

# The Platform-to-Business (P2B) Regulation under ACM supervision

# 5 things you need to know

## Intro

---

As of 8 November 2024, the Dutch Authority for Consumers & Markets (ACM) oversees compliance with Regulation (EU) 2019/1150 which came into effect on 12 July 2020. This regulation aims to enhance transparency and fairness for business users of online intermediation services and search engines. Non-compliance may lead to investigations, penalties, and corrective measures. It is important to understand whether the P2B Regulation applies to the online services you provide or use, to ensure compliance and leverage its benefits.

---

#1 The P2B Regulation applies to providers of online intermediation services and online search engines, including online marketplaces, app stores, booking sites, and major search engines

---

#2 Online platforms should ensure that their terms and conditions are clear and understandable

---

#3 Platforms must transparently disclose their product/service ranking methods and any preferential treatment of their own products

---

#4 Large platforms must have an internal complaint handling system

---

#5 Parity clauses must be transparently stated and communicated

# #1

---

## Note:

The P2B Regulation does not apply to:

- Peer-to-peer services: platforms where transactions occur solely between private individuals without any business involvement.
- Pure B2B services: platforms that do not involve consumer transactions but only facilitate business-to-business interactions.
- Online advertising tools: services focused solely on advertising without facilitating direct transactions between businesses and consumers.
- Payment services: online payment systems considered ancillary services rather than primary transaction facilitators.

## The P2B Regulation applies to providers of online intermediation services and online search engines, including online marketplaces, app stores, booking sites, and major search engines.

The [EU Regulation on platform-to-business relations](#) (P2B Regulation) applies to online intermediation service providers and online search engines that provide services to business users in the EU who in turn offer their goods or services to consumers in the EU. This is applicable regardless of where the online service provider is located and irrespective of the law otherwise applicable.

Here's an overview of the services to which the P2B Regulation applies, along with the relevant criteria:

**1. Online intermediation services** including platforms that facilitate transactions between businesses and consumers, such as online marketplaces, app stores or booking sites. The qualification criteria are:

- The service must be a 'service of the information society', meaning it is provided electronically at a distance, typically for a fee.
- It must allow business users to offer goods or services to consumers.
- There must be a contractual relationship between the platform provider and the business user.

**2. Online search engines** that help users find websites based on their queries. The qualification criteria are:

- The search engine must allow users to input queries to find relevant websites.
- It should return results from all websites or specific subsets, such as websites in a particular language.
- Specific provisions of the regulation apply only to search engines, mainly addressing transparency regarding ranking parameters.

# #2

---

## Online platforms should ensure that their terms and conditions are clear and understandable

Online platforms must ensure their terms and conditions are clear and understandable. If not written in plain and intelligible language, terms and conditions can be declared null and void.

## Note:

This requirement should not be interpreted as an obligation for the platform to disclose certain types of (non-personal or personal) data to its business users.

## #3

The terms and conditions should include the following:

- **Reasons for suspension or termination.** Platforms must explicitly state the reasons for any decision to suspend or terminate services provided to business users. At notice period of at least 30 days should be observed, except in cases of certain pressing reasons.
- **Notice period for changes.** Any changes to terms and conditions must be communicated at least 15 days in advance, giving businesses sufficient time to adapt to new requirements or policies.
- **Access to data.** Platforms must explain what data business users can access and how. The regulation requires platforms to clearly outline which data will be available to business users, such as customer insights or sales metrics, and provide detailed instructions on how this data can be accessed.

## Platforms must transparently disclose their product/service ranking methods and any preferential treatment of their own products

The P2B Regulation requires online platforms to be transparent about how they rank products or services.

This includes:

- **Key parameters.** Platforms must disclose the main factors that influence ranking decisions. Business users should understand the criteria determining the visibility of their products or services on a platform. This includes clear information about the key parameters used in ranking algorithms, such as relevance, popularity, and user reviews.
- **Paid promotion.** If businesses can pay for better visibility, this must be clearly indicated. The regulation requires platforms to explicitly state whether paid promotions are available and how these payments impact the ranking of products or services.
- **Preferential treatment.** If platforms treat their own products or services differently from those of other providers, this must be clearly explained.
  - \* Platforms should disclose if they give **preferential treatment** to their own offerings over those of third parties and should provide reasons for such differentiated treatment. This is the case when a platform's own products or services are ranked higher or displayed more prominently.
  - \* If platforms use **data that is not available to other business users** to enhance their own product offerings, this must be disclosed. This does not require full disclosure of the detailed workings of these algorithms.

## Note:

The regulation recognises that full disclosure of algorithmic details could lead to manipulation and competitive harm. Platforms are not required to disclose information that would allow business users or competitors to manipulate search results unfairly. In addition, detailed workings of algorithms often constitute trade secrets protected under the EU Trade Secrets Directive (Directive (EU) 2016/943).

## #4

---

### Note:

Business users cannot be forced to use the complaint-handling system and/or mediation process. However, if a business user does lodge a complaint or requests mediation, the platform must respond to that complaint or engage in mediation. A platform's or business user's right to go to court is also not affected.

## Large platforms must have an internal complaint handling system

Digital platforms should help business users solve problems. Platforms with more than 50 employees or EUR 10 million turnover are required to have an internal complaint handling system. The P2B Regulation outlines specific requirements for these procedures, such as prompt and fair handling and cooperation in good faith with business users to achieve amicable resolutions.

- **Internal complaint procedure:** platforms must have a procedure in place for handling complaints by business users promptly and fairly.
- **Mediation services:** Platforms should designate two or more mediators for out-of-court dispute resolution. These mediators must be impartial, independent, and accessible to business users at a reasonable cost. The goal is to provide an alternative method for resolving disputes without resorting to legal action.

## #5

---

## Parity clauses must be transparently stated and communicated

Parity clauses, also known as most-favoured-nation clauses, are rules set by platforms that prescribe business users to offer the same prices and conditions for their goods or services on the platform as they do on other sales channels. The P2B Regulation requires that such restrictions must be transparently stated and communicated, ensuring that business users are fully aware of these restrictions before entering into agreements with the platform.

This means that platforms must:

- Provide clear and accessible information about any parity clauses in their terms and conditions.
- Publicly disclose the main economic, commercial, or legal reasons for imposing such restrictions.
- Clarify how the restrictions impact the business users' ability to offer competitive pricing across different platforms.

### Any questions?

At NautaDutilh, we recognise the potential uncertainties about the effective implementation of these obligations and the interpretation of the corresponding rights. We are here to help. For instance, we conduct comprehensive assessments of current practices in relation to P2B requirements and offer guidance on updating terms and conditions. Furthermore, we support you in establishing efficient internal processes or, if necessary, by filing or responding to a complaint, through the platform's complaints-handling system, during mediation, before the ACM or in court.

For any further assistance or inquiries, please contact:

## Contact us

---



**Joris Willems | partner**

T: +31 6 52 05 03 90

[joris.willems@nautadutilh.com](mailto:joris.willems@nautadutilh.com)



**Saskia Nuijten | associate partner**

T: +31 6 20 21 04 89

[saskia.nuyten@nautadutilh.com](mailto:saskia.nuyten@nautadutilh.com)

## Contributor

---

**Lieuwe Zeldenrust**