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DISEQUILIBRATED CONTRACTUAL TERMS AND PLATFORMS' OBLIGATIONS UNDER DIGITAL MARKETS ACT

The paper approaches the problems of disequibrated contractual terms and platforms' obligations under the Digital Markets Act, seen through the lens of the provisions concerning the platform's legal statute. Particularly, the analysis concerns the specific set of obligations imposed on online networking services and online advertising services, activating particularly in platform-to-business contracts. First, the significant imbalances and contractual asymmetries that the disequibrated terms generate can encompass economic imbalances which consist of significant disproportions and ostensible asymmetries between the contracting parties, assessed in correlation to the agreement procedures and subsequently, during performing the contractual obligations. Second, we argue that the imbalance in the allocation of contractual risks in digital services contracts may emerge from clauses which affect the parties' right to resort to extrajudicial remedies to induce the digital services provider to perform correlative obligations. Third, when referring to the taxonomies applicable to economically imbalanced clauses, the paper discusses the reverberations of imbalances, generated by clauses allowing the service supplier to unilaterally select contractual terms without recognising the prerogative of unilaterally cease the contractual relations. Forth, the paper approaches the indirect economic imbalances caused by informational asymmetries manifested at the precontractual stage.

Keywords: disequibrated terms, digital platforms, Digital Markets Act, digital services, platform-to-business contracts.

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1. INTRODUCTORY REMARKS

Informational asymmetries are inherent to platform-to-business relations, mostly imputable to the differences in the financial dimensions of the contractual parties. The legal approach of these asymmetries oscillates between the need for a legislative reaction to the emergence of legal issues that exceed the egalitarian competences of the legal normativity; sinuously, the EU legislator needed to approach a perimeter dominated by the vulnerability of the medium or small-sized digital platforms with average comprehension and negotiation powers, most frequently described as the fragile party of the platform-to-business contractual relationships. Simultaneously, these harmonised norms dominate a legal space where significant imbalances and contractual asymmetries generated to unfair platform-to-business terms are ostensibly noticeable, and which may be divided into the following categories:

- (a) the purely economic imbalances, which consists of significant disproportions between the services of the professional contracting parties, assessed symmetrically at the formational stage and subsequently, during performing the contractual effects. Referring to the economic imbalance typology, we note they can be divided into:
 - (i) direct economic imbalances¹, generated, for example, by clauses allowing the digital services supplier to unilaterally increase the price of the services without recognising the other party's prerogative to resort to unilateral termination of the contractual relations if, because of the increase applied, the final price is excessively onerous in relation to the price agreed by the parties at the time the contract was concluded;
 - (ii) the indirect economic imbalance² caused, for example, by those clauses prohibiting the user from offsetting the debt against a claim that the medium or small-sized platform had towards the dominant digital platform;
- (b) imbalances in the allocation of contractual risk, triggered, for example, in the presence of clauses that remove the medium or small-sized platform's right to invoke the exception of non-performance of the contract in order to suspend its own services, or in order to induce the dominant platform to perform its correlative contractual obligations; the insertion of a similar term has the effect of generating a significant imbalance, since, although the supplier does not voluntarily perform its obligation under the contractual provisions, the dominant platform could oblige the correlative party to fulfil its own obligations under the adhesion contract;
- (c) procedural imbalances,³ which are directly related to the status of litigants of the contracting parties, with the consequence that those terms restricting the medium or small-sized platform's access to evidence, respectively clauses limiting the taking of evidence to clarify the disputed elements etc., are identified as unfair terms included in the category of procedural disequilibria;

¹ Recital (39) of the DMA concerning prohibitory practices imposed by dominant platforms.

² Recital (52) of DMA regarding the ranking of products offered by dominant platforms.

³ Recital (42) of DMA regarding the prohibited resorting to terms which inhibit or hinder users in seeking available judicial redress, by means of confidentiality clauses.

(d) the liability imbalances (Duivenvoorde, 2022, p. 44) which the medium or small-sized platforms are confronted with, in the sense that, by concluding standardised or adhesion contracts unilaterally drafted by the dominant platform, the liability regime may be altered while favouring the dominant platform.

Relevant to the EU legislator's attempt to manage the dangers arising from manipulative contractual incompleteness in platform-to-business relationships, by establishing an obligation to complete the specific contracting conditions (Campos Carvalho, 2020, p. 864), are the provisions of Regulation (EU) 2019/1150, which establishes harmonised standards on transparency and fairness digital services in P2B (platform-to-business) relationships (Monti, 2021, p. 16), in particular those mentioned in articles 7 to 10 of Regulation (EU) 2019/1150. Relevancy is similarly attached article 14 of the Digital Services Act (DSA), which contain salient provisions regarding the performance of the mandatory obligation to introduce specific clauses in the contractual field, without allowing the parties, in particular platforms acting as intermediaries or access controllers, to circumvent the EU provisions by deliberately omitting to include clarifications on the management of essential aspects of the platform-to-business transaction concerned (Papadopoulos & Kofina, 2024, p. 228). Congruently, in Recital (45) of Regulation (EU) 2022/1925 (DMA), the increasingly remarked opacity of the platform-to-business terms has been emphasised, which is imputable mainly to the practices of dominant platforms, beginning with the advertising stage⁴ (Zardiashvili & Sears, 2023, p. 842) and continuing with the contract formation stage (Bostoen, 2023, p. 264).

2. SPECIFIC EXIGENCIES ADDRESSING THE TRANSPARENCY OF PLATFORM-TO-BUSINESS TERMS

2.1. Requirements connected to the informative formalism

When compared to the informative formalism applicable to contracts between professionals and consumers (Brenncke, 2024, p. 129), in platform-to-business relationships, the focus is not primarily on consecrating a reasonable level of comprehensiveness and transparency, but rather on preventing strategies meant to manipulate the contractual omissive text in favour of the dominant digital service provider or the gatekeeper on the digital services market (Goicovici, 2021, p. 285). Therefore, we are witnessing a protective function of the EU regulation that establishes the obligation to introduce specific clauses increasing the level of transparency (Hornkohl, 2024, p. 72), by avoiding contractual incompleteness in platform-to-business relationships, doubled by a moralising function of these specific norms, which are addressing the manner of drafting the general contracting conditions between differently sized digital services professionals, targeting potential strategies to manipulate the contractual evasiveness⁵. When focusing on the role played

⁴ Recital (61) of the DMA addressing dominant platforms' obligations in P2B relations.

⁵ Recital (13) of the DMA concerning the resorting to contractual terms drafted in unilateral and detrimental manner.

by the obligation to insert specific clauses increasing transparency (Helminger, 2024, p. 107) and the role assigned to information formalism in the relations between differently sized digital platforms, particularly with platform-to-business relationships, it is essential to warn or inform the contractual partner in detail about the legal implications of certain contractual provisions, or legal implications that the professional party may anticipate (Mik, 2020, p. 114). Ostensibly, the EU harmonised regulation on consecrating an obligation to introduce specific clauses on the restriction or conditioning of access to data or access to digital services in platform-to-business relationships anticipates the potential undesirable reverberations of the contractual evasiveness to which platforms with the status of gatekeepers could resort, giving rise to the premises to manipulate the situation of contractual incompleteness for the benefit of dominant digital services providers.

For a coherent example of the obligation to insert ancillary clauses in P2B contracts, the text of article 7, para. 1 of Regulation (EU) 2019/1150, concerning the descriptive insertion of the contractual differentiated treatment assigned to users in the category of medium or small-sized platforms while concerning the provision of digital services, while highlighting the rationale for resorting to differential treatment. Illustrative of the obligation to avoid contractual incompleteness regarding specific clauses is Article 8 let. (a) of Regulation (EU) 2019/1150, which prohibit providers of online intermediary services from imposing retroactive amendments to the general terms and conditions of business accepted by users, except where the amendments result from the application of an overriding legally mandatory obligation, without generating a contractual imbalance. Second, the provisions of Article 8 let. (b) of Regulation (EU) 2019/1150 establish a prohibition applicable to the digital intermediary platforms to resort to contractual incompleteness in terms of the clauses and conditions under which the unilateral termination of the P2B contract may take place, when the holder of the right of termination or unilateral termination is the user, respectively the medium or small-sized digital platform. Similar provisions are also contained in the text of Article 8 let. (c) of Regulation (EU) 2019/1150, which prohibits digital intermediation platforms from omitting to include in the general terms the liability-managing conditions of business which are unilaterally drafted⁶. Nor can the clauses relating to access to personal data (Goicovici, 2022, p. 46) or non-personal data be omitted from P2B contracts,⁷ as provided for in article 9 of Regulation (EU) 2019/1150, as digital platforms do not maintain discretionary options on the exclusion of these terms from the contractual field.⁸

It is also worth mentioning the mandatory nature of the obligation to insert explanations motivating the possible choice of intermediating platforms to introduce restrictive clauses on access to digital services or to resort to exclusivity clauses, which would moderate or eliminate the possibility of contracting platforms to conclude similar transactions with the dominant platform's competitors, although for a limited period, according to the specifications of article 10 of Regulation (EU) 2019/1150. Similar provisions originate in

⁶ Recital (45) of the DMA approaching the transparency of costs related to digital advertising services.

⁷ Recital (36) of the DMA concerning the treatment of end-users' personal data by dominant platforms.

⁸ Recital (72) of the DMA concerning the transparency of profiling practices.

Article 14 of the DSA, digital platforms being required to insert information regarding: (i) the legal treatment applicable to algorithmic decision-making and the management of data subjects' requests for human intervention on the algorithmised decision and its possible review (Argelich Comelles, 2023, p. 194); (ii) the internal system for solving complaints and notifications addressed by users. The final thesis of article 14, paragraph 1 of the DSA reproduces the requirements of transparency and avoidance of manipulative strategies based on any ambiguous, incomplete, or evasive clauses, highlighting that the information in question must be presented in clear, simple, intelligible, accessible, and unambiguous language and in an easily accessible format. Relevant for the management of situations of contractual incompleteness in the perimeter of the provision of digital services are also the provisions of article 14, paragraph 5 of the DSA, which are addressing the conduct of dominant platforms, specifying that the latter are expected to inform the recipients of the services on the general terms and conditions related to specific liability regimen for contractual non-performance.

In the given context, the provisions of EU law applicable to platform-to-business contracts are evocative of the concern to temper the tendency of intermediating platforms, especially those in the category of 'very large online platforms' (VLOPs), to resort to manipulative strategies by amplifying the ambiguity of the contractual clauses with the intention of manipulating in their own interest the evasive nature of the general or specific contracting conditions. Platforms for intermediation of access to digital services, on account of the discretionary aspects attributed to drafting the P2B clauses proposed for acceptance to the recipients in the adherent category, respectively to the companies that use these intermediated digital services in relation to consumers, become the 'dominant contractual party'. The emphasis on the configuration of the contractual content reveals that the contractual incompleteness in P2B relationships is manifested also for endogenous reasons, due to asymmetric information, hence the need to regulate the obligation to inform the users/recipients of digital services on general or specific contracting aspects selected as relevant or indispensable by the EU legislator, as illustrated by the texts of the normative acts mentioned in the previous paragraphs. Interrogations may arise, however, as to the relevant remedies in the event of deliberate disregard of the exigencies related to the obligation of transparency incumbent on dominant digital platforms. Scrutinising the available judicial remedies, as parsimonious as these may appear, remains a difficult task, in terms of identifying specific approaches to those infringements, while the salient question may be raised: to what extent could the national courts resort to legal mechanisms and remedies that would lead to the filling of contractual gaps in the agreements at issue? Imposing on the dominant digital platforms the obligation to initiate negotiations or to supplement the informative clauses and bring them into compliance under the means of paying default damages for each day of delay could represent a 'classical' remedy adapted to these types of situations; nevertheless, it would not necessarily be the most effective in the long-term perspective. Neither the DSA nor Regulation (EU) 2019/1150, contain specific sanctions addressing the issue of adapting or supplementing the content of ostensibly 'incomplete' P2B contracts. In our opinion, concerning the EU legislator's preoccupation to keep within the competence of the Member States the selection of relevant legal

remedies for sanctioning deviant conduct of the providers of digital services placed on a favoured contractual position, the applicable sanctions can be ‘imported’ from the ordinary contractual liability regimen, with the specification that, in our view, the appropriate sanction would be that of the *inter partes* unenforceability of ambiguous or deliberately evasive clauses which, in the content of the platform-to-business adhesion contracts, would be unilaterally drafted by the dominant platforms.

Another observation concerns the fact that the informative formalism in platform-to-business contractual relations implies the obligation to expressly insert, in the unilaterally drafted contractual text proposed to the other party, of the minimum mandatory information selected by the legislator, to inform the latter on the relevant rights and obligations generated by accepting the offer and, finally, designed to protect the informed consent of the vulnerable contractual party. Ostensibly, the informative formalism specific to P2B clauses cannot be subsumed to any of the classic categories of contractual formalism, such as the substantial formalism, or the agreement-validating formalism, or the formalism related to the enforceability of rights against third parties, as forms the structure of which the informative formalism does not imitate; particularly, in the case of the P2B informative formalism, the emphasis falls on the warning of the non-dominant party on the configuration of its contractual obligations and on the potential exercise of its rights, while signalling the existence of the procedural remedies, the taxonomy of which may be included in the general contracting terms.

2.2. Facets of the dominant platforms’ pre-contractual obligation to provide transparent information

The resurgence of the obligation to include express mentions in the content of the P2B contracts blurs the possibility of the dominant platforms to opt for omitting the clauses listed by the EU or national legislator, the slippage into the area of contractual incompleteness not being allowed in this perimeter. In addition, it should be mentioned that informing the correlative party at the pre-contractual stage is, in the segment represented by the formation of P2B contracts, doubled or seconded by the informative formalism, which revolves around the obligation of the dominant platform to make relevant information accessible to the other party, which would warn the latter on the existence of rights and obligations the importance of which the legislator evaluated as decisive.

For endogenous reasons, the obligation incumbent on the dominant digital platforms to provide the medium-sized or the small-sized platforms with certain information at the pre-contractual stage is intended to enable the latter to compare the various concurrent offers received, to select the one most appropriate to its specific economic interests. As regards the obligation to provide the other party with certain information at the time of acceptance of the offer (incorporation of mandatory information, as an expression of the information formalism), its regulation would make it easier for medium-sized or the small-sized platforms to become aware of the existence of the rights and obligations incumbent on them under the P2B contract formed (ensuring that the latter are provided with the information necessary for exercising their legal prerogatives, especially the right to withdraw from the P2B contract). While being substantially attached to the obligation

to inform, the informative formalism is frequently associated with the requirements of the obligation of transparency incumbent on the dominant platforms, relating to the duty to explicitly inform the users on the minimum contractual prerogatives established by the mandatory legal norms. The antagonism installed in the 'classical' civil law between formalism and voluntarism is less visible from the territory of informational formalism, understood as a protective formalism of the will of the contractual party whose contractual posture is marked by fragility due to the latent informational asymmetries in the process of forming the platform-to-business contracts.

Contractual incompleteness strategies are incompatible with the requirements of informational formalism in platform-to-business relations, since this type of formalism requires submission to the formal character requirements for a specialised technique aimed at protecting the medium-sized or the small-sized platforms' consent at the stage of forming contracts with the dominant platforms providing digital services. It concerns a mechanism of legal origin consisting of the obligation of the dominant platform to insert, in the contractual text offered to the other party, including in the digital version of that text, specifications provided for by the special legislation, the purpose of which is to inform the latter about specific rights and obligations generated by certain contractual clauses, perceived as presenting a particular degree of risk for the vulnerable party. The information formalism cannot be fully absorbed by the obligation to exhibit information on unilaterally drafted terms, incumbent under the DMA, the violation of which constitutes an unlawful act of a tort nature, which implies the possibility of engaging the tort liability of the disobedient platform, while the sanctions applicable to the ignorance of the information formalism cover a sufficiently wide range, starting from the sanction of extending the term of withdrawal of the other party's consent, and continuing with the *inter partes* unenforceability of the clauses not expressly reproduced in the contractual text, respectively with the contravention fine imposed on the digital services providers.

3. AVOIDANCE OF CONTRACTUAL INCOMPLETENESS IN PLATFORM-TO-BUSINESS RELATIONS

3.1. *'Blurred' components of general contracting terms*

When the reasons for contractual incompleteness are emerging from the area of economic interests, or from informational asymmetries characterising the specific versions of contracting, the degree of completeness of platform-to-business contracts can be seen as variable, depending on the level of contractual transparency. In the perimeter of the formation of P2B contracts, the elements that present the most significant problems for identifying the legal remedies to address the invalidation of the contract are those involving the 'blurred' component of general terms, starting from the fact that the economic reverberations of certain clauses are not fully understandable or intelligible for the correlative party.

According to specialised literature, multiple problems have been identified for the use of disequibrated terms in P2B agreements (Kerber, 2021, p. 31), starting from the need

to outline adequate rules for engaging liability resulting from the unilateral selection of general terms that will determine the performance of digital contracts, as a type of liability that can be engaged for undesirable effects (De Streel *et al.*, 2024, p. 17) that could not be anticipated by the other party that was not able to predict the undesirable economic effects (Eckardt, 2024, p. 4).⁹

The selection of contractual clauses and the identification of the (apparently) optimal level of contractual completeness in P2B relationships may imply a decrease in the level of transparency attached to the automated ranking of contractual terms¹⁰. As mentioned in the previous sections, providers of digital online intermediating services are prohibited from resorting to contractual incompleteness or omission of terms from the category specified in the harmonised legislation. Firstly, the specific requirements applicable to the obligation to avoid contractual incompleteness, incumbent on dominant platforms, refer, according to article 5, paragraph 2 of the Regulation (EU) 2019/1150, to the identifying of the criteria which are predominantly significant in establishing the hierarchy of the offers. Second, article 5, paragraph 3 of the Regulation (EU) 2019/1150 remains applicable in cases where, at the time of the selection of the contractual terms, the main parameters include the possibility of influencing the position in the hierarchy by paying an annuity, by the companies using online intermediation services or by the professional users of websites, an annuity for the benefit of the dominant provider, situations in which the provider of digital intermediation services is required to exhibit a description of the effects of such remuneration on the hierarchical position of offers on the intermediating platform.

3.2. Relative visibility of ranked offers, and the relevance assigned to search results on the digital platform

It should be noted that the provisions of the EU normative act refer to the terms involved in the ranking of products, starting from the finding that this hierarchy of offers significantly influences users' choices and, indirectly, the size of the market share held by platforms whose offers are automatically ranked on the intermediation platform. The relative visibility of ranked offers, and the relevance assigned to search results on the digital platform for intermediation of transactions resulting from the use of algorithmic sequencing, decisively marks the contracting decisions. On the other hand, from the perspective of maintaining an adequate level of transparency between competitors, in the light of the requirements of fair competition (Bagnoli, 2021, p. 136), the predictability of algorithmic selections implies that providers of online intermediation services establish the hierarchy in a non-arbitrary manner, as specified in recital (24) of the Regulation (EU) 2019/1150. Providers of digital

⁹ For instance, the unforeseen behavior of sophisticated agents in the category of platform-to-business algorithmic contracting could lead to unlawful discriminatory practices, and the *ex-post* remedies, such as the right to challenge the algorithmic decision and to have the decision reassessed by a human agent, are not always effective. The opacity of the formation of platform-to-business contracts does not allow, in principle, to identify or fully decipher the way of selecting the P2B contractual terms, which have become mandatory for the parties to the transaction, and this level of uncertainty (despite the economic advantages, speed and facilitation of contracting) remains high even in the case of the use of more transparent intelligent agents.

¹⁰ Issues such as the transparent ranking of search results is addressed in article 5, paragraph 1 of Regulation (EU) 2019/1150.

intermediation services¹¹ for P2B transactions are thus required to explicitly mention, at the pre-contractual stage of the formation of intermediation contracts between these platforms and competitors on a given digital market, the main ranking parameters, to increase predictability for companies using online intermediation services, in order to allow them to better understand how the intermediation mechanism works when ranking and comparing the practices applied in this regard by different digital services suppliers. Additionally, it is apparent from recital (25) of the Regulation (EU) 2019/1150 that the description of the main ranking parameters should also include an explanation of the possibilities that companies supplying digital services may access to obtain a readjustment of the position of their offers in the algorithmically established hierarchy and to actively influence the position in the hierarchy in exchange for payments, as well as the relative effects of such a situation, without transgressing the limits represented by the requirements of fair competition. Similar explanations are explicitly mentioned in recital (70) of the DSA, from which it follows that digital platforms have an obligation to transparently inform users on the manner under which recommendation systems influence the way in which information is displayed on the platform and how it can influence the way in which information is presented to users (De Streel & Larouche, 2021, p. 48), including the cases when the information is prioritised on the basis of profiling and the online behaviour of the recipients of the digital services.

The involvement of intelligent virtual agents in the selection of contractual clauses may generate imbalances that require the assessment and auditing of such systemic risks that may fuel discrepancies between the contractual positions of the parties whose transactions are intermediated by digital service providers of considerably expanded dimensions (Ribera Martínez, 2024, p. 272), which, in accordance with the specifications in recital (84) of the DSA, are required to pay attention to the transparent configuration of the product recommendation and advertising settings, focusing on related data collection and fair commercial practices. Similarly, it is the task of these digital service providers in the category of VLOPs and VLOSEs (very large online search engines) to assess whether their general terms of use and implementation are adequate (Niels & Kleczka, 2025, p. 4). It is also specified in the text of the mentioned recital that, when assessing the systemic risks identified, dominant digital services providers are expected to properly disclose these vulnerabilities in their internal risk assessments.

It is also worth emphasising that the selection by VLOPs and VLOSEs of the algorithmic systems involved in the pre-contractual phase of P2B relationships is not immutable, as they have the obligation to reconsider the selection of algorithmic agents and to improve this selection or to periodically adapt the automated decision-making systems (especially those in the self-learning category).

¹¹ Core platform services include a closed-list of ten digital services, which include access to online search engines, online social networking services or web browsers.

4. OBLIGATION TO PROVIDE EXPLANATIONS CONCERNING THE HIERARCHY OF RESULTS GENERATED ON THE PLATFORM

As resulting from recital (24) of Regulation (EU) 2019/1150, the notion of ‘dominant parameters’ referred to in the explanations should be understood as referring to any specific mechanisms selected in relation to the hierarchy of results accessed on the platform. It should be noted that there are certain limits to this obligation to make explicit the intervention of algorithmic systems in digital transactions intermediated by digital platforms, as specified in recital (27) of Regulation (EU) 2019/1150. Antagonistically, it is mandatory to disclose the intervention of algorithms when the bid rankings have been manipulated to the detriment of consumers’ interests, according to the provisions of article 5, 6th para. of Regulation (EU) 2019/1150. Furthermore, avoidance of restrictive practices affecting fair competition is pivotal for the DMA regulation (Bostoen, 2023), accentuating the importance of addressing the vexing problem of remedies (Strand, 2024, p. 126) applicable to contractual incompleteness and evasiveness in platform-to-business agreements.

More precisely, the hierarchy of results generated on the platform may be considerably altered or influenced by the possibility of modifying the position in the hierarchy by resorting to the onerous mechanism of an annuity, by the companies using online intermediation services or by the professional users of websites, and for the benefit of the dominant provider, which represent hypotheses where the provider of digital intermediation services is required to exhibit a narrow description of the reverberations of the mentioned onerous mechanisms on the hierarchical position of offers on the intermediating digital platform. Transparentising the ranking criteria which influence the results list on the products and services available intermediating platform remains a major preoccupation under the DMA when approaching the fairness of P2B relations.

5. CONCLUDING REMARKS

The architecture of the rules applicable to platform-to-business contracts, while centred on contractual freedom and on the egalitarian essence of the contractual position of the parties, has been anticipated the need to re-balance the forces between medium-sized or small-sized digital platforms and the dominant platforms, from the perspective of preventing the resorting to disequibrated contractual terms. Compliance with the requirements of the principle of transparency of contractual clauses can be practiced voluntarily by dominant digital platforms; nevertheless, it would be an inhomogeneous solution in the absence of imperative or mandatory legal obligations. Contextualising the need for accuracy, transparency, comprehensibility and equilibrated contractual terms, the DMA’s lineage is designed to remedy the disequilibria inherent to contractual settings involving differently sized digital platforms. Given the transparency-increasing ambition of the DMA texts, it remains crucial to observe, when scrutinising the specific obligations imposed on the dominant digital platforms, that accent has been placed on the roles played by the informative formalism attached to the formation of the platform-to-business contracts.

Ambiguities in the text of the P2B general terms of contracting may give rise to the opportunity of exploiting the evasiveness of the agreed clauses in the benefit of dominant platforms, while being ostensibly detrimental to the medium-sized or small-sized digital platforms interacting with the dominant players. The narrative of strategic use reserved for the contractual incompleteness remains centred on the desequilibria favoured by the lack of contractual transparency, thus altering not only the premises for a fairer competition on the digital services market, yet also compromising the desiderata attached to the equilibrated platform-to-business relations, a scenario that may end up in marginalising the medium-sized or small-sized digital platforms' presence on the relevant market. There were arguments indicating that the economic (directly or indirectly generated) desequilibria fuelled by the deviance of dominant platforms from the exigences of the transparency principle may be tempered by resorting to the mandatory nature of the obligation to exhibit pertinent information, incumbent on the dominant platforms at the pre-contractual stage. Endogenously disequilibrated terms, which may allow dominant digital services businesses to easily escape the rigorous perimeter of the transparency principle, as set in the DMA provisions, may be identified as indicators of the malevolent conduct to which the dominant platforms may be tempted to resort in platform-to-business relations. Aiming at neutralising the effects of the 'programed' contractual incompleteness, regulatory tools such as the informative formalism applicable to P2B agreements may help promoting a fairer setting for the access to intermediating digital services. Undoubtedly, the accent should be placed on clarifying the contractual terms which approach the fair nature of the specific conditions when ranking third-party offers on the dominant platforms, not allowing dominant players to resort to ambiguously drafted terms favouring their contractual posture, while being detrimental to the legitimate interests of medium-sized or small-sized digital platforms, when acting in their capacity of commercial partners on the digital services markets.

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