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VULNERABLE SELLERS AND FAVORED CONSUMERS: A CRITICAL ANALYSIS OF DISTRIBUTIVE EQUITY IN MULTI-SIDED PLATFORMS

Yibo Li

PhD researcher, University of Antwerp, yibo.li@uantwerpen.be

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Cover Page Footnote

I would like to thank Prof. Gert Straetmans, Prof. Jan Blockx, Prof. Wouter Verheyen, and the reviewers for their valuable comments on earlier drafts of this article.

VULNERABLE SELLERS AND FAVORED CONSUMERS: A CRITICAL ANALYSIS OF DISTRIBUTIVE EQUITY IN MULTI-SIDED PLATFORMS

—Yibo Li*

Abstract *This paper critically examines the fundamental consumer protection assumption in the European Union context, namely the imbalance of power between consumers and sellers. Focusing on Multi-Sided Platforms, it questions this binary perspective in light of their unique characteristics as intermediaries. Drawing on empirical evidence and case studies of retail platforms such as Amazon, Zalando, and eBay, the paper uncovers the frequent vulnerability of sellers in platform economies, thus complicating the traditional consumer-seller dichotomy. The study identifies a need for nuanced legal frameworks that encapsulate the unique dynamics of platform economies, advocate for comprehensive legality assessments, and highlight the necessity for legislation focused on distributive equity among platform participants. This research underscores the urgency for regulatory and legislative attention to prevent the exploitation of economically dependent sellers by powerful Multi-Sided Platforms.*

Keywords: Consumer protection, digital platforms, e-commerce.

Introduction	201	Default Rules Set by EU Legislation	204
Objective	202	Amazon’s Terms and Policies on Return Policy	205
Choice of Platforms	202	Zalando’s Terms and Policies on Return Policy	206
Choice of Topics	203	Ebay’s Terms and Policies on Return Policy	206
Methodology	203		
Case Study: Return Policy	203		
Overview	203		

* Yibo Li, PhD researcher at the University of Antwerp, member of the Antwerp Center on Responsible AI (ACRAI), yibo.li@uantwerpen.be.

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Conclusion	207	Amazon's Terms and Policies on the Internal Dispute Resolution System..	214
Case Study: Information Duty	208	Zalando's Terms and Policies on the Internal Dispute Resolution System..	215
Overview	208	Ebay's Terms and Policies on the Internal Dispute Resolution System..	215
Default Rules Set by EU Legislation...	209	Conclusion	216
Amazon's Terms and Policies on Information Duty	209	Inter-Platform Differences and Legal Implications.....	217
Zalando's Terms and Policies on Information Duty	210	Comparison of Platform Policies.....	217
Ebay's Terms and Policies on Information Duty	211	Possible Reasons of Inter-Platform Differences	218
Conclusion	212	Implication for Improvement of Legal Framework	219
Case Study: Internl Dispute Resolution System.....	212	Conclusion	221
Overview	212		
Default Rules Set by EU Legislation...	213		

I. INTRODUCTION

One of the most fundamental theories and policy assumptions underpinning consumer protection legislation in the European Union (EU) is the economic and social imbalance of power between consumers and sellers. As articulated in Article 169 of the Treaty on the Functioning of the European Union (TFEU), the Union is committed to promoting the interests of consumers and ensuring a high level of consumer protection, including the protection of health, safety, and economic interests, as well as promoting their right to information, education, and organization to safeguard their interests.¹ The European Court of Justice (**the Court**), in the *Océano*, further posits that the EU consumer protection system assumes that consumers are in a weak position vis-à-vis sellers or suppliers, both in terms of their bargaining power and their level of knowledge.²

However, this assumption may not necessarily hold true in digital marketplaces where Multi-Sided Platforms (MSPs) provide intermediary services to facilitate transactions. Platform economists suggested that a MSP has both the capacity and the incentive to promote consumer interests, as it is economically advantageous to expand the user base on the demand side to generate both direct and indirect network effects.³ As the gatekeeper, rule-maker and enforcer of the ecosystem, with its informational advantages, a MSP can easily exert its power over the contractual relationship between its consumers and sellers (or service providers) to favor consumers and exploit sellers and service providers.

¹ Consolidated version of the Treaty on the Functioning of the European Union 2012 (Official Journal C 326) I, art 169.

² *Case C-240/98 to C-244/98 Océano* (2000) EU:C:2000:346 (European Court of Justice) [25].

³ Jean-Charles Rochet and Jean Tirole, 'Two-Sided Markets: A Progress Report' (2006) 37 *The RAND Journal of Economics* 645, 664–665; Mark Armstrong, 'Competition in Two-Sided Markets' (2006) 37 *The RAND Journal of Economics* 668, 673.

Recently, several service providers have publicly complained about the unfair treatment they received from their platform operators. In 2020, a app provider Epic Games initiated lawsuits against the Apple App Store, although Apple prevails in the appeal.⁴ Meanwhile, Google Play is accused by Epic and the dating app giant Match Group for imposing unreasonable terms.⁵ In 2021, Spotify lodged a complaint about the Apple App Store rules, which led to the commencement of an investigation by the EU Commission.⁶ However, official complaints from third-party sellers on retail platforms, such as Amazon, have been notably scarce. This observation has prompted this paper to investigate the distribution of contractual duties and rights between sellers and buyers within the ecosystems of retail platforms.

To scrutinize the distributive equity of contractual rights and duties on retail platforms, this paper is structured as follows: Section 1 explains the selection of platforms and topics, as well as the methodology employed for the case studies. Section 2 examines three sets of terms and policies from three retail platforms (Amazon, Zalando, and eBay). Section 3 provides a concluding remark and suggests implication for improvement of the legal framework.

A. Objective

The objective of this paper is to articulate the status quo of distribution of contractual duties and rights among sellers and buyers in the major retail platforms. It aims to examine the assumption that buyers (consumers) consistently exhibit a higher degree of vulnerability compared to sellers within the ambit of a platform-based economy.

B. Choice of Platforms

This paper selects Amazon, Zalando, and eBay for case studies, considering their popularity and diversity. Amazon, Zalando, and eBay all enjoy significant popularity in Europe. While Amazon and eBay provide marketplaces for the sale of a wide variety of products, Zalando specializes in fashion products. It is also noteworthy that eBay does not sell its own products on the marketplace, unlike the other two platforms. Given the size of the market and the need for comparisons among different member states, this paper focuses on the terms

⁴ Kellen Browning, 'Apple Largely Prevails in Appeal of Epic Games' App Store Suit' *The New York Times* (24 April 2023) <<https://www.nytimes.com/2023/04/24/business/apple-epic-games-appeal.html>> accessed 29 July 2023.

⁵ Sarah Perez, 'Epic and Match's Antitrust Case against Google Heads to Jury Trial on November 6' (19 January 2023) <<https://techcrunch.com/2023/01/19/epic-and-matches-antitrust-case-against-google-heads-to-jury-trial-on-november-6/>> accessed 29 July 2023.

⁶ European Commission, Antitrust: Commission Opens Investigation into Apple' <https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1073> accessed 20 June 2023.

and policies of these three platforms in six member states: Belgium, France, Germany, Italy, the Netherlands, and Spain.

C. Choice of Topics

This paper selects 1). return policies, 2). information duty, and 3). the internal dispute resolution system for the topics of case studies. Firstly, the terms and policies selected for case studies encompass pre-contractual stage, contract formation stage and post-contractual stage, facilitating a comprehensive examination of contractual duties and rights. Secondly, the terms and policies selected for case studies reflect the triangularity of the relationship among platform, seller and buyer in e-commerce. In contrast to other bilateral contractual terms between platforms and sellers (e.g., terms allowing platforms to unilaterally modify their terms of service) and bilateral terms between platforms and buyers (e.g., terms requesting excessive personal data), the selected sets of terms and policies involve balancing the interests of sellers and buyers, with the influence of platforms.

D. Methodology

To scrutinize the distributive equity of contractual rights and duties among seller and buyers of retail platforms, the methodology employed for the case studies unfolds as follows: 1). the applicable EU legislations relevant to the contractual provisions under review will be identified and summarized. These legislative frameworks will function as a standard of comparison; 2). the selected terms and policies will be compared to the default rules to ascertain whether there is a deviation and, if so, to determine which user group is favored; and 3). leveraging the insights from the three case studies, the paper will encapsulate the overall distribution of contractual duties and rights, and explore whether (and to what extent) buyers manifest greater or lesser vulnerability than sellers within the confines of retail platforms.

II. CASE STUDY: RETURN POLICY

A. Overview

The return policy of a MSP encompasses a series of significant contractual provisions, including information duty of return policy, the stipulation of withdrawal periods, the assignment of responsibility for return costs, and the determination of the scope of reimbursement, among others. This policy can be viewed as both pre-contractual, in terms of the information on the return policy that must be provided to the buyer, and post-contractual, in terms of the rights consumers possess should they wish to withdraw the order. The

mandatory return policy implemented by an MSP involves a delicate equilibrium of interests, contractual rights, and duties among its buyers and sellers. For instance, an MSP can modify its return policy to favor buyers by extending the withdrawal period or mandating its sellers to offer free returns.

By scrutinizing the return policies of the selected platforms, this case study will demonstrate whether platforms reallocate contractual obligations and rights in a manner that systematically favors buyers at the expense of sellers. This case study will first review the model return policy set by EU consumer protection legislation, and then compare the policies of platforms with respect to the three major issues in return policy: the withdrawal period, the bearing of return costs and the range of reimbursement.

B. Default Rules Set by EU Legislation

In the EU, Directive 2011/83/EU (Consumer Rights Directive),⁷ published in 2011 and subsequently amended by Directive (EU) 2019/2161 (Omnibus Directive),⁸ provides a precise standard for the return policy of contracts concluded in online marketplaces. According to the directive, consumers are entitled to a period of 14 days to withdraw from a distance or off-premises contract, without giving any reason.⁹ Additionally, sellers are required to reimburse all payments received from the consumer, including the (standard) original delivery costs,¹⁰ while consumers bear the direct cost of returning the goods, unless the seller has agreed to bear them, or the seller failed to inform the consumer that the consumer has to bear them.¹¹ It should be noted that, according to Article 2, these provisions apply only to professional traders, not non-professional sellers.¹² For non-professional sellers on online marketplaces, European consumer protection legislation does not yet provide any rules on the return policy.

⁷ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council 2011 (Official Journal L 30) 64.

⁸ Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules 2019 (Official Journal L 328) 7.

⁹ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council art 9.

¹⁰ *ibid*, art 13.

¹¹ *ibid*, art 14.

¹² *ibid*, art 2.

C. Amazon's Terms and Policies on Return Policy

In addition to the statutory 14-day right of withdrawal that consumers are accorded, Amazon necessitates its sellers to offer an extended, 30-day voluntary right of withdrawal.¹³ Regarding the range of reimbursement, consumers are entitled to receive refunds for the purchase price of the item, including the original delivery cost when the return is requested within 14 days upon receipt. If the return is after the 14-day period, they will not receive refunds for the original delivery cost, with one exception: for fashion products, the original (standard) delivery cost is also reimbursed.¹⁴ This exception is not mandated under EU consumer protection legislation.

As for return delivery costs, these are typically borne by Amazon's buyers, unless the purchased item falls within the category of fashion products.¹⁵ In such instances, the buyer is exempted from paying the return delivery cost, which is then split equally between the seller and Amazon, each assuming 50% of the costs. This cost assigned to sellers in this context is denoted as the returns processing fee.¹⁶

¹³ Amazon.com.be, 'Marketplace Returns and Refunds - Amazon Customer Service' <<https://www.amazon.com.be/-/nl/gp/help/customer/display.html?nodeId=GV38326YW5JX9V9X>> accessed 1 June 2023; Amazon.de, 'MarketplaceReturnsandRefunds-AmazonCustomerService' <<https://www.amazon.de/-/en/gp/help/customer/display.html?nodeId=GV38326YW5JX9V9X>> accessed 1 June 2023; Amazon.es, 'Devoluciones y Reembolsos de Marketplace-Serviciode Atenci3n al Clientede Amazon' <<https://www.amazon.es/gp/help/customer/display.html?nodeId=GV38326YW5JX9V9X>> accessed 1 June 2023; Amazon.fr, 'Marketplace Retours et Remboursements - Service ClientAmazon' <https://www.amazon.fr/gp/help/customer/display.html?ref=hp_left_v4_sib&nodeId=GV38326YW5JX9V9X> accessed 1 June 2023; Amazon.it, 'Resi e Rimborsi per Articoli Marketplace - Servizio Clienti Amazon' <<https://www.amazon.it/gp/help/customer/display.html?nodeId=GV38326YW5JX9V9X>> accessed 1 June 2023; Amazon.nl, 'Marketplace Returnsand Refunds-Amazon Customer Service' <<https://www.amazon.nl/gp/help/customer/display.html?nodeId=GV38326YW5JX9V9X>> accessed 1 June 2023.

¹⁴ Amazon.com.be, 'Amazon' (n 13); Amazon.de, 'Amazon' (n 13); Amazon.es, 'Amazon' (n 13); Amazon.fr, 'Amazon' (n 13); Amazon.it, 'Amazon' (n 13); Amazon.nl, 'Amazon' (n 13).

¹⁵ Amazon.de, 'Free Returns on Fashion Items for Seller-Fulfilled Orders' <<https://sellercentral.amazon.de/help/hub/reference/external/GEKBRFKQE38CQA6V?locale=en-US>> accessed 1 June 2023; Amazon.es, 'Free Returns on Fashion Items for Seller-Fulfilled Orders' <<https://sellercentral.amazon.es/help/hub/reference/external/GEKBRFKQE38CQA6V?locale=en-US>> accessed 1 June 2023; Amazon.fr, 'Free Returns on Fashion Items for Seller-Fulfilled Orders' <<https://sellercentral.amazon.fr/help/hub/reference/external/GEKBRFKQE38CQA6V?locale=en-US>> accessed 1 June 2023; Amazon.it, 'Free Returns on Fashion Items for Seller-Fulfilled Orders' <<https://sellercentral.amazon.it/help/hub/reference/external/GEKBRFKQE38CQA6V?locale=en-US>> accessed 1 June 2023.

¹⁶ Amazon.com.be, 'Returns Processing Fee' <<https://sellercentral.amazon.com.be/help/hub/reference/201112630>> accessed 1 June 2023; Amazon.de, 'Returns Processing Fee' <<https://sellercentral.amazon.de/help/hub/reference/external/201112630>> accessed 1 June 2023; Amazon.es, 'Returns Processing Fee' <<https://sellercentral.amazon.es/help/hub/reference/external/201112630>> accessed 1 June 2023; Amazon.fr, 'Returns Processing Fee' <<https://sellercentral.amazon.fr/help/hub/reference/external/201112630>> accessed 1 June 2023; Amazon.it, 'Returns Processing Fee' <<https://sellercentral.amazon.it/help/hub/reference/>>

D. Zalando's Terms and Policies on Return Policy

Regarding the withdrawal period, while the EU consumer protection legislation necessitates only 14 days, Zalando obliges its sellers to offer a voluntary right of withdrawal, extending to a period of 100 days.¹⁷

In terms of reimbursement scope, the purchase price of the item, including the original delivery cost are refunded when the return is requested within 14 days upon receipt. After that period, only payments for the items are refunded, excluding the original delivery costs in most instances.¹⁸ However, several exceptions apply. For example, on Zalando.fr, the standard original delivery costs are also refunded when the total order value exceeds €24.90.¹⁹ In contrast, Zalando.it and Zalando.es stipulate that all payments, inclusive of the standard original delivery costs, are to be refunded, provided the entire order is returned.²⁰ It is crucial to note that such a refund of original delivery costs after 14 days upon receipt is not mandated by EU consumer protection law.

Concerning return delivery costs, Zalando's policies provide that its sellers are obligated to provide free returns for all products they sell,²¹ and that the costs associated with these returns are unequivocally borne by the sellers themselves.²² The stipulation on free returns extends beyond the mandates articulated by the current legislative framework.

E. eBay's Terms and Policies on Return Policy

On eBay, professional sellers are required to offer a 14-day right of withdrawal to buyers, a period that mirrors the default time frame established by EU legislation.²³ For non-professional sellers, although return policy is subject

external/201112630> accessed 1 June 2023; Amazon.nl, 'Returns Processing Fee' <<https://sell-central.amazon.nl/help/hub/reference/201112630>> accessed 1 June 2023.

¹⁷ Zalando.be, 'Returns & Refunds' <<https://fr.zalando.be/aide/Retour-and-Remboursement/Retourner-un-article-partenaire.html>> accessed 1 June 2023; Zalando.de, 'Returns & Refunds' <<https://en.zalando.de/faq/Returns-and-Refunds/How-do-I-return-my-order.html>> accessed 1 June 2023; Zalando.es, 'Returns & Refunds' <<https://www.zalando.es/preguntas-frecuentes/Devolucion-y-reembolso/Como-devolver-un-articulo.html>> accessed 1 June 2023; Zalando.fr, 'Returns & Refunds' <<https://www.zalando.fr/aide/Retour-and-Remboursement/Combien-coute-le-retour-d'une-commande.html>> accessed 1 June 2023; Zalando.it, 'Returns & Refunds' <<https://www.zalando.it/aiuto/Reso-e-Rimborso/100-giorni-per-rendere-il-tuo-ordine.html>> accessed 1 June 2023.

¹⁸ Zalando.be (n 17); Zalando.fr (n 17); Zalando.de (n 17); Zalando.it (n 17); Zalando.es (n 17).

¹⁹ Zalando.fr (n 17).

²⁰ Zalando.it (n 17); Zalando.es (n 17).

²¹ Zalando.be (n 17); Zalando.fr (n 17); Zalando.de (n 17); Zalando.it (n 17); Zalando.es (n 17).

²² Zalando, 'Platform Rules (Version 7) (EN)' art 7.5 <<https://partnerportal.zalando.com/s/article/Platform-Rules>> accessed 27 July 2023.

²³ eBay.be, 'Returns and Refunds' <<https://www.befr.ebay.be/help/buying/returns-refunds/returning-item?id=4041>> accessed 29 July 2023; eBay.de, 'Returns and Refunds' <<https://www.ebay.com>>

to their individual discretion, they are required to disclose their return policies to buyers prior to transactions.²⁴

Concerning reimbursement and return costs, both professional and non-professional sellers on eBay must refund all payments, including the (standard) original delivery costs, and pay the return costs if the return is occasioned by non-conformity, such as when the product is damaged, defective, or deviates from the original description.²⁵ In scenarios where the return is not due to non-conformity, such as the buyers rescind their purchase decision, eBay does not provide mandatory rules.²⁶

F. Conclusion

The three platforms under review demonstrate varying degrees of deviation from the default rules set by EU consumer protection legislation. Amazon, a generalist platform with a wide array of product categories, extends the withdrawal period to 30 days, exceeding the legal requirement of 14 days. This policy is likely designed to attract and retain a larger customer base. By offering a longer withdrawal period, Amazon positions itself as a consumer-friendly platform, a strategy crucial for maintaining its broad customer base and competitive edge in a diverse market.

de/help/buying/returns-refunds/rckgabe-eines-artikels-gegen-eine-rckerstattung?id=4041> accessed 29 July 2023; eBay.es, 'Returns and Refunds' <<https://www.ebay.es/help/buying/returns-refunds/devolver-un-articulo-y-solicitar-un-reembolso?id=4041>> accessed 29 July 2023; eBay.fr, 'Returns and Refunds' <<https://www.ebay.fr/help/buying/returns-refunds/rckgabe-eines-artikels-gegen-eine-rckerstattung?id=4041>> accessed 29 July 2023; eBay.it, 'Returns and Refunds' <<https://www.ebay.it/help/buying/returns-refunds/restituzioni-oggetti-non-ricevuti-rimborsi-per-gli-acquirenti?id=4008>> accessed 29 July 2023; eBay.nl, 'Returns and Refunds' <<https://www.ebay.nl/help/buying/returns-refunds/returning-item?id=4041>> accessed 29 July 2023.

²⁴ eBay.be, 'Set up Your Return Policy' <<https://www.befr.ebay.be/help/selling/managing-returns-refunds/handling-return-requests/setting-rules-return-requests?id=4368>> accessed 31 July 2023; eBay.de, 'Set up Your Return Policy' <<https://www.ebay.de/help/selling/managing-returns-refunds/handling-return-requests/setting-rules-return-requests?id=4368>> accessed 31 July 2023; eBay.es, 'Set up Your Return Policy' <<https://www.ebay.es/help/selling/managing-returns-refunds/handling-return-requests/setting-rules-return-requests?id=4368>> accessed 31 July 2023; eBay.fr, 'Set up Your Return Policy' <<https://www.ebay.fr/help/selling/managing-returns-refunds/handling-return-requests/setting-rules-return-requests?id=4368>> accessed 31 July 2023; eBay.it, 'Set up Your Return Policy' <<https://www.ebay.it/help/selling/managing-returns-refunds/handling-return-requests/setting-rules-return-requests?id=4368>> accessed 31 July 2023; eBay.nl, 'Set up Your Return Policy' <<https://www.ebay.nl/help/selling/managing-returns-refunds/handling-return-requests/setting-rules-return-requests?id=4368>> accessed 31 July 2023.

²⁵ eBay.be, 'Returns and Refunds' (n 23); eBay.de, 'Returns and Refunds' (n 23); eBay.es, 'Returns and Refunds' (n 23); eBay.fr, 'Returns and Refunds' (n 23); eBay.it, 'Returns and Refunds' (n 23); eBay.nl, 'Returns and Refunds' (n 23).

²⁶ eBay.be, 'Returns and Refunds' (n 23); eBay.de, 'Returns and Refunds' (n 23); eBay.es, 'Returns and Refunds' (n 23); eBay.fr, 'Returns and Refunds' (n 23); eBay.it, 'Returns and Refunds' (n 23); eBay.nl, 'Returns and Refunds' (n 23).

Zalando, a platform that sells fashion products, offers an even longer return period of 100 days. While consumers often appreciate the flexibility to try on items and make return decisions over a longer period in the fashion industry, Zalando's return period of 100 days appears to significantly exceed the industry norm in the European market: ASOS and FARFETCH, for instance, offer return periods of 14 days, which align with the legal requirement set by EU consumer protection legislation.²⁷ LuisaViaRoma, the Italian fashion retailer offers a 28-day return policy.²⁸ ZARA and Mytheresa, while offering a more generous return period of 30 days, still fall far short of Zalando's 100-day policy.²⁹

Furthermore, both Amazon and Zalando offer free returns for fashion items sold by third-party sellers and transfer either partial or total costs of the return deliveries to their sellers. In contrast, eBay, a platform that primarily facilitates transactions between third-party sellers and buyers, adheres closely to the default rules set by EU consumer protection legislation. This approach may reflect eBay's role as a neutral intermediary that seeks to balance the interests of both sellers and buyers.

III. CASE STUDY: INFORMATION DUTY

A. Overview

Contractual powers are substantially shaped by the extent of knowledge accessible. In the process of finalizing a distance contract with another party via the platform-facilitated marketplace, consumers generally acquire pertinent information from either the seller or the platform operator. The former is often provided by the seller by editing the seller page or the product page on the platform while the later might be collected by the platform from the seller upon their registration (for instance, business identity and address); data which is generated automatically via aggregate data (such as customer reviews and ratings), and information supplemented by the platform operator and subsequently displayed by default on the selling pages (including standardized and mandatory platform policies). By imposing distinct information duties and providing varying degrees of access to information to different users, a MSP has the potential to mitigate, or indeed, substantially eradicate the information

²⁷ ASOS, 'Return Policy' <<https://www.asos.com/customer-care/returns-refunds/what-is-your-returns-policy/>> accessed 29 July 2023; FARFETCH, 'Return Policy' <<https://www.farfetch.com/be/returns-and-refunds/>> accessed 29 July 2023.

²⁸ Luisaviaroma, 'Return Policy' <<https://www.luisaviaroma.com/en-be/contactus/return-policy>> accessed 29 July 2023.

²⁹ ZARA, 'Return Policy' <<https://www.zara.com/be/en/help-center/HowToReturn>> accessed 29 July 2023; Mytheresa, 'Return Policy' <<https://www.mytheresa.com/euro/en/customer-care/returns-exchanges>> accessed 29 July 2023.

asymmetry that significantly contributes to the power disparity between sellers and buyers in digital transactions.

The conceptualization of this informational duty also reflects the equitable distribution of contractual duties and rights of sellers and buyers under the aegis of the MSP during the pre-contractual stage. Since the information duties imposed upon sellers by platforms commonly pertain to details relating to their identity, the products they sell, and the performance of the contract, the following case study will first review the legal requirements for information duties under EU consumer protection legislation, and then scrutinize the policies of platforms with respect to the duties established for these three categories of information.

B. Default Rules Set by EU Legislation

Article 6 of Directive 2011/83/EU requires that sellers shall inform consumers of their identity, contact (e.g., telephone number, fax number and e-mail address) and address when selling on the online marketplace.³⁰ The same article stipulates that sellers shall provide information regarding the main characteristics, the total price of the product, as well as other costs related.³¹

Regarding the information on the performance of the contract, Article 6 provides that sellers shall provide information about the arrangements for payment, delivery, performance; withdrawal and return policies; after-sale policies; a reminder of the existence of a legal guarantee of conformity for goods; the existence of relevant codes of conduct; and complaint and redress policies, etc.³²

C. Amazon's Terms and Policies on Information Duty

Amazon states that seller information displayed to consumers usually shall include: legal business designation, legal name, place of establishment address, VAT registration number, customer service email, customer service reply-to email, customer service phone and the business address.³³ Besides, overall rat-

³⁰ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council art 6.

³¹ *ibid.*

³² *ibid.*

³³ Amazon.de, 'Seller Information Displayed to Buyers' <https://sellercentral.amazon.de/help/hub/reference/external/841?ref=efph_841_cont_851&locale=en-DE>; Amazon.es, 'Seller Information Displayed to Buyers' <https://sellercentral.amazon.es/help/hub/reference/external/841?ref=efph_841_cont_851&locale=en-ES>; Amazon.fr, 'Seller Information Displayed to Buyers' <https://sellercentral.amazon.fr/help/hub/reference/841?ref=efph_841_cont_851&lo

ings and reviews of the sellers are shown, including positive, neutral, negative feedbacks in 30 days, 90 days, 12 months and lifetime.³⁴

In relation to product-related information, sellers are required to provide both general product information that is not specific to individual offers and will be used by all sellers, as well as specific information about their own offers, such as price, quantity, and condition.³⁵ Additionally, customer reviews of the product are readily accessible on the selling page.

While Amazon does not explicitly stipulate an information duty regarding the performance of the contract, in practice, information such as the arrangement of delivery, warranty, withdrawal, and return policies is typically provided. This is primarily because most of the policies related to the performance of the contract are determined by Amazon, imposed on all sellers, and displayed by default on the selling pages.

D. Zalando's Terms and Policies on Information Duty

In terms of seller information, Zalando collects details such as company names, addresses, and contact information, which are displayed to consumers on the sales pages. However, Zalando does not provide consumer reviews or ratings of sellers.

cale=en-IT>; Amazon.it, 'Seller Information Displayed to Buyers' <https://sellercentral.amazon.it/help/hub/reference/external/841?ref=efph_841_cont_851&locale=en-IT>; Amazon.nl, 'Seller Information Displayed to Buyers' <https://sellercentral.amazon.nl/help/hub/reference/841?ref=efph_841_cont_851&locale=en-DE>.

³⁴ Amazon.de, 'Data Access' <https://sellercentral.amazon.de/help/hub/reference/external/GQF7NU6F3SZWNLTM?ref=efph_GQF7NU6F3SZWNLTM_cont_521&locale=en-FR>; Amazon.es, 'Data Access' <<https://sellercentral.amazon.es/help/hub/reference/external/G761?locale=en-US>>; Amazon.fr, 'Data Access' <https://sellercentral.amazon.fr/help/hub/reference/external/GQF7NU6F3SZWNLTM?ref=efph_GQF7NU6F3SZWNLTM_cont_521&locale=en-FR>; Amazon.it, 'Data Access' <https://sellercentral.amazon.it/help/hub/reference/external/GQF7NU6F3SZWNLTM?ref=efph_GQF7NU6F3SZWNLTM_cont_521&locale=en-FR>; Amazon.nl, 'Data Access' <https://sellercentral.amazon.nl/help/hub/reference/external/GQF7NU6F3SZWNLTM?ref=efph_GQF7NU6F3SZWNLTM_cont_521&locale=en-FR>.

³⁵ Amazon.de, 'Product Page Style Guide' <<https://sellercentral.amazon.de/help/hub/reference/external/200270100?locale=en-GB>>; Amazon.es, 'Product Page Style Guide' <<https://sellercentral.amazon.es/help/hub/reference/external/200270100?locale=en-GB>>; Amazon.fr, 'Product Page Style Guide' <<https://sellercentral.amazon.fr/help/hub/reference/external/200270100?locale=en-GB>>; Amazon.it, 'Product Page Style Guide' <<https://sellercentral.amazon.it/help/hub/reference/external/200270100?locale=en-GB>>; Amazon.nl, 'Product Page Style Guide' <<https://sellercentral.amazon.nl/help/hub/reference/external/200270100?locale=en-GB>>.

With respect to product information, Zalando stipulates the information duty in its Mapping Guide.³⁶ In addition, Zalando provides a Content & Image Guideline for its Partners, which imposes specific requirements for the images of the items sold on Zalando.³⁷ Notably, Zalando does not provide consumer reviews or ratings of products.

In relation to information pertaining to the performance of the contract, Zalando does not establish an information duty for its sellers in its terms and policies. However, akin to Amazon, arrangements for delivery, withdrawal, and return policies are displayed by default as they form part of Zalando's uniform and compulsory platform policies.

E. eBay's Terms and Policies on Information Duty

Regarding information of sellers, eBay collects information necessary for the processing of transactions and send to buyers, in particular the contact details of the other user involved in a transaction.³⁸ Moreover, both sellers and buyers have access to the overall ratings and reviews of each other including the ranking in 1 month, 6 months, and 12 months.

Sellers on eBay are obliged to provide information about the products (e.g., precise characteristics of the object, product details, category of the product, any defects or imperfections in the of the products, etc.).³⁹ The reviews and ratings of the products are also made accessible to consumers.

³⁶ Zalando, 'Article Mapping Guide' <<https://partnerportal.zalando.com/partners/s/article/Mapping-Guide>> accessed 29 July 2023.

³⁷ Zalando, 'Image and Content Guides' <<https://partnerportal.zalando.com/partners/s/article/Image-and-Content-Guides>> accessed 29 July 2023.

³⁸ eBay.be, 'Terms of Use' <<https://www.befr.ebay.be/help/policies/member-behaviour-policies/user-agreement?id=4259>> accessed 29 July 2023; eBay.de, 'Terms of Use' <<https://www.ebay.de/help/policies/member-behavior-policies/allgemeine-geschftsbedingungen-fr-die-nutzung-der-deutschen-ebaydienste?id=4259>> accessed 29 July 2023; eBay.es, 'Terms of Use' <<https://www.ebay.es/help/policies/member-behaviour-policies/user-agreement?id=4259>> accessed 29 July 2023; eBay.fr, 'Terms of Use' <<https://www.ebay.fr/help/policies/member-behaviour-policies/user-agreement?id=4259>> accessed 29 July 2023; eBay.it, 'Terms of Use' <<https://www.ebay.it/help/policies/member-behaviour-policies/user-agreement?id=4259>> accessed 29 July 2023; eBay.nl, 'Terms of Use' <<https://www.ebay.nl/help/account/default/ebay-account?id=4188>> accessed 29 July 2023.

³⁹ eBay.be, 'Object Description' <<https://www.befr.ebay.be/help/policies/selling-policies/selling-practices-policy?id=4346>> accessed 29 July 2023; eBay.de, 'Object Description' <<https://www.ebay.de/help/policies/listing-policies/grundsatz-zur-artikelbeschreibung?id=4372>> accessed 29 July 2023; eBay.es, 'Object Description' <<https://www.ebay.es/help/policies/listing-policies/grundsatz-zur-artikelbeschreibung?id=4372>> accessed 29 July 2023; eBay.fr, 'Object Description' <<https://www.ebay.fr/help/policies/listing-policies/grundsatz-zur-artikelbeschreibung?id=4372>> accessed 29 July 2023; eBay.it, 'Object Description' <<https://www.ebay.it/help/policies/listing-policies/grundsatz-zur-artikelbeschreibung?id=4372>> accessed 29 July 2023; eBay.nl, 'Object Description' <<https://www.ebay.nl/help/policies/selling-policies/selling-practices-policy?id=4346>> accessed 29 July 2023.

With respect to the performance of the contract, eBay requires sellers to provide information such as shipping and handling fees, shipping and processing time, and return policy to their buyers.⁴⁰ This is primarily because eBay does not impose a compulsory return policy and other performance-related duties on its non-professional sellers.

F. Conclusion

The information duty policies of Amazon, Zalando, and eBay, pertaining to the disclosure of seller and product information, all adhere to Article 6 of Directive 2011/83/EU. Amazon's policy is notably comprehensive, necessitating sellers to disclose an extensive array of information. Furthermore, Amazon provides overall ratings and reviews of sellers and their products, which, while not mandated by EU legislation on consumer protection and platform regulation, enhances transparency and assists consumers in making more informed purchasing decisions.

Conversely, Zalando collects and displays basic seller information and provides detailed guidelines on product descriptions, but does not offer consumer reviews or ratings of sellers. This approach aligns with the default rules set out in the legislation.

eBay's policy mandates sellers to provide essential information for transaction processing. In contrast to Amazon, eBay provides mutual access to overall ratings and reviews for both sellers and buyers. This approach may reflect eBay's role as a neutral intermediary that seeks to balance the interests of both sellers and buyers.

IV. CASE STUDY: INTERNAL DISPUTE RESOLUTION SYSTEM

A. Overview

Following the conclusion of the sales contracts, the stage of contract performance commences, during which disputes may arise between sellers and buyers. These disputes include disputes regarding the performance of the contract such as delivery, quality of the product such as conformity of goods, or issues

⁴⁰ eBay.be, 'Sale Practices' <<https://www.befr.ebay.be/help/policies/selling-policies/selling-practices-policy?id=4346>> accessed 29 July 2023; eBay.de, 'Sale Practices' <<https://www.ebay.de/help/policies/selling-policies/pratiques-de-vente?id=4346>> accessed 29 July 2023; eBay.es, 'Sale Practices' <<https://www.ebay.es/help/policies/selling-policies/pratiques-de-vente?id=4346>> accessed 29 July 2023; eBay.fr, 'Sale Practices' <<https://www.ebay.fr/help/policies/selling-policies/pratiques-de-vente?id=4346>> accessed 29 July 2023; eBay.it, 'Sale Practices' <<https://www.ebay.it/help/policies/selling-policies/pratiques-de-vente?id=4346>> accessed 29 July 2023; eBay.nl, 'Sale Practices' <<https://www.ebay.nl/help/policies/selling-policies/selling-practices-policy?id=4346>> accessed 29 July 2023.

related to return and refunds, etc. As intermediaries, online marketplaces generally offer internal dispute resolution systems to address disputes when agreements cannot be reached between sellers and buyers. Therefore, the design of these marketplaces' dispute resolution systems can reflect their preferences and demonstrate the distribution of contractual rights and duties.

In order to examine the distributive equity, after reviewing the legal framework for internal dispute resolution system of MSPs, the case study particularly investigates, 1). Whether buyers and sellers are granted equal accesses to information regarding the internal dispute resolution system provided by the MSP; 2). Whether buyers and sellers are granted equal rights to submit claims concerning disputes arising from their transactions; and 3) whether buyers and sellers are granted equal rights to appeal decisions with which they are dissatisfied.

B. Default Rules Set by EU Legislation

The European legislations pertinent to dispute resolution in online marketplaces include Directive 2013/11/EU (Directive on Consumer ADR),⁴¹ Regulation (EU) No 524/2013 (Regulation on Consumer ODR),⁴² Regulation (EU) 2019/1150,⁴³ and Regulation (EU) 2022/2065 (Digital Service Act).⁴⁴ However, Directive 2013/11/EU and Regulation (EU) No 524/2013 only pertain to the obligation of the member states or the EU Commission to establish a dispute resolution platform for consumers, rather than regulating dispute resolution procedures provided by the online marketplaces to adjudicate disputes between their sellers and buyers.⁴⁵

Although Regulation (EU) 2019/1150 imposes the obligation on providers of online intermediation services to establish an internal system for handling

⁴¹ Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC 2013 (Official Journal L 165) 63.

⁴² Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC 2013 (Official Journal L 165) 1.

⁴³ Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services 2019 (Official Journal L 186) 57.

⁴⁴ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC 2022 (Official Journal L 277) 1.

⁴⁵ Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC; Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC.

complaints, it only covers disputes between the business user (professional seller) and the platform.⁴⁶ In contrast, Regulation (EU) 2022/2065 establishes a dispute resolution framework that takes into account the triangular relationship between the provider of the online platform, notifier, and content generator of alleged illegal content, however, its mechanism governs disputes pertaining solely to the handling of illegal content, excluding other disputes regarding products or their performance.⁴⁷

In conclusion, none of the four legislative documents mentioned above, among other EU legislation, provide legal requirements or formalities for the internal dispute resolution system on digital marketplaces for disputes between buyers and sellers. In the face of this legislative void, the benchmark for assessing the distributive equity of the internal dispute resolution system should embody neutrality between sellers and buyers. Therefore, for the purpose of this case study, the benchmarks are established as follows: both sellers and buyers should enjoy equal access to information, equivalent opportunities to initiate a dispute, and same rights to challenge decisions.

C. Amazon's Terms and Policies on the Internal Dispute Resolution System

Amazon provides an internal dispute resolution system called "A-to-Z Guarantee" which applies to disputes related to delayed delivery, non-conformity of items, refund, replacement, return, and additional charges by the third-party sellers, etc.⁴⁸ As stated by Amazon, "A-to-Z Guarantee" is aimed at protecting consumers and resolving disputes between consumers and sellers.⁴⁹ Hence, relevant information, such as the procedural framework of the "A-to-Z Guarantee", is exclusively provided in the terms and policies for Amazon's

⁴⁶ Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services art 11.

⁴⁷ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC art 20(4).

⁴⁸ Amazon.com.be, 'A-to-Z Guarantee' <<https://www.amazon.com.be/gp/help/customer/display.html?nodeId=GQ37ZCNECJKTIFYQV>> accessed 1 June 2023; Amazon.de, 'A-to-Z Guarantee' <<https://www.amazon.de/gp/help/customer/display.html?nodeId=GQ37ZCNECJKTIFYQV>> accessed 1 June 2023; Amazon.es, 'A-to-Z Guarantee' <<https://www.amazon.es/gp/help/customer/display.html?nodeId=GQ37ZCNECJKTIFYQV>> accessed 1 June 2023; Amazon.fr, 'A-to-Z Guarantee' <<https://www.amazon.fr/gp/help/customer/display.html?nodeId=GQ37ZCNECJKTIFYQV>> accessed 1 June 2023; Amazon.it, 'A-to-Z Guarantee' <<https://www.amazon.it/gp/help/customer/display.html?nodeId=GQ37ZCNECJKTIFYQV>> accessed 1 June 2023; Amazon.nl, 'A-to-Z Guarantee' <<https://www.amazon.nl/gp/help/customer/display.html?nodeId=GQ37ZCNECJKTIFYQV>> accessed 1 June 2023.

⁴⁹ Amazon.com.be, 'A-to-Z Guarantee' (n 48); Amazon.de, 'A-to-Z Guarantee' (n 48); Amazon.es, 'A-to-Z Guarantee' (n 48); Amazon.fr, 'A-to-Z Guarantee' (n 48); Amazon.it, 'A-to-Z Guarantee' (n 48); Amazon.nl, 'A-to-Z Guarantee' (n 48).

buyers. Provisions regarding an internal dispute resolution system for sellers could not be located either in the terms of use concluded between Amazon and its sellers, or in the policies available on Amazon's Seller Central.

Furthermore, only buyers are entitled to submit a claim via the "A-to-Z Guarantee".⁵⁰ Conversely, sellers are not accorded the opportunity to lodge their claims, and there exists no alternative internal dispute resolution mechanism available for sellers to instigate claims against consumers.⁵¹ However, both the buyer and the seller are permitted to contest a decision made under the "A-to-Z Guarantee" within 30 calendar days of the decision being rendered.

D. Zalando's Terms and Policies on the Internal Dispute Resolution System

Zalando offers a dispute resolution service via the Zalando Customer Service which handles disputes related to all items sold on Zalando. Zalando Customer Service deals with the following complaints from consumers (non-exhaustive): logistic-related issues (e.g., delivery, refunds, returns and product reclamations, etc.) and item-related issues (e.g., damage and defect, etc.).⁵²

Information about Zalando Customer Service are available to both buyers and sellers. Particularly, in Zalando's Platform Rules, it provides the procedure the team follows when reviewing claims and making decisions.⁵³ However, although Zalando provides detailed and transparent information on the procedure of its dispute resolution to sellers, only buyers can submit a claim. There is no alternative dispute resolution service or system accessible to Zalando's sellers. No article in the terms or policies has stipulated consumers' or Partners' right to appeal the decisions.

E. eBay's Terms and Policies on the Internal Dispute Resolution System

eBay provides an internal dispute resolution mechanism via eBay Customer Service, with information regarding its procedure publicly accessible to both

⁵⁰ Amazon.com.be, 'A-to-Z Guarantee' (n 48); Amazon.de, 'A-to-Z Guarantee' (n 48); Amazon.es, 'A-to-Z Guarantee' (n 48); Amazon.fr, 'A-to-Z Guarantee' (n 48); Amazon.it, 'A-to-Z Guarantee' (n 48); Amazon.nl, 'A-to-Z Guarantee' (n 48).

⁵¹ Amazon.com.be, 'A-to-Z Guarantee' (n 48); Amazon.de, 'A-to-Z Guarantee' (n 48); Amazon.es, 'A-to-Z Guarantee' (n 48); Amazon.fr, 'A-to-Z Guarantee' (n 48); Amazon.it, 'A-to-Z Guarantee' (n 48); Amazon.nl, 'A-to-Z Guarantee' (n 48).

⁵² Zalando, 'Platform Rules (Version 7) (EN)' (n 22) art 7.3.

⁵³ *ibid.*

buyers and sellers. Different from Amazon and Zalando, eBay allows both sellers⁵⁴ and buyers⁵⁵ to submit claims to eBay Customer Service, provided the user believes that the other party has contravened eBay's policies. Notably, both sellers and buyers are required to initially seek resolution with the other party before requesting eBay's intervention regarding the issue with the product.⁵⁶ Regarding the right to appeal, both buyers and sellers are permitted to contest decisions made by eBay within 30 days of dispute resolution.⁵⁷

F. Conclusion

While not mandated by EU consumer protection and platform regulation legislation, all three of the platforms reviewed—Amazon, Zalando, and eBay—have established their own internal dispute resolution systems. However, the design of these systems exhibits varying degrees of bias in favor of buyers.

⁵⁴ eBay.be, 'Report a Problem with a Buyer' <<https://www.benl.ebay.be/help/selling/resolving-buyer-issues/reporting-issue-buyer?id=4084>> accessed 29 July 2023; eBay.fr, 'Report a Problem with a Buyer' <<https://www.ebay.fr/help/selling/resolving-buyer-issues/reporting-issue-buyer?id=4084>> accessed 29 July 2023; eBay.de, 'Report a Problem with a Buyer' <<https://www.ebay.de/help/selling/resolving-buyer-issues/reporting-issue-buyer?id=4084>> accessed 29 July 2023; eBay.it, 'Report a Problem with a Buyer' <<https://www.ebay.it/help/selling/resolving-buyer-issues/reporting-issue-buyer?id=4084#section2>> accessed 29 July 2023; eBay.nl, 'Report a Problem with a Buyer' <<https://www.ebay.nl/help/selling/resolving-buyer-issues/reporting-issue-buyer?id=4084>> accessed 29 July 2023; eBay.es, 'Report a Problem with a Buyer' <<https://www.ebay.es/help/selling/resolving-buyer-issues/reporting-issue-buyer?id=4084#section2>> accessed 29 July 2023.

⁵⁵ eBay.be, 'Report a Problem with a Seller' <<https://www.benl.ebay.be/help/buying/resolving-issues-sellers/een-probleem-met-een-verkoper-melden?id=4022>> accessed 29 July 2023; eBay.de, 'Report a Problem with a Seller' <<https://www.ebay.de/help/buying/resolving-issues-sellers/reporting-item-issue-seller?id=4022>> accessed 29 July 2023; eBay.es, 'Report a Problem with a Seller' <<https://www.ebay.es/help/buying/resolving-issues-sellers/reporting-item-issue-seller?id=4022>> accessed 29 July 2023; eBay.fr, 'Report a Problem with a Seller' <<https://www.ebay.fr/help/buying/resolving-issues-sellers/reporting-item-issue-seller?id=4022>> accessed 29 July 2023; eBay.it, 'Report a Problem with a Seller' <<https://www.ebay.it/help/buying/resolving-issues-sellers/reporting-item-issue-seller?id=4022>> accessed 29 July 2023; eBay.nl, 'Report a Problem with a Seller' <<https://www.ebay.nl/help/selling/resolving-buyer-issues/reporting-issue-buyer?id=4084>> accessed 29 July 2023.

⁵⁶ eBay.be, 'Report a Problem with a Buyer' (n 54); eBay.fr, 'Report a Problem with a Buyer' (n 54); eBay.de, 'Report a Problem with a Buyer' (n 54); eBay.it, 'Report a Problem with a Buyer' (n 54); eBay.nl, 'Report a Problem with a Buyer' (n 54); eBay.es, 'Report a Problem with a Buyer' (n 54); eBay.be, 'Report a Problem with a Seller' (n 55); eBay.fr, 'Report a Problem with a Seller' (n 55); eBay.de, 'Report a Problem with a Seller' (n 55); eBay.it, 'Report a Problem with a Seller' (n 55); eBay.nl, 'Report a Problem with a Seller' (n 55); eBay.es, 'Report a Problem with a Seller' (n 55).

⁵⁷ eBay.be, 'Report a Problem with a Buyer' (n 54); eBay.fr, 'Report a Problem with a Buyer' (n 54); eBay.de, 'Report a Problem with a Buyer' (n 54); eBay.it, 'Report a Problem with a Buyer' (n 54); eBay.nl, 'Report a Problem with a Buyer' (n 54); eBay.es, 'Report a Problem with a Buyer' (n 54); eBay.be, 'Report a Problem with a Seller' (n 55); eBay.fr, 'Report a Problem with a Seller' (n 55); eBay.de, 'Report a Problem with a Seller' (n 55); eBay.it, 'Report a Problem with a Seller' (n 55); eBay.nl, 'Report a Problem with a Seller' (n 55); eBay.es, 'Report a Problem with a Seller' (n 585).

Amazon discloses information about its dispute resolution system solely to its buyers, while both Zalando and eBay provide pertinent information to both sellers and buyers. Amazon and Zalando restrict sellers from accessing their internal dispute resolution systems. In contrast, eBay maintains neutrality in the design of its internal dispute resolution system by allowing both sellers and buyers to submit claims. In terms of the right to appeal, Zalando is the only platform that does not specify this right or the corresponding procedure for either buyers or sellers. Both Amazon and eBay permit challenges to their decisions from both parties—sellers and buyers.

V. INTER-PLATFORM DIFFERENCES AND LEGAL IMPLICATIONS

A. Comparison of Platform Policies

The insights gleaned from the three case studies illuminate disparate approaches employed by Amazon, Zalando, and eBay in terms of the distribution of contractual duties and rights.

Amazon, a platform characterized by its diverse range of product categories, strongly advocates for the protection of customer interests, evident from the pre-contractual to the post-contractual stages. This is exemplified by its return policy, which offers a 30-day return period, exceeding the European Union's legal requirement of 14 days. With respect to information duties, Amazon requires its sellers to provide comprehensive disclosure of information. In addition, it offers ratings and reviews for both sellers and products, an element not mandated by EU legislation. In the sphere of dispute resolution, Amazon continues its consumer-centric stance. The platform reveals information about its dispute resolution system exclusively to buyers, signifying a discernable inclination towards safeguarding their interests.

As a preeminent fashion platform, Zalando likewise emphasizes a consumer-friendly environment. The distribution of contractual duties and rights is skewed towards diminishing the vulnerability of buyers, thereby ensuring customer satisfaction and retention. Notably, Zalando's return policy is extraordinarily lenient to buyers, proffering customers a 100-day window to return products. This substantially surpasses the standard 14-day period stipulated by EU consumer protection legislation, and is far more generous than the return policies of most major fashion platforms. Zalando also offers free returns for fashion items sold by third-party sellers, while transferring the total costs of return deliveries onto these sellers. In the domain of information duty, Zalando aligns with the default rules delineated in EU legislation, collecting and

exhibiting basic seller information and proffering comprehensive guidelines on product descriptions. Contrary to Amazon's approach, it does not make consumer reviews or seller ratings publicly accessible. Regarding dispute resolution, Zalando has established its own internal system, but restricts sellers from accessing it. It is worth noting that Zalando does not stipulate a right or procedure for appeals for either buyers or sellers, potentially creating uncertainty should a decision be contested.

Conversely, eBay endeavours to maintain a balanced distribution of contractual duties and rights, aiming to serve as a neutral intermediary between sellers and buyers. Its return policy adheres closely to the default rules dictated by EU consumer protection legislation, complying with the designated 14-day return period. Unlike Amazon and Zalando, eBay does not offer free returns for items sold by third-party sellers. In relation to information duty, eBay conforms to Article 6 of Directive 2011/83/EU, mandating sellers to offer necessary information for transaction processing. Furthermore, eBay provides mutual access to overall ratings and reviews for both sellers and buyers. This diverges from Amazon's and Zalando's approaches, which are distinctly one-sided. By facilitating mutual access to reviews and ratings, eBay promotes transparency and enables both parties to make informed decisions concerning transactions. In the realm of dispute resolution, eBay proffers relevant information to both sellers and buyers, maintaining a neutral stance by permitting both parties to submit claims. This demarcates eBay from Amazon and Zalando, which limit sellers' access to their internal dispute resolution systems. eBay's approach minimizes the vulnerability of both buyers and sellers in the event of a dispute. Moreover, eBay allows challenges to their decisions from both parties—sellers and buyers, thereby instituting an additional layer of fairness and transparency. Overall, eBay's policies demonstrate a balanced approach, endeavouring to mitigate the vulnerability of both buyers and sellers on its platform.

B. Possible Reasons of Inter-Platform Differences

The inter-platform differences manifested in the distribution of contractual duties and rights of sellers and buyers might be attributed to the interplay of their distinct business models and market powers.

Both Amazon and Zalando operate as sellers on their respective marketplaces, thereby placing themselves in direct competition with their third-party sellers. Although imposing compulsory buyer-friendly policies equates to a substantial financial burden that is borne equally by these platforms and their competitors, these expenditures are unlikely to pose significant concerns for

economic powerhouses such as Amazon and Zalando. But for smaller enterprises or individual sellers, terms such as extended return period and free returns might escalate their operational costs and curtail their ability to compete effectively.

Amazon, the largest online marketplace in Europe, and Zalando, the most prominent online fashion marketplace in the region, both command substantial user bases and are thus capable of exerting significant market power. Consequently, third-party sellers are often obliged to accept terms that may be perceived as unfavorable or even inequitable in order to retain access to consumers within the industry.

In contrast to Amazon and Zalando, eBay operates solely as a facilitator of transactions, refraining from direct competition with its third-party sellers. Additionally, eBay possesses a smaller market share, approximately half of Amazon's in the e-commerce market in EU. Furthermore, eBay's user accounts are fluid in nature, enabling the same account to engage in both buying and selling activities, thus allowing a buyer to transition into a seller role, or vice versa. This flexibility increases user mobility and impels the MSP to maintain neutrality and adopt a nuanced approach in creating a more balanced marketplace for both sellers and buyers. In the long term, eBay's methodology may foster a more sustainable transactional environment by treating sellers and buyers with an equal measure of fairness and consideration.

C. Implication for Improvement of Legal Framework

As shown in previous sections, a MSP can impose unfavorable or unfair terms and policies on its sellers, and shift contractual rights or interests to its consumers which can lead to the exploitation of sellers who are more economically dependent on the MSP. Although the interests of sellers do not fall under the purview of consumer protection law, an escalation in the operational costs for sellers will, in all likelihood, be passed onto consumers through increased product prices. Nevertheless, addressing this issue solely through the lens of consumer protection law presents certain challenges owing to its inherent limitations.

Regulating the practices adopted by MSPs, such as Amazon and Zalando, initially requires the development of a legal lexicon to delineate and articulate their characteristics within the platform economy. Particularly, such identified practices mirror a systematic redistribution of contractual rights and duties, reminiscent of the function of pricing leverage utilized by MSPs to engender network effects. It is advisable to foster theoretical discourse among legal scholars, platform economists, and regulators to systematically scrutinize these

practices. This would facilitate better identification of their deployment and assess their impact on sellers, consumers, and competition.

Subsequently, an analysis of the legality of the identified practices through the lens of various branches of law, including EU consumer protection law, competition law, and the regulation of digital platforms, should be undertaken. EU consumer protection law, with its primary focus on the rights and interests of consumers, presumes consumer vulnerability vis-à-vis sellers.⁵⁸ It does not adequately account for the shift in power dynamics within the platform-based economy and is traditionally not designed to address the unfair treatment of businesses or sellers.

This deficiency could be mitigated by examining the contractual terms and policies from a competition law standpoint, to assess their impact on sellers, consumers, and competition, and to determine if there is an abuse of dominance, either of an exploitative or exclusionary nature. However, the legal framework of EU competition law, which is also consumer-centric, harbors shortcomings vis-à-vis the identified practices. According to the Statement of Objections from the EU Commission pertaining to its investigations on Apple's App Store rules, it appears to suggest that the abusiveness of App Store rules and the unfairness of these terms imposed on service providers are conditional upon their impact on consumers.⁵⁹ This implies that the legal test of unfair trading conditions under EU competition law, established in *BRT/SABAM*,⁶⁰ might be inadequate to assess the legality of the identified practice.

Lastly, legislative attention ought to be more acutely directed towards distributive equity among the participants within the ecosystems of MSPs. While three pieces of legislation pertinent to the platform economy have been introduced in the EU, the increasing vulnerability of sellers and service providers, and the need for protecting distributive equity among the ecosystem of MSPs has not been fully addressed. Regulation 2019/1150 (P2B Regulation) and Regulation (EU) 2022/1925 (Digital Markets Act), seek to prohibit unfair contractual terms that arise in the context of bilateral contractual relationships between MSPs and their business users.⁶¹ However, the identified practices pertain to the distribution of contractual duties and rights within a triangular

⁵⁸ *Case C-240/98 to C-244/98 Océano* (n 2) para 25.

⁵⁹ European Commission, 'Antitrust: Commission Sends Statement of Objections to Apple' <https://ec.europa.eu/commission/presscorner/detail/en/ip_23_1217> accessed 16 June 2023.

⁶⁰ *Case C-127/73 BRT/SABAM* (1974) EU:C:1974:25 (European Court of Justice).

⁶¹ Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services; Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Official Journal L 265) 1.

contractual relationship among the MSP, its sellers (service providers), and its buyers (end customers). Regulation (EU) 2022/2065 (Digital Services Act), on the other hand, is confined to issues related to illegal content, neglecting matters related to transactions in e-commerce.⁶² Consequently, all three regulations fall short in comprehensively regulating the identified practices. Therefore, this paper suggests that distributive equity among sellers, service providers, and consumers should be integrated as a fundamental policy objective within platform regulation.

VI. CONCLUSION

This paper provides empirical evidence for theoretical literature that hypothesized the vulnerability of sellers in the platform economy, illustrating that sellers, as evidenced by the conducted case studies, can occasionally exhibit greater vulnerability than consumers.

The case studies indicate that Amazon and Zalando signify a discernable inclination towards safeguarding the interests of buyers beyond legal requirements, while eBay endeavours to serve as a neutral intermediary between sellers and buyers. The paper posits that inter-platform disparities, as manifested in the distribution of contractual duties and rights of sellers and buyers, may be attributed to the interplay between distinct business models and market powers.

The paper highlights that MSPs can enforce unfavorable or unfair terms and policies on sellers, leading to the exploitation of those who are economically dependent on these platforms, which should draw the attention of regulators and legislators. In response to these challenges, the paper suggests that 1). a nuanced legal vocabulary should be developed to effectively encapsulate the characteristics of such practices within the platform economy; 2). a comprehensive analysis of the legality of these practices identified through the perspective of various branches of law, such as EU consumer protection law, competition law, and digital platform regulation should be undertaken; and 3). the legislative focus should be more sharply trained on achieving distributive equity among the participants within the ecosystems of MSPs.

⁶² Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC.