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Consultation on the template for compliance report under the DMA

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The Commission is consulting on the template for the compliance report that designated gatekeepers will have to submit annually under Article 11 of the Digital Markets Act ('DMA').

Gatekeepers will be required to provide the Commission with their first compliance report within six months of their designation as gatekeepers. They will then be required to update these reports annually.

With the published consultation, the Commission is seeking feedback on the draft template that specifies the minimum information that the Commission expects gatekeepers to provide in their compliance report.

The gatekeeper's compliance reports will play an important role in enabling the Commission to verify that the gatekeepers comply with the obligations and prohibitions set out in Article 5, 6 and 7 of the DMA and that the measures implemented by the gatekeepers are effective in achieving the objective of the DMA. Where necessary, the Commission can make use of its investigatory and enforcement powers to ensure effective compliance with the DMA.

Target Group
All citizens, companies and organisations are welcome to contribute to this consultation. Contributions are sought particularly from undertakings, which are potential gatekeepers under the Digital Markets Act, as well as business users and end users of the potential gatekeepers and associations representing these users.

Objective of the consultation
The objective of the consultation is to gather comments on the draft template for the compliance report to be submitted by gatekeepers under Article 11 of the DMA.
In particular, the Commission would welcome feedback on the following two items:
- Precise indicators that the Commission could use to assess whether the measures implemented by the gatekeepers to ensure compliance are effective in achieving the objectives of the DMA and of the relevant obligations as required by Article 8 of the DMA; and
- content and presentation of the non-confidential summary of the compliance report that the gatekeepers must provide pursuant to Article 11(2) of the DMA in order to ensure that the summary enables third parties to provide meaningful input to the Commission on the gatekeeper's compliance with its obligations under the DMA.

The stakeholders' feedback will enable the Commission to prepare a finalised version of the template. The Commission may regularly update this template to request further information, which it expects gatekeepers to provide.

How to provide feedback
Please submit your contribution by 5 July 2023 (midnight). Your submissions should not include any confidential information. Your non-confidential submissions will be published on the Commission's website for the Digital Markets Act.
Your answers can be in any EU language.

Template for the compliance report

DMA_template_-_Compliance_report_consultation.pdf

Your details

* Publication of your details

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* Your first name

[redacted]

* Your family name

[redacted]

* Your organisation

[redacted]

* Your email address

[redacted]

Your contribution

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Contact

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Consultation on the template for compliance report under the Digital Markets Act

Introduction - The implementation of article 6.8 must underpin independent third party "market agreed" audience measurement to secure fair competition and transparency on the media and advertising market.

The Digital Markets Act's objective is to address a rising power imbalance between traditional market players and digital players such as very large online platforms that play an increasingly important role in the economy, in the internal market, by enabling businesses to reach users throughout the Union. To quote parts of Recital 2 in Regulation (EU) 2022/192, "characteristics of core platform services are very strong network effects, an ability to connect many business users with many end users through the multi-sidedness of these services" which has "impacted the fairness of the commercial relationship between undertakings providing such services and their business users and end users." Over the years the self-regulatory mechanisms set up by the media and advertising industry to ensure that market reviewed and agreed audience measurement is available have been affected by a lack of transparency in the online sphere. The challenges have namely resulted from platforms' unwillingness or uncooperativeness in providing data that relates to advertisers and publishers' own content and services. This has prevented businesses' ability to independently verify their return on investment from advertising campaigns shown on online platforms, involving billions of euros of digital ad-spend.

Article 6.8 seeks to address this issue by providing that companies that advertise on a gatekeeper platform should be provided with the tools, information, and data necessary for advertisers and publishers to carry out an independent verification of their advertisements hosted by the gatekeeper. The media and advertising market's long-standing self-regulatory systems provide that ad-campaigns must be independently measured. Consequently, data sharing with authorised third parties that provide audience measurement reports to the market must be facilitated in the implementation of the Digital Markets Act and must be an integral part of the compliance indicators.

European media markets have worked with independent third parties and self-regulatory bodies such as Joint Industry Committees for more than 60 years to ensure that both traditional and digital publishers' and broadcasters' effective number of active users and reach of their audiences are measured correctly, independently and are based on market standards and methodologies with clear and transparent codes of practices. For decades, this well-established institutional system has ensured that the figures that are in the public domain are robust, defensible, auditable and comparable across markets and trusted by both the buy side (advertisers) and the sell side (publishers). Increasingly, in a time of digital convergence, the audience measurement industry is developing integrated measurement systems designed to include platform data in research and allow a full view of audiences across platforms.

Compliance indicators in relation to 6.8 should fully reflect the objective of achieving market transparency for the ecosystem and make sure that aggregated and non-aggregated data is provided in a manner that is compatible and interoperable with the audience measurement review systems set up by the wider media and advertising industry. Indicators should prove or disprove that real collaboration has taken place both technically, commercially, contractually, and legally when sharing data with independent third parties and self-regulatory bodies appointed by the relevant stakeholders to provide audience measurement for the market.

I- Compliance indicators in relation to the article 6.8 and of the relevant obligations as required by Article 8 of the DMA

a) Data related indicators

Assessment of whether data is being shared in an effective manner needs to be determined based on the following measures:

Type of data: Is all the consumption data for both content and Ads being shared with the relevant measurement companies, publishers, broadcasters, advertisers and/or agencies?

Granularity of data: Is the data granular enough for measurement companies and/or agencies to utilise as part of their services?

Frequency of data: Is the data being made available in real time, daily, weekly and/or monthly frequencies?

Metrics: Are all the critical metrics being shared such as viewability, traffic volumes, duration/time spent, audience exposure, demographics, or hashed identifiers to determine demographics, geography reporting, invalid/robotic traffic?

Auditability: Can the data that is being shared be independently audited in a reasonable manner to ensure accuracy, including census audit pings that allow verification of content/ad throughput/volume?

b) Technical indicators: The main technical indicators can be broken down into the following measures.

Ease of access: What systems and/or procedures have been put in place to ensure ease of access to the data in a privacy safe way? Systems need to be put in place that enable all the relevant parties to have access to data without requiring complex development to take place.

Data retention & storage policy: How long will the data be stored within the system for access by the relevant parties? Where is the data being stored?

Data delivery/access mechanism: Will the data be delivered to the relevant parties, or will they need to connect to a system to access/pull the data or will both options be made available?

Data Security: What is the authentication mechanism to ensure access is restricted to authorised users? What logging exists to monitor access to the data?

Other indicators: What procedures and systems have been put in place to ensure PII data is protected? What systems and/or procedures have been implemented to ensure appropriate data segregation exists to only give access to the relevant parties for data that is applicable to them

II - Indicators relating to compliance with anti-circumvention measures in article 13.

a) Privacy and anti-circumvention

Collecting and using data by digitally focused businesses create different competition issues. As such, gatekeepers might be interested in using 'privacy' as an excuse not to share data or to make access to the data more difficult. Complex and voluminous data protection obligations 'transferred' by gatekeepers onto data recipients may affect competition adversely if such obligations present disproportionate compliance efforts and unreasonable barriers. There should be no doubt that data

recipients are subject to respective requirements under Regulation (EU) 2016/69, but this issue must remain beyond a gatekeeper's control. In particular, it means that gatekeepers should not, either by way of an agreement (this topic is covered in more detail below) or in any similar manner, require a data recipient to first satisfy specific requirements under Regulation (EU) 2016/69 or prove that these requirements have been satisfied before disclosing the data. Given the specific circumstances of the processing, some of the requirements would not apply to data recipients (e.g., an information obligation under Article 14 in connection with Article 11 of Regulation (EU) 2016/69), or a data recipient will not be in the position to satisfy such a requirement from a gatekeeper.

b) Consent

Consent should not constitute a legal basis for processing personal data by gatekeepers and disclosing it with relevant measurement companies, publishers, broadcasters, advertisers and/or agencies. The only purpose of this data processing is to secure fair competition and transparency in the media market. As such, processing personal data for this purpose shall fall under the condition of Article 6 sec. 1(e) Regulation (EU) 2016/679, i.e., the processing is necessary for the performance of the task carried out in the public interest or in the exercise of official authority vested in the controller. If consent were to be used by gatekeepers for this purpose, although the Digital Markets Act foresees that and aims to prevent such a possibility, there is a risk of deploying dark patterns or similar mechanisms by gatekeepers to prevent or make access to the necessary data more difficult.

In addition to the above, unreasonable legal requirements relating to data protection may include the gatekeeper requiring a relevant party being a data recipient to sign an agreement under the pretext of ensuring compliance with the requirements of the Regulation (EU) 2016/679 (for instance, Article 26 or Article 28 of the Regulation (EU) 2016/679). Such an agreement is unnecessary and should not constitute a prerequisite for sharing data by gatekeepers. Where a gatekeeper will disclose personal data to a relevant data recipient to secure fair competition and transparency in the media market, Regulation (EU) 2016/679 does not require an agreement between independent data controllers (i.e., a gatekeeper disclosing, on the one hand, and a relevant data recipient on the other). A gatekeeper's internal policies, procedures, or privacy-oriented justifications should not give grounds for signing such an agreement.

Conclusion

To fulfil the core objectives of the Digital Markets Act and article 6.8, special consideration must be given to independent audience measurement provided by third parties and Joint Industry Committees which collectively represent the Institutional self-regulatory market review system that provides the official audience measurement currencies for media markets in the European Union. All the technical and legal indicators listed above must be considered to ensure effective and good faith compliance with article 6.8.