



Progress Report

Expert Group for the Observatory on the Online Platform Economy

Introductory remark by the Chairman



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1. The role and purpose of the Observatory and its Expert group

The growing importance of the online platform economy raises new policy and regulatory challenges. Platforms offer great advantages in terms of choice and innovation and convenient services for consumers, as well as efficient access to cross-border markets for businesses. At the same time, this role can mean platforms act as gatekeepers for businesses to access markets and reach consumers, which for many leads them to depend on platforms' services. In this environment, there is a growing debate about how the trading practices used by platforms can prevent businesses reaping the full benefits of the online platform economy.

Considering the fast-changing online environment, the EU opted for a two-step approach to address these issues.

Firstly, the Regulation on promoting fairness and transparency for business users of online intermediation services ("P2B-Regulation")¹ will address some of these challenges when it applies from 12 July 2020. It provides for horizontal, principle-based rules, designed to ensure more transparency, fairness and the means to resolve problems in the relationship between platforms and businesses.

Secondly, further in-depth analysis and close monitoring of the evolution of the online platform economy that fits with the complexity of the commercial interactions and the fast pace of technological change, leaves room for potential further policy action.

In particular, the Commission agreed to further investigate the problems linked to the dependence of business users on platforms and related unfair trading practices used by them, including issues relating to self-preferencing (differentiated treatment) and certain data policies.²

On 26 April 2018, the Commission set up **the Observatory for the Online Platform Economy**³ tasked with monitoring and analysing developments in the online platform economy.

¹Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services; OJ L 186/57, 11.7.2019

² Article 18 P2B Regulation

³Commission Decision of 26.04.2018 on setting up the group of experts for the Observatory on the Online Platform Economy (C(2018) 2393 final).

Following a competitive selection process, and to support the Observatory's dedicated team of Commission officials, the Commission appointed 15 independent experts as members of the Expert group⁴ for the Observatory on the Online Platform Economy.

On 27 September 2018, the group started its work.

The Observatory Expert group has been tasked to provide the Commission with advice and Expertise on the evolution of the online platform economy, in particular with performing Expert analysis on issues such as:

- platforms and search engines' use of algorithmic decision-making and ranking;
- the access to, and use of, personal data and other data provided or generated by the use of platforms and search engines;
- the remuneration of material displayed online, mainly in search results;
- the transparency and accountability of online advertising;
- self-preferencing;
- the restrictions imposed by platforms on businesses who wish to offer different conditions for their goods and services outside of the platform (so called MFN clauses); and
- The possible impacts of platforms' potentially harmful practices on consumers.

In the first year of their activity, the Experts focused on three main work-streams: measurement of the online platform economy, access to and use of personal and other data by platforms and differentiated treatment. They produced initial, though targeted papers on 1) relevant economic indicators that can be used to measure the online platform economy, 2) data and 3) differentiated treatment.

2. Purpose of the Progress report

This report contains the first glimpse of the Experts' work on the above three topics. It does not intend to provide either final answers or final policy recommendations. Rather, it seeks to open the debate to identify priority areas for further research, analysis and policy scrutiny.

The feedback and reactions gathered from the stakeholder consultation will enable the Observatory to draw comprehensive conclusions that will be included in the final report planned for the second part of 2020.

⁴ <https://ec.europa.eu/digital-single-market/en/expert-group-eu-observatory-online-platform-economy>

3. Contents of the Progress report

The **Report on Measurement and Economic Indicators** aims to identify the indicators that could be used to monitor the online platform economy for the purposes of policy making and further regulation, and to recommend corrective actions in areas where no indicators are available to ensure such data becomes available in the future.

The report breaks down the problem of observation into three broad areas that cut across policy domains.

The first is economic significance of platforms in the context of the broader economy. The report identifies three measurement indicators: *volume of trade mediated by platforms*; *platform size and importance*; and *data on data*.

The report recommends that statistical agencies should be empowered to collect data on trade mediated by platforms. It also offers suggestions as regards new, more conceptual approaches to measuring platform size and “data on data”.

The second area of observation is the platforms’ power over their users. The report identifies three indicators for measurement: *business dependence on platforms*; *platform’s share of consumer attention*; and *acquisitions as a competitive strategy*.

The report finds that although from a business strategy perspective, the concept is relatively well understood, good data sources on business dependence on platforms are still lacking. It thus recommends that both industry associations and statistical agencies invest into collecting suitable data, for example turnover generated on online platforms. As regards platforms’ share of consumer attention, the report suggests more alternative ways, such as measurement of “big data” web traffic.

Regarding acquisitions as a competitive strategy, including so-called “killer acquisitions” designed to pre-empt future competition, the report suggests automated market intelligence data feeds and recommends to consider new obligations on major platforms to report M&A activities to the European Commission, for ex-post research and monitoring purposes.

The third area of observation covered in the Measurement report relates to the alleged effects of platforms’ power: how to measure *platform volatility (e.g. continuous changes in terms and conditions or algorithms)*; *platform transparency*; and *other potentially problematic and thus policy-relevant practices*. The report stresses that platform transparency would benefit from further conceptual research to better understand the trade-offs between a public’s need for transparency of powerful actors vs. the legitimate private business interests of a platform company.

As for other potentially problematic practices, the report recommends that the data generated by the internal complaint-handling procedures, as mandated by the P2B Regulation, should be analysed with a view to identifying and assessing any need for further public policy intervention.

The focus of the **Report on differentiated treatment** is an analysis of differentiated treatment as a potential source of ‘unfairness’ in the relationship between platforms and their business users in the online platform economy. It distinguishes between practices of self-favouring, whereby a platform gives preferential treatment to its own vertically integrated activities over those of rivals, and more general practices of differentiated treatment where one or more business users are treated more favourably than others.

The report provides guidance on how to assess the impact of differentiated treatment by online platforms from a technical, economic and legal perspective. It also identifies areas requiring further scrutiny because of the particularly problematic nature of certain practices implemented by platforms. Given that instances of differentiated treatment are not necessarily limited to cases where a platform holds a ‘dominant position’ within the meaning of EU competition law, the report looks beyond the application and interpretation of competition law.

The report stresses that for assessing what practices can be considered “unfair”, more transparency and oversight are needed into the practices in which platforms engage. In this respect, the Platform-to-Business Regulation⁵ provides a good starting point to facilitate the more concrete identification of forms of differentiated treatment that can be considered unfair and might, as such, need to be regulated.

The report concludes that it is desirable to keep monitoring the sector closely and conduct focused studies to scrutinise the impact of problematic practices.

The Report on Data in the Online platform ecosystem provides a structured overview of how data is generated, collected and used in the online platform economy. It maps out the diversity and heterogeneity of data-related practices and expands on what different types of data require a careful examination in order to better understand their importance for both the platforms and their users as well as the issues and challenges arising in their interactions. The report concludes with a range of issues, which deserve, in the view of the authors, further policy attention and analysis in the light of the limited evidence available and/or the importance and impact they entail.

4. How can you react?

Feedback on this progress report can be submitted during a stakeholder consultation commencing on 6 July and ending on 8 September.

At the same time, the Observatory will consult with the Member States to gather their views and experience, including those of dedicated national authorities.

5. What are the next steps?

Once the feedback referred to above has been gathered, the Expert group will further analyse this and finalise the three papers. The Expert group will also provide papers on two other topics which it has been analysing since January 2020, i.e. online advertising and issues related to platforms with significant market power.

⁵ Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (‘Platform-to-Business Regulation’) [2019] OJ L 186/57.

Along with the evidence collected by the external consultant⁶, all those documents will constitute the core of the final report of the Expert group. Complementing the Commission's own analyses as well as other recent reports published in Europe and elsewhere over the last 18 months, the report of the Expert group for the Observatory on the Online Platform Economy will aim at supporting the implementation of the European Commission's comprehensive strategy, disclosed on 19 February 2020, aimed at unlocking the potential of data and digital technologies in Europe⁷.

Bruno Liebhaberg
Chairman of the Expert group

⁶ In April 2019, the Commission also contracted an external consultant – PPMi/Open Evidence. The contractor has been tracking the evolution and providing an overview of the online platform economy. It is supporting the Observatory and the Experts by gathering evidence and analysing high-level data concerning emerging issues in the online platform economy.

⁷ Communication by the European Commission, 'Shaping Europe's Digital Future', 19 February 2020, https://ec.europa.eu/info/sites/info/files/communication-shaping-europes-digital-future-feb2020_en_4.pdf