



Ms Rita Wezenbeek  
Director Platforms DG Connect  
European Commission

15 September 2023

Dear Ms Wezenbeek,

**Article 15 of the Digital Markets Act ('DMA'): feedback on the template relating to the reporting on consumer profiling techniques (the "Template") and audit of designated gatekeepers' reports**

PwC International Ltd (PwC), on behalf of the PwC network, welcomes the opportunity to respond to the public consultation on the template for the description of consumer profiling techniques and audit of such reports that designated gatekeepers will have to submit annually under Article 15 of the Digital Markets Act ('DMA').

**EC ambition to increase transparency over profiling techniques and inclusion of an audit obligation**

We fully support the EC's ambition to increase transparency over profiling techniques used, on the basis that transparency puts external pressure on gatekeepers not to make deep consumer profiling the industry standard and allows other undertakings providing core platform services to differentiate themselves better through the use of superior privacy guarantees.

The inclusion of an audit obligation targeted at gatekeepers requiring them to engage an independent auditor to provide a reasonable assurance report as to the accuracy and completeness of the gatekeeper's description of the profiling techniques they use will assist the EC to deliver these ambitions. This aligns to our own commitment to deliver high quality assurance services that enhance transparency and build trust in external reporting over a subject matter that is of significant interest and value to society and other stakeholders.

**Observations on the proposed audit obligation**

We are supportive of the principles proposed and as currently articulated the audit obligation is one that we would expect to be able to deliver against. By focusing on profiling techniques used by gatekeepers, it will facilitate the users of the core platform services provided by the gatekeepers to better understand the nature and impact of the application of those profiling techniques (and any associated implications) on them.

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We have set out as follows some observations regarding the current proposals that in our view would help clarify certain aspects of the proposals or which may, more broadly, be worthy of consideration.

### **Specific observations**

#### **i) Point in time reporting**

In relation to the period covered and the timing of the independent audit, our expectation is that the description of profiling techniques (and therefore the independent audit) will relate to a point in time. (The alternative would be to describe what techniques have existed over a particular time period).

Given the dynamic and evolving nature of the profiling techniques increasingly being adopted by gatekeepers, describing techniques over a period of time (and auditing that description) would be substantially more challenging for the gatekeepers and their auditors. We therefore support a “point in time” approach. We note also that this would be analogous to the approach taken in assurance reports on internal controls over financial reporting issued in certain large capital markets.

However, it would be helpful to the providers of the assurance services if the EC clarified within the Act that our understanding is correct as it relates to a “point in time” versus an “over a period” audit requirement.

#### **ii) Frequency of audit requirements**

There is clarity in the Act as to when the gatekeeper publishes and updates their description, but not whether i) an updated description triggers a requirement for a new audit report or ii) whether the audit obligation will be a one-off or annual requirement.

We would welcome clarification of these points.

#### **iii) Circulation of the report**

It would also be helpful if the draft template specified how the audit report will be circulated. There is clarity as to when the gatekeeper publishes and updates their description, but not whether the audit report is also published.

#### **iv) Considerations related to providing detailed personal information of the audit provider**

Section 3.1(a) of the template requires the audit provider to share details of personal names, professional email addresses, and professional qualifications. This level of public disclosure of personal information of individuals causes us concern, especially as we expect that these engagements will involve a wide variety of specialists from across assurance service providers. Subject to clarification of point (ii) above, if the audit report is to be published, we instead recommend that the Commission amends Section 3.1(a) to require only the disclosure of the individual responsible (unless significant personal security or data privacy concerns are identified) for the issuance of the opinion and any reported conclusion(s).

We note that this approach would align to what we see emerging across a broader range of audit and assurance engagements. Any additional details of personnel involved in the audit, could be provided upon request or through separate non-public reporting mechanisms.

#### **v) Use of recognised standards and frameworks**

Additionally, as noted in PwC's response to the consultation in respect of the Digital Services Act ('DSA') draft Delegated Regulation, we currently deliver assurance of this nature in accordance with an internationally recognised independent assurance standard, in this case the IAASB's *ISAE 3000 (Revised) 'Assurance engagements other than audits or reviews of historical financial information'* ('ISAE 3000'). This is a standard that can be applied by any practitioner, not just traditional financial audit firms, and is one that mandates the independence requirements laid down in the IESBA's Code of Ethics for Professional Accountants, as well as quality management systems within the audit provider under the IAASB's *ISQM 1 ('International Standard on Quality Management')*, all of which are required to be explicitly referenced in the audit report. In our experience, use of ISAE (3000) drives higher quality and consistency, both in terms of execution, but also through the independence and quality management systems requirements that must be in place.

We recommend that the EC consider referring to ISAE (3000) as an example of a standard that could be applied.

#### **vi) Potential future evolution of the audit requirements**

We are of the view that by focusing the purpose of the independent audit to an assessment of the accuracy and completeness of the gatekeeper's description of the profiling techniques, the EC has adopted a sensible and proportionate position as the DMA regulations and associated requirements are launched and become established.



Over time the EC may wish to explore with the assurance profession and the gatekeepers how assurance could be utilised to widen the remit of the audit. The audit could, potentially, include:

- an assessment of the appropriateness of profiling techniques - noting that such an assessment would need the EC to publish specific “appropriateness” criteria to assure against; and/or
- coverage of any wider techniques that do not involve profiling based on user activity (that could intentionally or unintentionally result in market dominance), such as requiring device manufacturers to install the gatekeeper’s apps or search engines on their devices.

Such wider remits, if well-designed and executed, could deliver even greater public interest benefits.

We would be delighted to participate in any such dialogue and in particular to advise on how a more substantive and comprehensive audit approach might be developed.

We hope our observations in this letter provide useful input in achieving the Commission's goals. We would be happy to work with the EC and other experts over the coming months to provide any further input and support that may be deemed helpful.

If you would like to discuss any of the points raised in this letter, please do not hesitate to contact me ([gillian.lord@pwc.com](mailto:gillian.lord@pwc.com)), Tim Clough ([tim.clough@pwc.com](mailto:tim.clough@pwc.com)), or Mary-Jane Kellaway ([mary-jane.kellaway@pwc.com](mailto:mary-jane.kellaway@pwc.com)).

Yours sincerely,

A handwritten signature in cursive script that reads "Glord".

Gilly Lord  
Global Leader for Public Policy and Regulation, PwC