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Mr. Roberto Viola  
Director-General  
DG CONNECT  
European Commission  
Rue de la Loi 41,  
BE - 1000 Brussels

Paris la Défense, 14 septembre 2023

**Subject: Public consultation on the template relating to the reporting on consumer profiling techniques pursuant to Article 15 of regulation (EU) 2022/1925 (Digital Markets Act)**

Dear Mr. Viola,

On behalf of KPMG, we are pleased to offer our feedback regarding the draft template pertaining to the reporting on consumer profiling techniques as stipulated by Article 15 of Regulation (EU) 2022/1925, commonly referred to as the Digital Markets Act (DMA).

We welcome the ongoing willingness of the European Commission (EC) to receive feedback on these important topics and believe that such a constructive approach is essential to helping develop workable and sustainable solutions.

Our response is in addition to our involvement in the European Contact Group (ECG) submission with the intention of providing some further detail on specific areas. The DMA stands as a pivotal piece of legislation, and we firmly support the European Commission's efforts to provide relevant guidance to gatekeepers and audit organizations in the context of independent audits.

Nonetheless, there exist several critical aspects within the draft template that have the potential to present significant challenges for both (i) DMA auditors tasked with conducting audits in accordance with Article 15 of the DMA, and (ii) the ultimate recipients of DMA audit reports.

We have outlined the primary areas of concern and recommendations on how these concerns might be effectively addressed.

**A. Proposal to leverage existing and recognized assurance frameworks (Section 4)**

**Issue of concern:** In Section 4 of the template, information pertaining to audit procedures is disclosed. However, it does not prescribe specific assurance standards for adoption by audit organizations. Consequently, this may lead to auditors employing disparate assurance standards, thereby undermining the comparability of audit reports.



**Recommendation:** We recommend that the Commission leverages the use of established frameworks. To achieve this, we propose the utilization of existing standards promulgated by the International Auditing and Assurance Standards Board (IAASB), such as the International Standards on Assurance Engagements (ISAEs) 3000 (Revised), or equivalent standards.

**B. Proposal to add more detailed instructions on how to conclude, with a reasonable level of assurance, on the completeness and the accuracy of the detailed description of all the consumer profiling techniques applied by the gatekeeper (Section 5)**

**Issue of concern:** In Section 5 of the template, it is not made explicit whether the auditor needs to give an opinion on the completeness and accuracy of the qualitative disclosure or whether we are to issue an audit report concluding on the effectiveness of controls, based on an existing assurance standard (see also Point A).

Additionally, the definitions ascribed to the potential conclusions 'positive,' 'positive with comments,' and 'negative' remain unsubstantiated and are not in line with existing assurance standards, for example, the ISAE 3000 (Revised).

Also, Section 5.1(b) asked the audit organization to provide a detailed justification for the assessment concerning potential misstatements, omissions, misrepresentations, or errors, without reference to the concept of materiality.

Consequently, this ambiguity could necessitate the inclusion of additional explanatory language in the audit report to clarify the limitations of the engagement. This deficiency has the potential to impede the comparability of audit reports across diverse entities.

**Recommendation:** We suggest adding language within Section 5 that clarifies that where the disclosure of profiling techniques consists of describing mechanisms, processes or controls, the audit conclusions are based solely upon obtaining sufficient and appropriate evidence of their design, implementation, and (potentially) operating effectiveness to a level to determine whether disclosures are complete and accurate and free from material misstatements. In doing so, we suggest using the standard terminology, following recognized assurance standards like the ISAE 3000 (Revised) as referred to in Point A.

**C. Proposal to consider whether a point-in-time audit would be more appropriate (Section 4)**

**Issue of concern:** Section 4.2(b) and (c) describes the required disclosure of the observed period(s) which is subject to audit and the period(s) when the audit was conducted. This suggests that the period of audit was at more than one point of time. The determination of whether the period under audit encompasses a single point-in-time or period-in-time can significantly influence the scope and depth of the audit procedures conducted, as well as the comparability of audit reports across different entities.

**Recommendation:** We propose to consider whether an audit conclusion as of a single point-in-time would be more appropriate. Such an approach would streamline the reporting process and augment the comparability among audit reports. Furthermore, it would obviate the necessity for multiple audit procedures and conclusions per description, given the rapid evolution of profiling techniques deployed by gatekeepers and potentially related controls. Alternatively, if the European Commission would like to receive an audit report on a period (instead of point in time), we recommend to explicitly state the period that should be under audit.

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#### **D. Proposal to clarify the frequency of the audit (Section 4)**

**Issue of concern:** The initial template introduction explicitly mentions that "the gatekeeper shall update the audited description at least annually," implying a requirement for an annual audit. However, Section 4 fails to define this requirement explicitly.

**Recommendation:** It is recommended that language be incorporated into Section 4 to unambiguously determine whether this audit is a one-time occurrence or an annual event.

#### **E. Suggestion to limit the disclosure of personal information about the individuals performing the audit (Section 3)**

**Issue of concern:** Section 3.1 mandates the provision of specific personal information of the members of the audit team, namely, personal names, professional email addresses, and professional qualifications, encompassing areas of expertise and certifications. This requirement presents potential privacy challenges as it necessitates the disclosure of personal information, potentially of individuals with limited involvement in the comprehensive audit process or junior members of the engagement team who bear no responsibility for the overarching conclusions presented.

**Recommendation:** Considering this, we propose a modification to Section 3.1, wherein disclosure is limited to the individual accountable for the issuance of the opinion and the communicated conclusions. Such an adjustment would align with established assurance standards. Furthermore, we recommend that additional information concerning personnel involved in the audit, encompassing professional email addresses and professional qualifications, among other details, be made available upon request or through a separate, confidential reporting channel.

#### **Conclusion**

We are committed to the success of the DMA and the independent audit required relating to the reporting on consumer profiling techniques. We look forward to further dialogue with the European Commission at your convenience.

Please do not hesitate to contact my colleague Koen Klein Tank ([kleintank.koen@kpmg.nl](mailto:kleintank.koen@kpmg.nl)), our key specialist in this area, if you wish to discuss any of the issues raised in this letter.

Yours sincerely,

Bertrand Pruvost  
Partner  
European Contact Group Lead for KPMG

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