user is in violation of that article in this specific case. The statement of reasons says nothing about the other articles with which business user Z is in violation of.

Explanation: As a provider, according to the P2B Regulation you are required to in any event refer to the applicable reasons for the decision to terminate in the general terms and conditions. The statement of reasons must enable a business user to gain insight into the actions that are not in accordance with the online platform's general terms and conditions and are reason to, for example, terminate an account.

In this case the provider proceeds with the termination on the basis of the business user's violation of three articles. However, the provider chooses to include only a reference to one of the violated articles in the statement of reasons. It makes sense that this would lead to the provider restoring the account if the business user has remedied the problem that the provider has referred to in the statement of reasons. If the provider wishes to restore the account only after all three problems have been remedied by the business user, it will include a reference to all three articles in the statement of reasons, including the reason or reasons why the user is in violation of each of those articles in this particular case.

58. An exception to having to provide a statement of reasons and observe the period of notice (see paragraphs 50 through 52) applies in the event of repeated violations of the applicable general terms and conditions by a business user. It is important that you have also made these previous violations known to the business user.



## 4 Ranking

59. Are you a provider of an online platform or online search engine?  
Do you make use of ranking<sup>58</sup> to present the relative importance of goods, services or search results?

<sup>58</sup> See the definition of ranking in Article 2(8) of the P2B Regulation. Essentially, ranking is seen as a form of data-driven algorithmic decision-making. When providers present, organize or communicate information concerning goods or services to consumers or in the context of search results, they 'rank' those results based on certain parameters; '[Guidelines on transparency of ranking pursuant to Regulation \(EU\) 2019/1150 of the European Parliament and of the Council](#),' European Commission, 2020/C 424/01 (hereinafter referred to as the 'EU Guidelines'), paragraph 11.

If so, then the information you provide on this must comply with the rules on ranking described in Article 5 of the P2B Regulation, and this chapter applies to you.

## 4.1 Why is transparency about ranking important?

60. The ranking of goods and services or search results has a major impact on consumers' choices<sup>59</sup> and therefore on the success of businesses. Their success increasingly depends on their visibility and findability online.<sup>60</sup> If the ranking method or methods that you use are not made public, it will be unclear to business or corporate website users what the reasons are for their ranking performance and/or how they can perform better, possibly with the use of paid ranking.<sup>61</sup> That is why it is important for you to be transparent about ranking. This will make comparing ranking practices possible for business or corporate website users and enable them to partly base the choice of an online platform or online search engine on the operation of the ranking mechanism.<sup>62</sup>

## 4.2 What does the P2B Regulation say about ranking?

61. To make ranking predictable for business and corporate website users, the providers of online platforms and online search engines must provide a description of how the ranking mechanism works.<sup>63</sup>
62. As a provider of an online platform, you must provide a description of the main parameters that determine ranking in advance in your general terms and conditions, as well as the reason for the relative importance of the main parameters compared to other ranking parameters.<sup>64</sup>
63. As a provider of an online search engine, you must explain the main parameters that either separately or together carry the most weight when determining the ranking, as well as the relative importance of these parameters. This description must be easily and publicly available on your online search engine and must be drafted in plain and intelligible language. You must also ensure that the description is up to date.<sup>65</sup>
64. For both providers of online platforms and providers of online search engines, if paying a direct or indirect fee is one of the most important parameters for influencing ranking,<sup>66</sup> you must describe these possibilities. In addition, you must also provide a description of the impact of such a fee on the ranking.<sup>67</sup>
65. For both providers of online platforms and providers of online search engines, the description of how the ranking mechanism works must ensure that business or corporate website users adequately understand whether and to what extent the ranking mechanism takes account of: <sup>68</sup>
- (a) the characteristics of the goods or services offered to consumers through your service;
  - (b) the relevance of those characteristics to consumers; and
  - (c) the design features of the website used by the corporate website users (applies only to online search engines).

<sup>59</sup> Ranking also has a major effect on consumer choice, and in some cases paid ranking can even be misleading. For the specific purpose of protecting consumers, businesses must comply, among other things, with the obligations in connection with ranking in the Omnibus Directive (EU) 2019/2161, Article 6 bis. [See also the guidelines on the protection of the online consumer \(acm.nl\).](#)

<sup>60</sup> See EU Guidelines, paragraph 12.

<sup>61</sup> [‘Digital single market: EU negotiators agree on new rules to make online platforms fairer’](#), European Commission, Feb. 14, 2019.

<sup>62</sup> Q&A, subsection 6.2.

<sup>63</sup> Article 5(1) and 5(2) of the P2B Regulation.

<sup>64</sup> Ibid.: Article 27 of the DSA also contains transparency obligations for the providers of online platform using recommendation systems.

<sup>65</sup> Article 5(2) of the P2B Regulation.

<sup>66</sup> Direct fees are payments made for the primary or sole purpose of improving rankings, such as paying for increased visibility on social media pages or preferred placement. In the case of indirect fees, a business user or corporate website user accepts additional obligations that could have a positive impact on the ranking, such as the use of additional services of the relevant provider of an online platform (e.g., cloud services or logistics, or ‘premium programs’ or trust marks).

<sup>67</sup> Article 5(3) of the P2B Regulation.

<sup>68</sup> Article 5(5) of the P2B Regulation.

66. If you, as a provider of an online search engine, have changed the ranking or delisted a particular website in response to a notification by a third party, you must provide the corporate website user with the opportunity to understand what the content of this notification is.<sup>69</sup>
67. You may not refuse a business or corporate website user inspection of the main parameters determining ranking for reasons of commercial interests.<sup>70</sup> However, the P2B Regulation does not require you to disclose algorithms or information that would, result in misleading or disadvantaging consumers.<sup>71</sup> The P2B Regulation also does not affect your ability to take action against malicious manipulation of rankings by third parties, partly in the interest of consumers.<sup>72</sup>

### 4.3 ACM's guidance

68. In this subsection, ACM provides you – as a provider of an online platform and/or online search engine – with guidance on how to comply with the rules that apply when you use ranking.
69. The European Commission has published guidelines with a view to the consistent application of the rules on ranking.<sup>73</sup> These EU Guidelines are intended to offer providers of online platforms and online search engines recommendations on the application of the rules. In addition, the EU Guidelines are intended to contribute to the optimization of the way in which the main parameters for ranking can be identified and presented to business and corporate website users.<sup>74</sup> ACM agrees with these EU Guidelines and refers you to them for a further explanation of the application of the rules in connection with ranking.

#### Guidance description

- a. easily available
- b. drafted in plain and intelligible language
- c. specific and detailed
- d. complete

70. It is important for both business users and corporate website users that the description of how your ranking mechanism works is **easily available**. As a provider of an online platform, you must include the description in the general terms and conditions.<sup>75</sup> As a provider of an online search engine, you must make the description publicly accessible on the online search engine. This must be a place that is easily available to users of your service. To determine if a place is easily available, for example, you can look at your users' behavior concerning where they look for other information about how your service works.<sup>76</sup> A location on your online search engine that requires users to log in or sign in is not considered easily and publicly available.<sup>77</sup>
71. The description you give of how your ranking mechanism works must be **drafted in plain and intelligible language**. The extent to which the description is drafted in plain and intelligible language depends not only on the language<sup>78</sup> in which you provide the description, but also

<sup>69</sup> Article 5(4) of the P2B Regulation.

<sup>70</sup> Recital 27 of the P2B Regulation.

<sup>71</sup> Article 5(6) of the P2B Regulation.

<sup>72</sup> Recital 27 of the P2B Regulation.

<sup>73</sup> See '[Guidelines on transparency of ranking pursuant to Regulation \(EU\) 2019/1150 of the European Parliament and of the Council](#)', European Commission, 2020/C 424/01 (hereinafter referred to as the 'EU Guidelines').

<sup>74</sup> EU Guidelines, paragraph 1.

<sup>75</sup> See the general principles in paragraph 18 of these Guidelines.

<sup>76</sup> EU Guidelines, paragraph 116 to 119.

<sup>77</sup> Recital 26 of the P2B Regulation.

<sup>78</sup> See paragraph 38 of these Guidelines.

whether the method of description matches the level of knowledge of the users of your service. You must therefore also take this into account when drafting the description.<sup>79</sup>

72. The description must also be **specific and detailed**. The main parameters must properly reflect what determines ranking under the ranking mechanism in question.<sup>80</sup> There may be a large number of ranking parameters. For example, to determine what the most important parameters are you can eliminate parameters that play only a secondary role in determining the ranking. You can then divide the remaining main parameters into categories and subcategories, and in doing so determine and describe the relative importance of these main parameters.<sup>81</sup>
73. The main parameters concern all general criteria, processes and specific signals integrated into algorithms or other adaptation or degradation mechanisms used in connection with ranking. Examples of main parameters are<sup>82</sup>:
- the indicators used for measuring the quality of goods or services of business users (e.g., consumer reviews);
  - the use of editors that can influence the ranking of those goods or services (e.g., 'deals of the day', 'top picks'<sup>83</sup>);
  - the extent to which fees affect ranking (paid ranking); or
  - elements that are not or are only slightly related to the good or service itself, such as the presentation characteristics of the online offer (e.g., display on mobile telecommunications devices).
74. The description must be more than a simple listing of the main parameters.<sup>84</sup> You must describe why you have determined that these are the main parameters.<sup>85</sup> To avoid confusion among users about the meaning of the main parameters, consider describing for each main parameter exactly what it means for the ranking mechanism. This is because this can be understood and measured differently for each service.<sup>86</sup>
75. It is also important that the description is **complete**. For example, if paid ranking options are one of the main parameters used to determine the ranking then this must also be included in the description. But also, when the main parameters involve the more unexpected factors, which a user may assume are irrelevant,<sup>87</sup> or when they involve factors such as temporary changes or personalization.<sup>88</sup>

#### **Example: complete description of main ranking parameters**



A seller of IT-products on an online platform reads the general terms and conditions carefully, with the goal of achieving a higher ranking. The general terms and conditions only state the following:

*"The main parameters for determining rankings are:*

- *consumer reviews, and*
- *use of the delivery offered by the online platform itself."*

The seller has the maximum score in terms of consumer reviews and uses delivery by the online platform. Other business users who score lower on these items are above her in the ranking. These business users pay a fee to the platform to move up in the ranking.

<sup>79</sup> EU Guidelines, paragraph 105.

<sup>80</sup> EU Guidelines, paragraph 47.

<sup>81</sup> EU Guidelines, paragraph 42.

<sup>82</sup> Recital 24-25 of the P2B Regulation; see also Appendix I of the EU Guidelines

<sup>83</sup> A preferential selection of the editors.

<sup>84</sup> EU Guidelines, paragraph 22.

<sup>85</sup> EU Guidelines, paragraph 96.

<sup>86</sup> EU Guidelines, paragraph 99.

<sup>87</sup> EU Guidelines, paragraph 43.

<sup>88</sup> EU Guidelines, paragraph 24.



Explanation: As a provider of an online platform, you must describe all the main parameters in the general terms and conditions, including the reasons for the relative importance of those parameters. In this case, paid ranking is one of the main parameters. However, this is not mentioned in the platform's general terms and conditions. Moreover, the description does not explain the reasons for the relative importance of the main parameters compared to other parameters. This is an obligation, however.

## 5 Unequal treatment

76. Do you also offer your own goods and/or services through your online platform or online search engine?  
Or do you offer certain goods or services through your online platform or online search engine through a business user or corporate website user over whom you have control<sup>89</sup> (for example, a provider of goods or services in which you own a majority of the shares)?

Do you or can you treat the offering of these services or goods differently than the offering of competing business or corporate website users?

If you can answer 'yes' to the above questions, then you must follow the rules in Article 7 of the P2B Regulation. This chapter is relevant to you.

### 5.1 Why is transparency concerning unequal treatment important?

77. As a provider of an online platform or online search engine you may also offer certain goods or services yourself that compete directly with other business or corporate website users who use your online platform or search engine.<sup>90</sup> In this context, there could be an incentive to favor your own offer through technical and/or economic means.
78. It is important for a business or corporate website user to understand that unequal treatment is taking place. On the basis of this information, a business owner can better assess whether they think the unequal treatment is reasonable and respond accordingly with their own choices, such as choosing to use your online platform.

### 5.2 What does the P2B Regulation say about unequal treatment?

79. As a provider of an online platform or online search engine you are required to provide a description of any form of unequal treatment by legal, commercial or technical means that is actually given or may be given.<sup>91</sup> This means that you must be transparent about any form of unequal treatment of, on the one hand, your own offer or the offer of business or corporate website users over which you have control and, on the other hand, products and/or services provided by business or corporate website users over which you have no control. This regards goods and/or services that are offered to consumers. As a provider of an online platform, you must provide this description in the general terms and conditions, and as a provider of an online search engine you must provide it in publicly available descriptions.
80. If you are a provider of an online platform, you are also required to include the main economic, commercial, or legal considerations in the description. This additional requirement does not apply to providers of online search engines.
81. The P2B Regulation explicitly identifies four elements on which unequal treatment can occur in particular: (1) access to data, (2) ranking or other settings applied by the provider that influence consumer access to goods or services, (3) any direct or indirect fee charged for the use of the

<sup>89</sup> A provider of an online platform or online search engine controls a business if:

i. the business is owned by the provider of the online platform or online search engine, or  
ii. the provider of the online platform or online search engine can exercise decisive influence over the business.

<sup>90</sup> Recital 30 and 31 of the P2B Regulation.

<sup>91</sup> Article 7(1) and 7(2) of the P2B Regulation.

services, and (4) access to, conditions for or any direct or indirect fee charged for the use of services, functionalities or technical interfaces that are directly connected or ancillary to the services provided.<sup>92</sup> These elements are not exhaustive, as the obligations in this article apply to all forms of unequal treatment where a provider favors itself or the business or corporate website users he has control over, over other business or corporate website users.

82. The obligations of the P2B Regulation on unequal treatment, however, are independent of whether it is permitted under other legislation. The DMA, prohibits unequal treatment by gatekeepers with respect to ranking in any event.<sup>93</sup> The Dutch Competition Act also places limits on the application of unequal treatment.<sup>94</sup>

### 5.3 ACM's Guidance

83. In this subsection, ACM provides you – as a provider of an online platform and/or online search engine – with guidance on how to draft the description of unequal treatment(s).

#### Content of the description of unequal treatment

84. Below, ACM provides guidance on how to define any form of unequal treatment through legal, commercial or technical means.

##### Guidance for description

- a. easily available
- b. drafted in plain and intelligible language
- c. specific and detailed
- d. complete

85. If you apply or can apply unequal treatment, the P2B Regulation requires you to describe that unequal treatment in the general terms and conditions. The general terms and conditions must be easily available (see paragraph 29). It must be clear to businesses what forms of unequal treatment you apply or can apply. If you are a provider of an online platform, you are also required to include the main underlying considerations for the unequal treatment in the description. This description must comply with the general principles described in chapter 2.
86. Firstly, providers of both online platforms and online search engines must write the description in **plain and intelligible language**. For online platforms, this follows from the requirements for the general terms and conditions as a whole. The same requirement applies to the description that online search engines must make publicly available.
87. In addition, the description of each unequal treatment must be **specific and detailed**. This description must include the specific measures taken by, or the behavior of, the provider.<sup>95</sup> It is therefore important that you describe what specific measures you take or can take, or actions you exhibit or can exhibit, that lead to or could lead to unequal treatment. This requirement applies in any event to the four elements singled out in paragraph 89,<sup>96</sup> but it does not detract from the fact

<sup>92</sup> Article 7(3) of the P2B Regulation.

<sup>93</sup> Article 6(5) of the DMA. See <https://eur-lex.europa.eu/legal-content/NL/TXT/PDF/?uri=CELEX:32022R1925&from=EN>.

<sup>94</sup> An example is self-promotion in a position of power. This can constitute an abuse of an economic dominant position (Article 24 of the Competition Act or Article 102 of the Treaty on the Functioning of the European Union). The European General Court found in the Google Shopping [ruling of November 10, 2021](#) that self-preferential treatment can constitute an abuse of an economic dominant position in its own right under Article 102 of the Treaty on the Functioning of the European Union. Alphabet appealed this ruling to the European Court of Justice.

With respect to ranking, in the event of self-preferential treatment Article 6 of the Dutch Competition Act (or Article 101 of the TFEU) may also be relevant.

<sup>95</sup> Article 7(3) of the P2B Regulation.

<sup>96</sup> Ibid.

that the requirement is also applicable to situations in which a provider favors itself in some other way.

88. Finally, the description of the unequal treatment must be **complete**. It must include any unequal treatment that a provider of an online platform or an online search engine applies or may apply.<sup>97</sup> Merely giving some examples does not suffice.

#### Examples of unequal treatment

89. By way of illustration, ACM provides examples below of the four elements where unequal treatment may occur that are singled out in Article 7(3) of the P2B Regulation.

- 1) **Access to the data** that is provided to providers of online platforms or online search engines by consumers, business users or corporate website users, or which are generated by the provision of these services.

##### *Example: access to data*



A travel platform collects click data from consumers who book trips through its online platform to improve its services. The provider of the travel platform also offers trips itself and therefore competes with tour operators that use the online platform. If tour operator X, which uses the online platform to offer trips, gets no or only limited access to this consumer click data, the provider of the online platform must be transparent about this in its general terms and conditions for business users. In that case, the platform exhibits behavior that results in unequal treatment.

Explanation: The description in the general terms and conditions must in any event include:

- what specific form of unequal treatment is applied, and
- what considerations form the basis for the unequal treatment.

- 2) **Ranking or other settings** that are applied and influence consumer access to the offers of other business and corporate website users over which you have no control.

##### *Example: description of prominent display of own offering in 'buy box'*



Online platform X uses a 'buy box': when a consumer searches for a product on the online platform, the buy box appears at the top right of the web page, allowing the consumer to add the product directly to their shopping cart. If a product is offered by multiple sellers, including the online platform itself, the online platform's product is always at the top of the buy box. The provider of online platform X mentions nothing about this in its general terms and conditions.

Explanation: If you – as a provider of an online platform – want to use, for example, a buy box or similar feature, where you place yourself at the top by default, you must be transparent about this in your general terms and conditions. This is, in fact, a case of unequal treatment, as business users have no opportunity to be at the top of the buy box. A business user must be able to be aware that they do not have access to this.

<sup>97</sup> Article 7(1) and 7(2) of the P2B Regulation.

- 3) Fees charged for the use of the online platform or online search engine.

**Example: fee for the use of the online platform**



The provider of real-estate platform Z charges 3% of their turnover to estate agents who use the online platform to sell properties. However, the provider of the online platform is not required to pay this fee when selling its own properties.

Explanation: In this case it is important that the estate agent understands that they must pay a percentage of their turnover to the provider of the online platform in order to use the services, whereas the provider of the online platform itself, or an estate agent that it controls, does not have to pay this percentage when offering real-estate services. Business users can use this information when considering whether or not to opt for offering real estate through this online platform.

- 4) Access to, conditions for, or any direct or indirect fee charged for the use of services or functionalities, or technical interfaces that are directly connected or ancillary to utilizing the online platform or online search engine, such as operating systems.

**Example: offering 24-hour delivery is not permitted**



E-commerce platform X only allows 24-hour delivery to be offered to consumers of products in its own offerings. Competing business users therefore do not have this option. No information on this is included in the general terms and conditions.

Explanation: In this example, the provider of the e-commerce platform must be transparent in its general terms and conditions about the fact that it applies unequal treatment where the possibility to offer 24-hour delivery to consumers is concerned. In addition, the considerations for the unequal treatment must be stated. This is because the unequal treatment may result in consumers preferring to buy the product provided by the online platform provider itself.



## 6 Restrictions on using different conditions outside of the online platform

90. Do you, as a provider of an online platform, impose restrictions on the terms (e.g., the price) that business users outside of your online platform can charge for the same goods and/or services they also offer on your online platform?

If so, then the rules in Article 10 of the P2B Regulation apply to you. This chapter is relevant to you.

91. If you are a provider of an online search engine, then the rules that are explained in this section do not apply to you.

## 6.1 Why is transparency concerning restrictions on using different conditions outside of the online platform important?

92. Business users may decide to sell goods or services to consumers through multiple sales channels, including their own website. A business user may, for example, choose to apply different delivery conditions or prices than on your online platform. If you decide not to allow business users who are active on your online platform to apply better terms of delivery or prices through other sales channels than on your online platform, it is important that business users are aware of this, including the reasons for your decision. This information is important for business users in order to determine whether, and in what way, they wish to use your online platform.

## 6.2 What does the P2B Regulation say about imposing restrictions?

93. If you impose restrictions on business users, you must inform them of these restrictions in your general terms and conditions. You must also include the reasons for imposing such restrictions in your general terms and conditions. These reasons must not only be easily accessible to the public, but also contain the main economic, commercial and legal considerations.

## 6.3 ACM's guidance

94. In this subsection, ACM provides you with guidance on how to comply with the rules that apply when you impose restrictions on business users using other sales channels to offer different terms and conditions.
95. An example of such a restriction is the Most Favored Nation (MFN) clause, or parity clause. Such a clause prohibits business users from offering the same good or service on their own website (narrow parity clause) or any other online platform (broad parity clause) at better conditions, such as a lower price or more cancellation options.
96. However, the requirements of the P2B Regulation are independent of the question of whether imposing restrictions, such as parity clauses, is permitted. The use of such a clause could potentially contravene Dutch contract law in the event that the clause would be unreasonably onerous, and the Dutch Competition Act if you restrict competition by imposing the clause. Since the entry into force of the new Vertical Block Exemption Regulation in June 2022, 'broad' parity clauses are no longer included in the exemption from the ban on restrictive practices (Article 6 of the Dutch Competition Act and Article 101 of the Treaty on the Functioning of the European Union).<sup>98</sup> For this type of parity clauses it is considered more likely that they will have competition-restricting effects than other types of parity clauses. This means that as a provider of an online platform, you may not simply restrict business users from choosing to offer their goods or services on other online platforms on more favorable terms.<sup>99</sup> If your online platform is designated as a gatekeeper in the DMA, the use of both narrow and broad parity clauses is prohibited without exception.<sup>100</sup>
97. It must be clear to a business user what restrictions you place on offering goods or services through other sales channels, and why you have imposed these restrictions. This description must comply with the general principles described in Section 2. This means that this description must be **easily available**. In this case, an additional requirement is that the considerations must not only be easily available to all business users in the general terms and conditions that apply to them, but also to the general public. In addition, the description must be **formulated in plain and intelligible language, specific and detailed, and complete**.

<sup>98</sup> Article 5(1)(d) of [Commission Regulation \(EU\) 2022/720 of 10 May 2022 on the application of Article 101\(3\) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices](#).

<sup>99</sup> Guidelines on vertical restrictions (2022/C 248/01), [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022XC0630\(01\)&qid=1657189521553&from=NL](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022XC0630(01)&qid=1657189521553&from=NL).

<sup>100</sup> Article 5(3) of the DMA. See <https://eur-lex.europa.eu/legal-content/NL/TXT/PDF/?uri=CELEX:32022R1925&from=EN>.

**Example: description of a restriction that is not specific and detailed**



The provider of a food delivery platform indicates in its general terms and conditions that when restaurants also sell meals on their own website, this is subject to restrictions. Restaurant X wants insight into exactly what these restrictions involve. When they consult the general terms and conditions, all it says there is that restaurants are restricted from offering different terms and conditions through their own websites.

Explanation: If a provider of an online platform only indicates that restrictions apply, this is not specific and detailed. The description must make clear exactly what these restrictions involve, and why the provider imposes them. For example, if the restriction concerns charging lower prices on the business user's own website you must state this in the description, including an explanation.

## 7 Internal complaint handling system

98. Do you offer an online platform and are you not a small enterprise<sup>101</sup>? If so, then the rules in Article 11 on the internal complaint handling system of the P2B Regulation apply to you.<sup>102</sup> This chapter is relevant to you.
99. If you are a provider of an online search engine, then the rules that are explained in this section do not apply to you.

### 7.1 Why is transparency about the internal complaint handling system important?

100. As a provider of an online platform, you can make various impactful decisions about the service you provide to business users. A business user may not agree with the decision you make, for example if you decide to restrict, suspend or terminate the provision of your service to a business user altogether. It is therefore important that business users are able to challenge such a decision. This gives them the opportunity to submit facts that may require you to reverse your earlier decision and allow the business user to regain access to the services you provide. In this way the internal complaint handling system contributes to safeguarding the rights of business users. This also applies to the obligation to offer mediation, which gives both you and the business user the opportunity to resolve disputes without the need for legal proceedings.<sup>103</sup>

### 7.2 What does the P2B Regulation say about the internal complaint handling system?

101. As a provider of an online platform, you must provide an internal complaint handling system<sup>104</sup> that handles complaints from business users. In the general terms and conditions, you must include all relevant information needed by the business user to access the internal complaint

<sup>101</sup> Article 11(5) of the P2B Regulation. You are a small enterprise if your company has fewer than 50 employees and generates sales of less than 10 million euros.

<sup>102</sup> Article 11(1) of the P2B Regulation. Under the DSA there are also obligations regarding the internal complaint handling system of online platform providers. See Article 20 of the DSA.

<sup>103</sup> Article 12 of the P2B Regulation. In these Guidelines, ACM does not provide guidance on how you – as a provider of an online platform – must approach mediation. You can however find a description of this obligation in the Appendix.

<sup>104</sup> The P2B Regulation allows you to outsource the internal complaint handling system to an external party, as long as this external party is able to ensure that the internal complaint handling system meets the requirements of the P2B Regulation. See consideration 39 of the P2B Regulation.



handling system and its functioning.<sup>105</sup> Making use of the internal complaint handling system is not a precondition for using mediation and/or initiating legal proceedings by the business user. If you – as a provider of an online platform – are a small enterprise, then there is no obligation under the P2B Regulation to set up an internal complaint handling system. However, as a small enterprise you are free to set up an internal complaint handling system on a voluntary basis.

102. The P2B Regulation places several requirements on the internal complaint handling system. You must ensure that the internal complaint handling system is **easily available**, and that business users do not have to incur costs to submit a complaint. Business users to whom you have restricted, suspended or terminated the provision of your services must also have access to it.<sup>106</sup>

103. In addition, the P2B Regulation also requires you to make information concerning the operation and effectiveness of the internal complaint handling system easily accessible to the public.<sup>107</sup> This information includes:

- the total number of complaints submitted;
- the main types of complaints;
- the average time that it took to process the complaints; and
- bundled information on the outcomes of the complaints.

You must review this information at least once a year and update it where necessary in the event of significant changes.

104. Furthermore, you must ensure that you carry out the following tasks as part of the internal complaint handling system:

- You must take submitted complaints seriously and be able to address the issue about which the business user is complaining.<sup>108</sup>
- You must process business user complaints in a swift and effective manner, taking the importance and complexity of the issue raised into account.<sup>109</sup>
- The complaints must be dealt with within a reasonable period. The handling time depends on the complexity of the complaint.<sup>110</sup>
- You must inform the business user individually and in **plain and intelligible language** of the outcome of the internal complaint handling process.<sup>111</sup>

105. Through the internal complaint handling system, business users can submit a complaint to you about the following issues:<sup>112</sup>

- Obligations under the P2B Regulation that the business user believes you are not complying with, if this affects the business user;
- Technological issues directly related to the provision of your service that affect the business user; or
- Any measures you take or any conduct you engage in, if this is directly related to the provision of your service and affects the business user.

106. When dealing with complaints from business users, it is important that you do so in a non-discriminatory way. This means that you treat equivalent situations (complaints) in an equal way.<sup>113</sup>

107. You may enforce the decision you have made, which the business user has complained about, during the processing of the complaint.<sup>114</sup> NB: if you withdraw the measure, you must restore the business user's situation as soon as possible. See paragraph 49.

<sup>105</sup> Article 11(3) of the P2B Regulation.

<sup>106</sup> Recital 37 of the P2B Regulation.

<sup>107</sup> Article 11(4) of the P2B Regulation. The DSA also includes requirements for transparency reporting that apply to providers of online platforms in connection with complaints. See Article 15(1)(d) of the DSA.

<sup>108</sup> Article 11(2)(a) of the P2B Regulation.

<sup>109</sup> Article 11(2)(b) of the P2B Regulation.

<sup>110</sup> Article 11(1) of the P2B Regulation.

<sup>111</sup> Article 11(2)(c) of the P2B Regulation.

<sup>112</sup> Article 11(1), second paragraph, subparagraphs (a) to (c) of the P2B Regulation.

<sup>113</sup> Article 11(1) of the P2B Regulation.

<sup>114</sup> Recital 37 of the P2B Regulation.

### 7.3 ACM's guidance

108. In this subsection, ACM provides you – as a provider of an online platform – with guidance on how to comply with the rules governing the handling of complaints.

#### Guidance for internal complaint handling

- a. easily available
- b. drafted in plain and intelligible language
- c. specific and detailed complete

#### Access to complaint handling system

109. First of all, the internal complaint handling system must be **easily available** to all business users. This means that all business users must be able to easily find where to submit a complaint.

110. Business users must in any event be able to find all relevant information on how to access the internal complaint handling system in the general terms and conditions. This information in the general terms and conditions must therefore be in **plain and intelligible language, specific and detailed, and complete**.

#### Example: information on access to complaint handling system



A business user wants to submit a complaint through a reservation platform provider's internal complaint handling system. The provider of the platform states the following in its general terms and conditions:

"You can submit a complaint on the website."

Explanation: The information you provide as a provider of an online platform in the general terms and conditions regarding access to your internal complaint handling system must be in plain and intelligible language, specific and detailed, and complete. In this particular case, too little information is given about access to the internal complaint handling system, so reading the general terms and conditions does not give the business user a complete picture of where to send their complaint. The mere reference to the website is not sufficiently specific. The information must provide business users with clarity on where to send their complaint. You might think about including a link to the place on your website through which complaints can be submitted, or an email address to which business user can send his complaint.

#### Working of the complaint handling system

111. You must also include all relevant information about how the complaint handling system works in the general terms and conditions. Information on how the complaint handling system works must be in **plain and intelligible language, specific and detailed, and complete**. The process of complaint handling must be predictable for business users.

**Example: complete information on the working of the complaint handling system**



An app provider submitted a complaint to an app store it uses to market its app to consumers. The only information that can be found in the general terms and conditions concerning the internal complaint handling system is that business users can submit complaints through a form on the website, including a link.

Explanation: As a provider of an online platform, you must include all relevant information about how the complaint handling system works in the general terms and conditions. In this particular case, only information about access to the system is listed in the terms and conditions.

Information on how the internal complaint handling system works might include:

- A description of periods within which a decision will be made on the submitted complaint;
- A description of how the business user will be informed of the outcome of their submitted complaint;
- A mention of a contact person whom the business user can contact in case they have any questions about the process; or
- The extent to which a business user can amend or withdraw their complaint.

**Result of complaint handling**

112. In addition, you must inform the business user in **plain and intelligible language** about the outcome of the submitted complaint. For guidance regarding plain and intelligible language, see paragraph 38.

113. Furthermore, the result you communicate to business users must be **specific and detailed**. This means that you must address the individual complaint of the business user. It is important for business users to be clear about the outcome of their complaint, the reasons behind the outcome and the consequences for him.

**Example: Specific and detailed information on complaint handling**



A business user has submitted a complaint to the provider of a comparison website. By now he has gone through the entire process, and he is being informed of the outcome of his submitted complaint. This is a general message stating:

“Your complaint is rejected.”

Explanation: As a provider of an online platform, you must inform the complainant of the outcome of the handling of the complaint individually and in plain and intelligible language. You must provide the business user with a personalized response related to the individual complaint. In doing so, a standard answer is insufficient.<sup>115</sup>

114. Finally, you must consider the importance of the complaint to the business user and the complexity of the complaint submitted when handling it.

<sup>115</sup> Q&A, subsection 6.5.4.

**Example: importance of the complaint to the business user**



The account of a seller of home accessories on an e-commerce platform has been suspended. The hundreds of items it normally offers on the platform cannot be sold during the suspension. They are losing a lot of revenue as a result of the suspension. They disagree with the suspension, and therefore submit a complaint through the internal complaint handling system. The suspension continues during the handling of the complaint. The platform informs the seller of the outcome of the submitted complaint after one month.

Explanation: As a provider of an online platform, you must consider the interests of the business user when handling a complaint. A suspension of a complainant's entire account can have major financial consequences for that business user. Is a major (financial) interest of the business user involved in the complaint? Then a month is a very long time to handle the complaint. However, the handling of a complaint may also depend on the complexity of the complaint.

## Appendix

115. This Appendix contains a summary of Articles 6, 8, 9 and 12 of the P2B Regulation. These articles concern ancillary goods and services, specific contract conditions, access to data and mediation. This Appendix sets out in brief what is stipulated in the P2B Regulation in this respect.

### Ancillary goods and services

116. As a provider of an online platform, do you offer ancillary goods and services on your online platform? Or are ancillary goods and services offered by business users on your online platform? If so, then the rules in Article 6 of the P2B Regulation apply to you

If you are a provider of an online search engine, then the rules in Article 6 of the P2B Regulation do not apply to you

#### What does the P2B Regulation say about ancillary goods and services?

117. If you offer ancillary goods and services, including financial products, to consumers through your online platform from yourself or others, you must describe in your general terms and conditions: (1) the type of ancillary goods and services offered, whether offered by yourself or others, and (2) whether and under what conditions business users may also offer their own ancillary goods and services via your online platform.

118. Ancillary goods and services are goods and services offered to consumers before the completion of a transaction initiated on your online platform to complement the primary good or service offered by the business user. Ancillary goods and services are products that typically depend on and are directly related to the primary good or service in order to be able to function. For this reason, goods and services sold only in addition to the primary good or service in question, rather than being supplementary in nature, do not fall under this concept.

119. Examples of ancillary services are repair services for a specific good, or financial products such as car rental insurance, that are offered to make the specific goods or services offered by the business user more valuable. Ancillary goods may include goods that supplement the specific product offered by the business user, such as an upgrade or tool associated with that specific product to customize goods or services to personal requirements.

120. Given that the description must be provided in the general terms and conditions, it must be drafted in clear and comprehensible language in accordance with Article 3(1)(a). The description must be sufficiently comprehensible to enable a business user to ascertain whether a good or service is being sold as a supplement to a good or service of the business user. The description need not necessarily include the specific good or service, but rather the type of product offered to supplement the business user's primary product.

### Specific contractual terms

121. Are you a provider of an online platform? Then article 8 of the P2B Regulation applies to you.

If you are a provider of an online search engine, then article 8 of the P2B Regulation does not apply to you.

#### What does the P2B Regulation say about specific contract conditions?

122. To ensure that contractual relationships between you and business users are implemented in good faith and based on fair dealing, the following applies to you:

- a) you may not impose changes to the general terms and conditions retroactively, unless this arises from a legal or regulatory obligation or where the retroactive changes imposed are to the advantage of business users;
- b) you must ensure that the general terms and conditions include information on the conditions under which business users can terminate the contractual relationship with you. You must ensure that the termination conditions are always proportionate and can be exercised without undue difficulty; and
- c) you must include in your general terms and conditions a description of the technical and contractual access to the information provided or generated by the business user that they may or may not retain after the expiry of the contract between you and the business user.<sup>116</sup>

## Access to data

123. Are you a provider of an online platform? Then article 9 of the P2B Regulation applies to you.

If you are a provider of an online search engine, then article 9 of the P2B Regulation does not apply to you.

### What does the P2B Regulation say about access to data?

124. You must include in your general terms and conditions a description of the technical and contractual access (or lack thereof) of business users to personal data or other data (or both types of data). This concerns data provided to you by business users or consumers for the use of your online platform service or generated in the provision of your online platform services.

125. In that description you must adequately inform business users about the following in particular:

- a) whether you have access to personal data and/or other data provided by business users or consumers for the use of your online platform services or generated in the provision of those services, and if so, what categories of data are involved and what the conditions of access are;
- b) whether a business user has access to personal data or other data (or both types of data) that this business user provides by using your online platform service or is generated in the provision of those services to that business user and the consumers of the business user's goods or services, and if so, what categories of data are involved and what the conditions of access are;
- c) whether (in addition to point b) a business user has access to personal data or other data (or both types of data) including in aggregate form, provided by or generated in the provision of your online platform services to all business users and consumers of these services, and if so, the categories of data involved and the conditions of access; and
- d) whether the data referred to in point (a) will be provided to third parties, and where the provision of such data to third parties is not necessary for the proper functioning of your online platform services, information on the purpose of such data exchange, and options for business users to opt out of this data exchange.

126. Given that the description must be provided in the general terms and conditions, it must be drafted in plain and intelligible language in accordance with Article 3(1)(a). It is important that you provide business users with a clear definition of the scope, nature and conditions regarding the access you grant to certain categories of data and its use.

127. The description must be proportional. Instead of an exhaustive description of factual data, the description may include an indication of general conditions of access, or of categories of data. The description may also include the description of, and specific conditions of access to, certain types of actual data that could be highly relevant to business users. Such data might include ratings and reviews of the online platform services by business users. Taken together, the

<sup>116</sup> See paragraph 47 of these Guidelines.



description must enable business users to understand whether they can use or control the data in order to create added value with it, including by possibly using third-party data services.

128. It is also important for business users to know whether you exchange data generated when the business user makes use of the online platform service with third parties. In particular, business users must be informed about the exchange of data with third parties that takes place for purposes that are not necessary for the proper functioning of the online platform services, such as when you use the data for commercial purposes. To enable business users to fully exercise their available rights to influence this data exchange, you must also explicitly state what options are available to opt out of the data exchange, if these exist in the context of the contractual relationship with the business user.

129. The requirements of Article 9 of the P2B Regulation should not be understood as an obligation on you to disclose (or not disclose) non-personal and personal data to your business users. When processing data, you must comply with the relevant laws and regulations.

## Mediation

130. Do you offer an online platform and are you not a small enterprise<sup>117</sup>? If so, then article 12 of the P2B Regulation applies to you.

If you are a provider of an online search engine, then the rules in Article 12 of the P2B Regulation do not apply to you.

### What does the P2B Regulation say about mediation?

131. In your general terms and conditions, you must designate two or more mediators with whom you are willing to work to try to reach agreement with business users regarding the out-of-court resolution of disputes between you and a business user in connection with the provision of the online platform services in question, including complaints that could not be resolved through your internal complaint handling system. You may only appoint mediators who provide their services from a location outside of the European Union if it is ensured that the use of these services in no way deprives the business user concerned of the legal protection afforded to them by law.

132. Intermediaries must comply with certain fixed criteria to ensure that they are accessible, fair, and as quick, efficient and effective as possible. The mediators you appoint must comply with the following requirements:

- a) they are impartial and independent;
- b) their mediation services are affordable for business users of your service in question;
- c) they are able to provide their mediation services in the language of the general terms and conditions that apply to the contractual relationship between you and the business user concerned;
- d) they are easily accessible, either physically at the business user's place of business or residence or remotely by means of communication technology;
- e) they are able to provide their mediation services without delay;
- f) they have sufficient understanding of the general trade relations between undertakings to be able to contribute effectively to the attempt to settle disputes.

Nevertheless, you and the business users are free to jointly appoint a mediator of your choice after a dispute arises between you.

133. Mediation has a voluntary nature. This means the parties are themselves responsible for it and can begin and end the mediation at any time. Despite its voluntary nature, requests to use

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<sup>117</sup> Article 12(7) of the P2B Regulation. You are a small enterprise if your company has fewer than 50 employees and generates sales of less than 10 million euros.

mediation must be considered by you and the business users in good faith. Before or during the mediation, you must make information available to the business user at its request on the operation and effectiveness of the mediation related to the business user's activities.

134. You are not obliged to engage in mediation if a business user initiates proceedings on an issue for which that business user has previously brought a case to mediation and the mediator in that case found that the business user did not act in good faith. You are also under no obligation to engage in mediation with business users who have made repeated, unsuccessful mediation attempts. These exceptional situations should not restrict the business user's ability to put forward a case for mediation when the subject of mediation, as determined by the mediator, is unrelated to the previous cases.
135. You must bear a reasonable share of the total costs of mediation in each individual case, taking all relevant elements of the case in question into account. On the basis of a proposal by the mediator, a reasonable share of those total costs will be determined, taking into account all relevant elements of the case in question, and in particular the relative merits of the parties' allegations in the dispute, the parties' conduct, and the size and financial capacity of the parties in relation to each other.
136. Attempts to reach agreement on the resolution of a dispute through mediation do not affect the rights of you and the business users to initiate legal proceedings at any time before, during or after the mediation process.