



NEW SAFEGUARDS IN CONTRACTUAL RELATIONS WITH ONLINE INTER-MEDIATION PLATFORMS



The unstoppable process of digitalisation over the last two decades has led companies to have to deal with the ever-increasing economic and contractual power of the (few) search engines and (large) platforms offering online intermediation services, in particular with platforms operating as marketplaces, app stores and social medias used for professional purposes.

The contractual power of search engines and online platforms

In such a context, companies have often ended up passively accepting potentially disadvantageous contractual terms and conditions prepared (if not imposed) by such operators.

The reasons behind this phenomenon are easy to explain. The positioning of corporate websites has a major impact on consumer choices and is decisive for commercial success. Similarly, the high level of online intermediation services can be crucial to the commercial success of companies that use these services to reach consumers.

EU legislation protecting business users of online intermediation platforms

Focusing on intermediation platforms, Regulation (EU) 2019/1150 (Platform to Business - P2B Regulation) introduced a significant number of provisions aimed at promoting fairness and transparency in favour of business users who make use of their services.

In this regard, attention should be given to Article 3 of the P2B Regulation, which requires that the terms and conditions prepared by intermediation platforms:

*"(a) are drafted in plain and intelligible language (**comprehensibility**);*

*(b) are easily available to business users at all stages of their commercial relationship with the provider of online intermediation services, including in the pre-contractual stage (**availability**);*

(c) set out the grounds for decisions to suspend or terminate or impose any other kind of restriction upon, in whole or in part, the provision of their online intermediation services to business users;

(d) include information on any additional distribution channels and potential affiliate programmes through which providers of online intermediation services might market goods and services offered by business users;

(e) include general information regarding the effects of the terms and conditions on the ownership and control of intellectual property rights of business users."

The P2B Regulation also prescribes that, subject to the exceptions provided for therein, intermediation platforms must notify any proposed changes of their terms and conditions, to the business users concerned, on a durable medium and at least 15 days before the implementation of such changes.

The guidelines for the application of Regulation P2B of the Italian communication watchdog (Agcom)



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Following a nationwide monitoring activity, on 24 November 2022 the Italian Communications Authority (Agcom) issued guidelines for the adequate and effective application of the P2B Regulation.

In particular, on the topic of **comprehensibility**, Agcom's guidelines prescribe that *'the relevant information should be organised, according to an adequate level of detail'* and should be *"easily accessible (for example, by means of hyperlinks inserted in the main document)"*, adding that it is *'good practice'* to make the terms and conditions, as well as the related disclosures, available also in Italian.

With regard to **availability**, the guidelines specified that the terms and conditions must *"also be available to potential users"* and that *"providers of online intermediation services shall identify the methods by which they must ensure easy accessibility to the T&Cs and related information notices (e.g. by means of a connection clearly identifiable through a link well visible from the home page of the website or app or from a specific thematic page or dedicated section), also in the pre-contractual phase (not conditioned by prior registration or the creation of an account to access a reserved area)"*.

Finally, the guidelines recall the criterion of the **completeness of the terms and conditions**, by virtue of which they must contain all the information elements referred to in Article 3 of the P2B Regulation recalled above so that business users can *"acquire all the elements necessary to make informed and conscious choices, as well as obtain a reasonable degree of predictability on the most important aspects of the contractual relationship"*.

Terms and conditions of platforms that do not comply with the requirements of the P2B Regulation are legally void.

Professionals from the [Contracts department](#) of Baccardi Partners remain at disposal of companies to verify that, in their dealings with online intermediation platforms, the latter comply with the regulations set out above.