

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](#)

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Contact

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Draft Template for Reporting Pursuant to Article 11 DMA
Google's response to European Commission consultation
5 July 2023

Introduction

1. Google welcomes the opportunity to respond to the European Commission's consultation on the draft template for the compliance report that designated gatekeepers will be required to submit under Article 11 of the Digital Markets Act (**DMA**) (**the Draft Template**).
2. The reporting obligation under Article 11 is a significant component of the DMA's implementation, enabling gatekeepers to engage meaningfully with the Commission on how they are complying. We are committed to working constructively with the Commission and are mindful of the role that gatekeepers' reporting will play in allowing the Commission to fulfil its own duties under the DMA.
3. While the intention and drafting of the Draft Template is mostly clear, there are some aspects which would benefit from clarification, namely **(i)** the **"minimum" information** to be provided in the reports; **(ii)** the **Commission's** approach to **confidentiality claims** for the non-confidential summary; **(iii)** clarification on **top 10 business users**; and **(iv)** **non-application under Section 2.3** of the Draft Template. We set out in more detail below our comments on these topics as well as addressing at section **(v)** the Commission's specific request for feedback on appropriate metrics to be used to assess compliance with gatekeepers' obligations under Articles 5-7 DMA.

I. Minimum requirements in Section 2.1.2 of the Draft Template

4. Section 2.1.2 sets out a list of 19 "minimum" categories of information for gatekeepers to include in their Article 11 report. These categories include, for example, information about any technical changes, changes to customer experiences, changes to terms and conditions, and many other relevant changes and consultations with consumers.
5. Not all of these information categories are relevant or meaningful for all services and rules at issue or the kind of information covered by the category may simply not exist. For example, for a rule such as the prohibition of MFNs under Art. 5(3) or the prohibition to restrict the ability to complain under Art. 5(6) many of the listed categories do not fit well. Moreover, covering all listed categories for all products and all rules will be impractical and will lead to unnecessary complexity that is liable to obscure rather than elucidate salient points of compliance: covering 19 information categories for 22 behavioural rules (not counting sub-rules) would require coverage of 418 different information categories per designated CPS. For a gatekeeper with, e.g., 5 designated CPSs this would imply covering more than 2,000 information categories.
6. The Draft Template seems to recognize these issues as it qualifies several of the information categories with "any". But this approach is not applied consistently. It would therefore be helpful if the wording of Section 2.1.2 could be amended to add a general explanation that information listed under a given category must be provided only insofar as

it is pertinent for assessing compliance of a given designated CPS with a given behavioural rule.

7. Additionally, in many circumstances there may be metrics or information that serve as reasonable equivalent alternatives to one or more of the categories of information listed in Section 2.1.2. The Template should recognise that it is possible to provide such reasonably equivalent alternatives in substitution for any of the categories of information listed in Section 2.1.2.
8. The Draft Template would also benefit from clarification that Section 2.1.2 does not impose any substantive obligations on gatekeepers that go beyond what is provided for in the DMA. For example, sub-sections 2.1.2(o) and (p) ask for information on “*any type of market analysis or testing, in particular A/B testing or consumer surveys...*”. Given that there is no obligation in the DMA to undertake such testing, and it may not be practicable, relevant or appropriate for gatekeepers to undertake such testing in all circumstances, it would be helpful if the wording of 2.1.2(o) and (p) could be amended to include a “where applicable” qualification similar to that included in section 2.1.2(n) and/or a footnote similar to footnote 2 of the Draft Template clarifying that there is no obligation under the DMA for such measures to be undertaken.

II. Approach to confidentiality claims for the non-confidential summary

9. The Commission has asked gatekeepers to comment on the content and presentation of the non-confidential summary of the compliance report that gatekeepers must provide under Article 11(2) of the DMA.
10. Given that Section 2.1.2 of the Draft Template sets out a very broad list of information requirements, some of which are likely to be highly sensitive, Google would welcome clarification on the applicable confidentiality standard in the Draft Template. Section 4.1 provides that information should only be omitted from the non-confidential summary of the report if it constitutes “*business secrets or if the information is otherwise confidential*”. Footnote 4 states that these standards “*may be similar*” to those in merger control and antitrust guidance. Protection of business secrets and other confidential information is particularly important in the early years of enforcement while the DMA rules and obligations remain ambiguous and untested.
11. Assuming the Commission’s intention is that the same approach would be adopted to confidentiality requests under the DMA as in merger control and antitrust, we would recommend simply substituting the phrase “*may be similar*” with “*will be the same*” to avoid confusion and ensure consistency with established practice.
12. Noting that the standard for the non-confidential summary is that of ensuring that third parties are able to provide meaningful input on gatekeepers’ compliance measures, we consider that adequately detailed summaries would be able to meet this standard and the requisite format should not be merely redacted versions of the full confidential report.

III. Clarification on top 10 business users

13. Section 2.2 of the Draft Template requests that gatekeepers provide a list of and details for their CPSs' top 10 business users based on revenues established in the EEA. It would be helpful for the template to clarify which revenues are required, i.e. is it the revenues derived from the business' use of the CPS or is it overall revenues of the relevant business. In respect of those CPSs from which businesses do not derive revenue or for which revenues derived from use of the CPS are not readily available or calculable, it would be helpful to clarify that alternative means may be appropriate to determine the top 10 business users in these circumstances.

IV. Non-application under Section 2.3 of the Draft Template

14. Google would also welcome clarification on Section 2.3 of the Draft Template, which provides that gatekeepers can set out reasons why a specific obligation at Articles 5-7 DMA "*cannot, by nature, apply to the Undertaking's relevant [CPS]*". We understand that the purpose of this provision is for gatekeepers to consider each of the obligations in Articles 5, 6 and 7 of the DMA and consider whether these apply to their CPS. For example, Article 6(11) DMA relates to data sharing for online search, but this will be irrelevant for non-search CPSs. We think that it would be helpful for the Commission to clarify the intention behind Section 2.3 in the text of the Draft Template to avoid any potential confusion with Article 9 (Suspension) and Article 10 (Exemption for grounds of public health and security).

V. Feedback on indicators for assessing gatekeepers' compliance

28. The Commission has requested feedback on the indicators that it could use to assess whether measures implemented by gatekeepers to ensure compliance under the DMA are effective in achieving those objectives.
29. The nature of the differing DMA obligations at Articles 5-7, and the fact that they will apply to different types of CPSs, means that the effectiveness of relevant compliance measures will require bespoke assessment. We set out below three key principles that we would suggest should guide the Commission when adopting appropriate indicators for assessing gatekeepers' compliance.

a) Evidence should be related to modification of behaviour and not market outcomes

30. The DMA specifies categorical behavioural rules (do and don't rules). The application of these rules does not turn on effects and the rules do not specify particular effects or outcomes. Assessing compliance based on indicators or metrics that are linked to market outcomes (e.g. market shares or number of competitors) would therefore be incompatible with the legal framework created by the DMA. Instead, relevant compliance metrics are indicators and metrics that evidence consistency of gatekeepers' behaviour with the DMA's behavioural obligations.

b) Indicators should factor in proportionality

31. Google recommends that the Commission considers using indicators that will enable it to assess whether the compliance measures adopted by gatekeepers are effective in

achieving the objectives of the DMA, while at the same time ensuring that the relevant obligations imposed on gatekeepers are proportionate in the specific circumstances of the gatekeeper and the relevant CPS. For example, the Commission should consider not only the various measures that gatekeepers have taken to comply in isolation but also the implications for the gatekeeper and other stakeholders of the steps that have been taken. Where alternative approaches are proposed for a particular obligation, these kinds of indicators can help establish the most proportionate approach.

c) Indicators should ensure consistency of compliance measures such that CPSs in the same category are effectively subject to the same rules

32. Google recommends that the Commission should use indicators which ensure that CPSs in the same category are subject to the same rules and effectively ensure a level playing field for gatekeepers, business users and consumers. This would ensure fairness and consistency in the Commission's application of the DMA and interpretation of compliance measures across each CPS and gatekeeper. For example, similar indicators could be used to test consumers' understanding of new choice options across different CPS and gatekeepers.

Conclusion

33. Google looks forward to continuing our dialogue with the Commission in relation to the Draft Template and on the DMA compliance and implementation process more broadly.

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