



# Offer Agreement on Marketplaces: Issues of Legal Status and Balance of Parties' Interests

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## Abstract

*The article investigates the fundamental rupture between classical contract-law doctrine and the actual relations that arise on global electronic marketplaces. The relevance of the topic is argued by the fact that the dominant business model of platforms artificially constructs legal reality through inflexible adhesion contracts (ToS), degrading product listings to the status of invitations to make offers. As a result, a systemic imbalance forms in which the consumer is deprived of legal certainty, while the platform evades responsibility by positioning itself as a passive intermediary. The purpose is to critically analyze this contradiction, drawing on international experience, and to propose scientifically grounded mechanisms for harmonizing the interests of the marketplace, the vendor, and the consumer. The author concludes that the existing model is untenable and that there is a global trend toward strengthening platform liability. The author's contribution lies in developing an innovative approach that goes beyond the binary logic of offer/non-offer. It proposes introducing a qualified-offer standard to enhance certainty, implementing a multi-tier system of platform liability based on the degree of its involvement in the transaction, and ensuring mandatory transparency of key contractual terms directly in the user interface. The materials presented will be helpful to legal scholars specializing in digital law, practicing attorneys in e-commerce, and regulators tasked with adapting legislation to the realities of the platform economy.*

**Keywords:** Balance of Interests of the Parties, Offer Agreement, Marketplace, Online Platform, Legal Regulation, Public Offer, Judicial Practice, Digital Economy, Electronic Commerce.

## INTRODUCTION

The rapid expansion of the digital economy and the entrenchment of platform marketplaces as the dominant model of electronic commerce have driven a fundamental shift in the paradigm of concluding commercial transactions. Platforms (Amazon, Alibaba, eBay, and others) have ceased to be mere technological intermediaries; they have evolved into complex ecosystems that independently set the rules of the game, dictate terms of engagement, and, in effect, construct their own normative space. In this context, the classical doctrine of contract law, grounded in the binary seller-buyer model and a clear demarcation between offer and acceptance, undergoes profound erosion.

The significance of this research is substantiated by the widening gap between traditional legal constructs and the factual economic relations that arise within the tripartite platform-vendor-consumer model. This model is characterized by a systemic imbalance in bargaining power and information asymmetry, which generates complex

problems of the legal status of contractual proposals and the equitable allocation of risk.

The article seeks to contribute to the academic discussion on the need to adapt contract law to the realities of the digital age and to propose concrete mechanisms for achieving a more equitable balance of interests among all participants in platform-based legal relations.

## MATERIALS AND METHODS

The sources examined in preparing this article may be conditionally divided into three thematic directions. The first group comprises works devoted to the theoretical-legal aspects of offers and public contracts. P.S. Davies considers classical approaches to the construction of offer and acceptance in bilateral agreements [9]; K. Raghvendra and K. Shailendera analyze the concept of a public offer in the context of regulating corporate obligations [8]; the terminological dimension is presented in the LexisNexis legal glossary [4]. The second direction encompasses materials describing the specificity of electronic platforms as subjects of contractual

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relations: T. Derave and co-authors develop an ontology of digital platforms, fixing functional roles of participants and types of contractual linkages [10]; the Amazon Services Business Solutions Agreement reveals a practical model of the contractual architecture between the platform and sellers [1]. The third group includes publications addressing problems of the legal balance of interests and liability allocation. In particular, the *Oberdorf v. Amazon.com Inc.* case and its legal analysis in the University of Miami Law Review demonstrate the evolution of the relevant doctrine [3, 5]; G.M. Dickinson examines the question of limited immunity for internet platforms [7]; the Consumer Rights Directive and the Digital Services Act set the framework for user protection and operator obligations [2, 6].

The scholarly debate reveals contradictions in defining the legal status of the marketplace as either a neutral intermediary or an active participant in contractual relations. The issue of the correlation between national and supranational mechanisms for protecting parties' rights, as well as the balance of interests between sellers and the platform when offer terms are modified, is insufficiently developed.

The study employs methods of comparative legal analysis, evaluation of judicial precedents, systemic and normative approaches, and generalization.

## RESULTS AND DISCUSSION

The central problem in contractual relations on marketplaces is the doctrinal ambiguity in characterizing a vendor's product listing posted on the platform's storefront. Classical contract theory distinguishes between an offer, a proposal containing all material terms and expressing an intention to conclude a

contract with any party who responds, and an invitation to make offers. In traditional retail, the display of goods on a shelf is usually regarded as an invitation to treat. At the same time, the buyer who brings the product to the cashier makes an offer that the seller then accepts. However, applying this logic to marketplaces proves problematic [4, 9].

On the one hand, detailed product descriptions, price indication, and Buy or Add to Cart buttons exhibit all the hallmarks of a public offer, accepted by the buyer through conclusive actions. Under this approach, the vendor is obligated to enter into a contract with each respondent on the stated terms. On the other hand, platforms and vendors often seek to reserve the right not to fulfill an order, for instance, in the event of a pricing error or stock unavailability. In such situations, they construe the listing as an invitation to treat, and the buyer's order as an offer that the seller must still accept [8, 10].

Platforms themselves actively exploit this dualism. Their user agreements, by nature adhesion contracts, typically contain special clauses that imperatively determine the moment of contract formation. For example, Amazon's Terms of Use explicitly state that the buyer's order is merely an offer to enter into a transaction, and that the seller's acceptance occurs only upon dispatch of the goods to the buyer [1]. Thus, the platform artificially constructs a legal reality favorable to itself and its vendors, relegating consumers to the status of offerors and depriving them of legal certainty. A significant imbalance results: until dispatch, the seller is not bound by obligations, while the buyer's funds may already be blocked.

To systematize these approaches, it is expedient to present them in Table 1.

**Table 1.** Comparison of contract formation models on marketplaces (based on [4, 8, 9])

Comparison criterion	Listing as an offer	Listing as an invitation to offer
Offeror	Vendor (seller)	Buyer
Moment of contract formation	Clicking Buy (completion of purchase)	Dispatch of goods by the vendor or separate confirmation
Legal consequences for the vendor	Duty to sell at the stated price from the time of order	No duty until acceptance of the buyer's offer; right to cancel the purchase
Legal consequences for the buyer	Right to demand delivery from the time of the order	No right to demand delivery before acceptance; risk of seller-initiated cancellation
Role of the platform	Provision of a venue for public offers	Construction of the contractual model via ToS in favor of vendors
Example of a jurisdictional approach	Consumer-protective orientation (specific EU directives)	Predominant U.S. business model entrenched in ToS

Judicial systems and regulators in leading jurisdictions adopt divergent approaches to resolving the balance-of-interests problem on marketplaces. The U.S. has historically held that online platforms can be treated as neutral intermediaries protected by Section 230 of the Communications Decency Act. Still, it has, in recent years, leaned toward greater responsibility for the content that the content platforms recommend.

One of the leading opinions is from the US Court of Appeals for the Third Circuit in *Oberdorf v Amazon, Inc.* (2019). This holds that Amazon may be a vendor for product liability law for platforms where third-party vendors sell products. In *Oberdorf*, the buyer suffered a severe eye injury due to a faulty dog leash sold by an independent third-party seller. The court indicated that Amazon was the sole channel of communication between the vendor and buyer, controlled the

transaction, and served as an integral link in the sales chain, thereby distinguishing its role from that of a mere content publisher. Although the decision was subsequently vacated for rehearing en banc and the case ultimately settled out of court, it created a crucial precedent. It signaled a departure from the notion of absolute platform immunity [3, 5, 7].

In the European Union, the approach has been more consumer-protection-oriented from the outset. The Consumer Rights Directive (2011/83/EU) and the E-Commerce Directive (2000/31/EC) set high standards for informing consumers about the seller's identity, the terms of the transaction, and the right of withdrawal. The new Digital Services Act (DSA), effective in 2024, goes further: for large online platforms, it introduces obligations to vet vendor reliability (Know Your Business Customer), ensure

transparency of recommendation algorithms, and establish effective appeal mechanisms. Although the DSA does not directly alter contract law, by imposing public-law duties on platforms to provide a safe environment, it indirectly affects the balance of power in private-law relations. A platform that fails to exercise due diligence when admitting a vendor is more likely to bear responsibility to the consumer [2, 6].

Accordingly, whereas in the United States the evolution proceeds through incremental expansion of platform liability via judicial precedents, in the EU it follows the path of constructing a comprehensive regulatory framework that raises operational standards for platforms.

Regarding conflicts of interest, the consolidated Table 2 below presents the corresponding characteristics.

**Table 2.** Analysis of conflicts of interest in contractual relations on marketplaces (compiled by the author)

Participant	Core interest	Key risk within a standard offer contract	Example of legal conflict
Buyer (consumer)	Receipt of goods of appropriate quality at the stated price; simple, comprehensible return procedure	Risk of order cancellation due to a pricing error; difficulty identifying the responsible party (vendor or platform); imposition of unfavorable terms via ToS	Dispute over the seller's duty to supply goods at an erroneously low listed price
Vendor (seller)	Access to a broad audience, reduction of transaction costs, and protection against bad-faith buyers	Dependence on platform rules and algorithms; risk of account blocking without explanation; imposed responsibility for delivery and returns	Unilateral debiting by the platform from the vendor in the buyer's favor under a guarantee program
Marketplace (platform)	Maximization of commission revenue with minimal own liability; preservation of reputation and traffic	Risk of being held liable for third-party (vendor) acts; regulatory tightening; reputational loss due to on-platform fraud	Claim against the platform for harm caused by a defective product sold by a third-party seller (Oberdorf v. Amazon case)

Analysis of the current state of legal regulation and enforcement practice shows that existing approaches do not fully meet the challenges of the platform economy. To achieve a more equitable and sustainable balance of interests, the following measures appear appropriate at both the business-practice and prospective-regulatory levels.

First, it is proposed to introduce, legislatively or via self-regulatory mechanisms, the concept of a qualified offer for marketplaces. Product listings marked with this status should be unconditionally deemed public offers, from which the seller cannot unilaterally withdraw. Platforms must, in turn, provide vendors with a technical capability to assign

this status to their best listings. This would enhance legal certainty for buyers, build on the protective principles embedded in EU consumer directives, and constitute a competitive advantage for bona fide sellers. The novelty of the recommendation lies in departing from the binary offer / non-offer logic in favor of a graduated approach.

Second, it is advisable to move away from the all-or-nothing principle regarding platform responsibility, as courts attempted in Oberdorf v. Amazon. A model is proposed in which liability depends directly on the platform's level of involvement in the transaction (Table 3).

**Table 3.** Model levels based on the platform's involvement in the transaction (compiled by the author)

Level	Characterization
Basic (information intermediary)	The platform bears responsibility within the contours delineated, for example, by the EU Digital Services Act, timely removal of illegal content and the provision of vendor information.
Elevated (active participant)	Where the platform controls payments or provides fulfillment services, its liability should be joint and several with the vendor for issues tied to contractual performance.
Maximum (quasi-seller)	Where goods are sold under the platform's own brand or the vendor is anonymous to the buyer, the platform is recognized as a full-fledged seller, as contemplated in the Oberdorf decision.

The essence of the following proposal is that, instead of obscuring legally significant provisions in multi-page ToS,

platforms should be obliged to display key terms (including the moment of contract formation and cancellation

conditions) in the checkout interface. This measure accords with DSA requirements prohibiting dark patterns and enhancing interface transparency. It would transform passive adhesion into a more informed acceptance.

### CONCLUSION

In sum, the legal construct of the offer agreement on marketplaces is in a state of deep crisis. The market-dominant model, in which the platform, through an adhesion contract, treats the product listing as merely an invitation to make offers, produces a systemic tilt in favor of professional market participants. The evident imbalance is exacerbated by the opacity of user agreements and the platforms' drive to minimize their own responsibility by presenting themselves as passive intermediaries. Analysis of U.S. case law, particularly *Oberdorf v. Amazon*, and EU regulatory initiatives helps demonstrate a global trend toward revising this status and imposing greater responsibility on marketplaces.

The article's scholarly contribution is to propose a concrete, multi-tier mechanism for harmonizing legal relations, grounded in principles of differentiation and transparency. The recommendations formulated, introduction of the qualified offer, multi-level platform liability, and mandatory disclosure of core terms in the interface aim to create a fairer and more predictable environment. Their implementation is likely to enhance legal certainty for consumers, drawing on best international practices, and to stimulate fair competition.

Further inquiry should focus on the influence of algorithms on consumer freedom of will and on the development of legal models for decentralized marketplaces. Adapting classical institutions of contract law to the digital reality is a fundamental challenge whose resolution depends on the resilience and fairness of the global digital economy.

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