

OFCOM CONSULTATION – DRAFT TRANSPARENCY REPORTING GUIDANCE

RESPONSE BY EBAY UK LTD

eBay welcomes the opportunity to comment on Ofcom's Draft Transparency Reporting Guidance. We would make the following observations in response:

- It would be helpful to clarify precisely when the new transparency notices regime will enter into force. The consultation mentions that Ofcom aims to issue the first transparency notices in mid-2025. However, it is not clear whether these will be in draft or final form. Moreover, it would be helpful to understand whether the transparency reports have a different timeline to the rest of phase 3 timelines (effective ~ Q1 2026).
- The exact timings for when platforms would have to prepare the transparency report remain unclear as does the length of time they would have to complete it. As there are no fixed timings, it is possible that the timeline could fall within peak trading period of Q4 which would be less than ideal; and based on our reading of the consultation, platforms could have anywhere between two and six months to respond. Clearly, the more time that platforms have to perform this task, the better.
- Further, the information that could be requested by Ofcom is very broad under the Act. Ofcom has said its focus on information requested could change from year to year. This makes it difficult for services to resource as they will have to collect and prepare completely different sets of information each year depending on the draft/formal notice. It is therefore vital that service providers are given adequate advance notice of any significant changes to the information sets they will have to provide.
- Ofcom mentions that each notice will be tailored to the service provider in respect of the information required, but to date we have found that Ofcom has often tended not to discriminate between platforms and has predominantly used broad brush approaches – for example, its evidence on online harms repeatedly treated all marketplaces as the same, despite the fact that both the business models and the harms associated with these can vary enormously depending on the platform. For example, pure third-party marketplaces like eBay are fundamentally different from hybrid platforms like Amazon which also act as a retailer. Moreover, goods-based marketplaces are likely to have a different risk profile to services based marketplaces. This needs to be reflected in information requests.
- The consultation is not clear on what is meant by the requirement that the service provider will “publish” their report after submitting it to Ofcom. We presume this means that providers will need to publish on their site. However, it is not clear where and how prominently. We would recommend that there is a link to it and other associated legal documents on the home page.
- In regard to commercially sensitive/confidential information, we recommend that Ofcom should not require services to publish or share confidential information where we would not ordinarily make that information publicly available, and Ofcom should not refer to or publish any confidential information submitted to it (but not publicly disclosed) in Ofcom's own transparency reports.

- The consultation notes that Ofcom will compare findings from provider reports. We would recommend that comparison is made between similar types of services and that in respect of marketplaces that such comparisons distinguish between pure third- party marketplaces and hybrid marketplaces. In addition, any comparison reports should be shared in draft with providers before any publication.
- More thought needs to be given on how to address the challenges in making comparisons between services based on the different performance metrics used by each platform. Each service provider will typically use bespoke performance metrics which reflect the nuances of their own service. And requiring them all to use common metrics would be disproportionate and mean additional expense and time for platforms who need to adapt their performance monitoring. On the other hand, if Ofcom draws comparisons based on different metrics reported by different companies, these comparisons may be misleading and lacking important context.
- Finally, it is important that Ofcom give service providers advance notice before referring to/excerpting any information included in that provider's transparency reports. This will allow service providers to ensure that Ofcom is representing their practices accurately and appropriate context is being provided.