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SME Europe: contribution to the European Commission's inception impact assessment re fairness in platform-to-business relations

ABOUT US

The purpose of SME Europe a.is.b.l. (Small and Medium Entrepreneurs of Europe) is to shape EU policies in a more SME friendly way. SMEs are the power cells of the European economy as it is especially them that create sustainable jobs, growth and prosperity. We closely cooperate with national business organisations and European policy makers within the EPP political family, with a particular focus on the European Parliament. As a pro-active organisation within the political networks of Christian-Democrats and Conservatives, we want to bring a new spirit and a fresh entrepreneurial wind into the political debate. The interests of SMEs are best served when market mechanisms can freely make an impact.

We welcome the European Commission's Inception Impact Assessment on Fairness in Platform-to-Business relations. Platforms together with SMEs are adding a substantial contribution to the EU economy.

GENERAL POSITION

This debate is necessary however it is very important to ensure to be conscientious and fair in the outcome. For this we want to mention some basic principles taken into account for this regulation:

- a) The interests of SMEs are best served when market mechanisms can flow and perform freely. Dynamic competitiveness and fair market rules are hence essential to reach that goal. Monopoly or dominance, as defined by EU competition legislation, can have a negative impact on a fair market. In such cases every concrete situation requires constant investigation, monitoring and also action if necessary. On the other hand, innovation and the following transition of markets can create monopolization and domination for a certain timeframe on certain parts of the market. This is natural and often in the beginning of innovation/new goods or innovative products temporarily positive. We believe that in this scenario, the first response should be creating an environment for more innovation, competitorship and competition, only the subsidiary and last answer should be negative regulation or any other kind of legal intervention. Markets should be open for innovation and competitors, competition must be fair (this includes also third parties like SMEs, who are using such Platforms from service

providers to sell their goods or services) and the consumer rights should be protected (to remark here: SMEs can be also consumers), only monopolies or dominant market leaders who clearly damage (proved by evidence) one of these three aspects, have to be regulated stricter and faster. However: from a mid - and long-term perspective, competition is always better than any kind of monopoly.

- b) Good regulation is not the same as overregulation – if there is any doubt of the necessity of regulation, then no or less regulation is always better than too much regulation.
- c) Subsidiarity is always preferable, if problems are resulting more efficiently solved on the national level.
- d) Fair framework conditions and legal certainty are crucial for SMEs – that means: clear understandable and handleably Regulations for SMEs Compliance in interplay with existing rules are essential for all actors within the same sector. Guaranteeing a level playing field and ensuring fair competition as well as effective monitoring of rules are required. There should be no room for different interpretations, otherwise SMEs might and will be discouraged of or paralyzed in doing their business, investing in innovative ideas or employment.
- e) Transparency is in general positive, but must be balanced between the fair entrepreneur's rights and consumer rights/protection. Only when consumer rights have already been granted, it should become a duty. However: transparency only for the sake of being transparent is violating the rights of entrepreneurs and hence can create unforeseen damages on the market.

SPECIFIC POSITION

On the one hand, Platforms open up a lot of new business opportunities for SMEs such as market and customer based expansion, cost reduction (e.g. through providing consumers with better ways to find products and services they need) or facilitating information exchange between SMEs and their customers. Platforms are heavily reliant on SMEs' success. Platform business models are often acting as intermediaries which means they hardly produce any goods or services themselves. Most platforms need SMEs to thrive otherwise they lose their reason to exist. Platforms and SMEs are entangled in a complex ecosystem in which they depend on each other's success - businesses' growth powers platforms, platforms' success makes it possible for SMEs to reap off additional business opportunities at near-zero marginal cost, as mentioned above. In general SMEs have a huge benefit from such platforms.

On the other hand, there are also cases and examples of Platforms, that have used their dominating position for unfair contract relations with SMEs or unfair rating systems, misguiding consumers and damaging SMEs (which often have no alternative and are depending on dominating Platforms because of the structure of the market). Such cases are showing the lack of commitment to fair competition and consumer rights. There is clearly no benefit for the internal market and the EU must interfere with regulatory measures. If there is also a monopoly or market dominator involved, the regulation has to take this in account, because in such cases, both the Platform and the market itself will not solve it in a fair way.

Another point we consider important, are third parties (not the platform owners) trying to exclude SMEs as resellers from such platforms or creating extra costs of their services/products, leading to consumers avoiding certain platforms.

It is relevant to keep that equilibrium in mind while discussing regulating P2B business relations.

In this context essential for us would be:

i) **A final and clear definition of a Platform, because:**

- a) Without a fair framework, conditions and legal certainty will be very hard to create and maintain.
- b) This legislative intervention could result in a catch-all piece of legislation capturing all forms of businesses with online presence - big and small, Internet and traditional companies (is a retailer selling goods through a website to be considered a platform?), start-ups and incumbents, etc.

→ This means that P2B legislation will risk creating burdens not only for all types of online Platforms but also their business users and ultimately consumers who shall be put at the centre of the entire online ecosystem. It would go against a number of EU better regulation principles which aim to ensure that burdens on businesses and citizens are kept to a minimum.

→ **In consequence: If there will be no clear definition of a Platform previous or included into to this regulation, we prefer option 1 before we discuss other options**

ii) **If point i) is solved, new regulation should not damage growth, innovation, competition and the free market, because:**

- a) The Digital revolution is advancing faster, than new regulation comes up. Europe is involved in a global competition. For that our companies have to be as flexible as possible to be part of the top - but it must be fair also to the old economy, as the success of our economy is mainly based on analog productivity today.
- b) Consumer (consumers include SMEs) protection is fundamental, also for the trust in the European companies and the European Legislation – but Europe has to avoid to become a nanny-state. Transparency, clear and simple legal information about his rights and understandable service offers of the platform, should help the well-informed consumer to take his own decisions.

→ Administrative burden in the EU's economic ecosystem should be avoided. When it comes to P2B, the EU shall ensure a more effective application of existing competition and consumer protection frameworks. In addition, we



encourage a soft law approach which would promote standards on transparency, fairness and effective redress and to ensure enhanced monitoring of platform ecosystems.

→ **In consequence: Option 1 is in general the ideal solution, Option 2 can be necessary for parts of the regulation, but should be used sensitively.**

Option 3 will lead to inflexible regulation, which could damage the ecosystem between SMEs and Platforms. Such kind of regulation will be always behind the developments of the digital revolution.

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