

Recommended Practices for Digital Platforms prepared under the DA Global Initiative towards post-COVID-19 Resurgence of the MSME Sector

Harnessing the Interaction between Digital Platforms and MSMEs: Recommended Practices for Digital Platforms

Agenda



THE IMPORTANCE OF DIGITAL
PLATFORMS FOR ECONOMIC
DEVELOPMENT



RECOMMENDED PRACTICES FOR
DIGITAL PLATFORMS



IMPLEMENTATION ISSUES

The Importance of Digital Platforms for Economic Development

- Developing countries stand to benefit massively from the digitization of their economies
- Digital platforms acting as intermediaries between business (suppliers, advertisers, content providers, etc.) and users (consumers, viewers, etc.) have played a positive role in promoting the digitization of developed and developing countries

Concerns about contestability and economic dependence

- Because some of the markets where such platforms operate are concentrated and, on occasion, monopolized, large platforms enjoy an unequal position vis-à-vis their business including MSMEs, whose business operations may be dependent on access to the platforms' services
- Concerns about concentration are justified by the lack of contestability that characterizes the markets in which these platforms operate

Specific concerns in developing economies

- The adverse consequences of the uncontrolled market power of such platforms is likely to be more severe in developing economies, since the power imbalance between platforms and MSMEs in developing countries may be way more significant than the one in developed countries
- Concurrently MSMEs may be less protected by competition authorities and consumers will not reap the benefits and advantages of effective competition in the marketplace.

Recommended Practices for Digital Platforms: Objectives

- The RDP laid out in this document are not meant to substitute the regulatory initiatives of any country or supra-national entity
- Rather, it aims to complement those existing, emerging, and future initiatives and guide those countries which (i) do not yet have any regulation or legislation in place in developing their own regulatory frameworks, or (ii) already have a regulatory framework but are prone to a weak enforcement culture or may not have effective capacity to effectively deal with the complexities of digital platform regulation

Targeted Services and Key Digital Platforms

- The RDP are targeted at digital platforms offering or providing certain platform services – the **Targeted Services** – which are indispensable to business and are thus identified as **Key Digital Platforms (KDPs)** by virtue of their absolute and relative significance in connection with the provision of the Targeted Services in one or more countries

Targeted Services

- (a) online intermediation services;
- (b) online search engines;
- (c) online social networking services;
- (d) music/video-sharing platform services;
- (e) number-independent interpersonal communication services;
- (f) operating systems;
- (g) software application stores;
- (h) cloud computing services;
- (i) online browsing services;
- (j) online payment services; and
- (k) advertising services, including any advertising networks, advertising exchanges and any other advertising intermediation services, provided by a provider of any of the Targeted Services listed above

Key Digital Platforms

- A platform providing or offering Targeted Services shall be categorized/identified as a KDP when:
 - it has an important economic position and a significant role in the provision of such services in the country or in one substantial part of it
 - operates a Targeted Service platform which serves as an important gateway for business to reach end users; and
 - enjoys an entrenched and durable position in its operations or it is foreseeable that it will enjoy such a position in the near future (e.g., within two or three years)

Principles

- **Market accessibility and contestability.** The RDP seek to foster competition within KDPs; between those platforms and other platforms offering the same Targeted Services; as well as in the provision or offering of other Targeted Services which could be entered by platforms that should be regarded as KDPs
- **Fair competition and fairness.** The RDP seek to ensure that KDPs above treat business, fairly and non-discriminatorily. Platforms adopting the RDP shall therefore recognize their responsibility to provide business with clearly defined rights, offering commitments that protect their autonomy and provide them with sufficient certainty as to their future treatment by the platform provider

Specific commitments on accessibility and contestability (1)

- **Preserving within platform competition.** KDPs need to ensure competition within the platforms they control
 - KDPs should grant non-discriminatory access to their platforms, data, and services to all similarly situated business
 - KDPs should not seek to disadvantage those business that may be in competition with the KDP's own products or services
 - Policies and actions of KDPs should apply equally to all business that are similarly placed and should not be changed with the intention of targeting one or a small number of specific users
 - KDPs should not encourage or allow restrictions of competition on their platforms

Specific commitments on accessibility and contestability (2)

- **Preserving actual competition with platforms offering the same Targeted Services.** Unless they can demonstrate a sufficient efficiency justification
 - KDPs should commit not to restrict consumers, users and/or business patronizing their platforms from dealing with rival platforms for the same or similar Targeted Services.
 - KDPs should refrain from taking any action, contractually or technologically, that could create or increase switching costs across substitutable or complementary platforms for consumers, users and/or business. Additionally, KDPs should not lock in end or business or disincentivize them to switch to other platforms offering the same Targeted Services through, for example, default arrangements.
 - KDPs should refrain from entering contracts that restrict competition with rival platforms, such as, e.g., retail parity agreements or other clauses capable of producing similar distortive effects.

Specific commitments on accessibility and contestability (3)

- **Preserving potential competition with platforms offering the same Targeted Services.** Unless they can demonstrate a sufficient efficiency justification,
 - KDPs should commit not to engage in commercial practices that leverage their power to other markets beyond the ones already under their control. This would not only ensure the contestability of these adjacent markets but would make it possible for firms operating in them to contest the position of the KDP in their Targeted Services markets. In particular,
 - KDPs should refrain from requiring business, consumers or users of a Targeted Service to purchase, subscribe to or register with any other Targeted Service identified in above as a condition to access, sign up or register to any of their Targeted Services
 - KDPs should be transparent towards end users about the options they have when agreeing to consent about the combination of personal data obtained from the KDPs' Targeted Services platforms with personal data from any other services offered by the KDP, or with personal data from third-party services, and about the implications of signing into other services of the KDP where the goal is the combination of their personal data
 - KDPs should publish all acquisitions of potential providers of the same Targeted Services they undertake when such acquisitions may fall outside the relevant merger control regime and do not meet the notification thresholds. KDPs should also undertake best efforts to argue a sufficient efficiency justification when acquiring potential competitors. A potential competitor could be a new entrant planning to compete head-to-head with the KDP in the provision of the latter's Targeted Services or a company operating in an adjacent market which could develop by virtue of its successful operation in such a market the skills needed to enter the markets where the KDP delivers its services

Specific on fairness towards business users (1)

- **Duty to deal fairly and equitably**

- KDPs should disclose their default terms and conditions prior to entering negotiations with business; and commit not to change those terms and conditions without prior notification to them, allowing the latter to oppose the proposed changes or negotiate the change in good faith
- KDPs should not abuse their bargaining power when negotiating contractual terms with business: KDPs should not explicitly or implicitly threaten a business with a deterrent action that would not apply to them absent the negotiation; and, where asked, should negotiate with a collection of similarly placed firms that wish to bargain collectively
- Business should be allowed to retain the direct relationship with their customers
- KDPs should establish fair, accessible, and free dispute resolution mechanisms and provide a clear, non-arbitrary and succinct procedure to resolve commercial disputes among business, or between business and the platform provider

Specific on fairness towards business users (2)

- **Neutrality**

- Business of large online platforms may compete both against other businesses and directly against the platform owner itself, for instance when an online marketplace provider sells its own products or services that compete with those of third-party sellers. KDPs should treat similarly placed business equally. In particular, KDPs should respect the commitments of No discriminatory access; No self-preferencing; and No discrimination, aimed at protecting within platform competition, listed above

- **Transparency**

- It is incumbent on KDPs to share with business and their customers sufficient information so that they can make informed choices on those matters that directly affect them
- KDPs should supply business with the search ranking criteria and a clear understanding of how their products or services will appear to customers in search, display or other ranking systems, and inform business users in advance of any change that will detrimentally affect them

Implementation issues: A soft law instrument

- The RDP is a voluntary international soft-law instrument that member States may wish to consider in accordance with their domestic legislations and institutional frameworks
- The RDP purports to provide guidance to member States, MSME associations, and digital platforms to ensure that digital markets are fair and contestable to the ultimate benefit of consumers, users and business (in particular, MSMEs)
- The RDP should be viewed as a complement to the existing competition regulatory frameworks and enforcement powers which may already apply to the conduct of digital platforms in each jurisdiction

Digital platforms

- The Digital platforms providing one or more Targeted Services wishing to behave in accordance with the commitments of the BRDP laid out above are thus expected to :
 - self-assess and declare whether they hold a KDP position in the provision of one or more of Targeted Services; and
 - declare whether they accept all specific commitments laid out in the RDP without exception (full commitment) or, instead, in case they wish to limit the scope of their commitments (partial commitment), they should enumerate those they agree with and intend to respect.
- KDPs' commitment declarations will be made public through the KDP's websites, so that they can be monitored by current and potential business and, as a result, have a proper deterrent effect

Competent Authorities

- Interested member States would appoint a **Competent Authority (CA)**
- CAs will draw from the RDP in dealing with disputes involving such KDPs, especially in cases where there are no existing provisions in the laws.
- CAs will make best efforts to acknowledge the legitimacy of the RDP and disseminate the RDP among business, consumers, users, digital platforms, and national and supra-national regulators to increase the reputational value of adoption and voluntary compliance.
- CAs will encourage business users to complain if they feel they have been mistreated and digital platforms to produce annual compliance reports. CAs will create and manage a repository of such declarations to facilitate third-party access by users and business, regulators and courts, and academics.
- The launch of the RDP may be accompanied by the establishment of a multi-stakeholder group including CAs, companies affected by the RDP, academics, think tanks and professional associations. This group's mission will be to help complying companies to implement the RDP correctly. Over time, the development of a rating system could also encourage KDPs to follow internationally accepted principles

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THANK YOU