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DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND
TECHNOLOGY
DIRECTORATE-GENERAL FOR COMPETITION

The Directors

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CNECT.F.1/GC

**KICK-OFF MEETING OF THE
ARTICLE 5(2) DIGITAL MARKETS ACT SUB-GROUP
OF THE HIGH-LEVEL GROUP FOR
THE DIGITAL MARKETS ACT**

5 February 2024 – 09.30-14.00

Berlaymont building – Jean Rey room

**DRAFT Minutes
[confidential]**

Welcome by the Commission

Rita Wezenbeek, Director F of DG CNECT, opened the inaugural meeting of the Article 5(2) Digital Markets Act sub-group (“sub-group”) and welcomed its members. She informed the members of the sub-group about the current state of play of the enforcement of the Digital Markets Act¹ (“DMA”). Additionally, she stressed that Article 5(2) of the DMA is a key example of the important role that the High-Level Group for the Digital Markets Act (“High-Level Group”) has in order to ensure high level coherence and effective complementarity in the implementation of the DMA and of other sectoral regulations applicable to the designated gatekeepers.

Rita Wezenbeek explained that the Commission discussed in the last months with the designated gatekeepers how compliance with Article 5(2) of the DMA could be achieved. In that context, she highlighted that consistency with the General Data Protection Regulation² (“GDPR”) is required. Additionally, she mentioned that the Commission convened the sub-group to exchange and seek input from its members on two specific topics concerning the application of Article 5(2) of the DMA as laid down in the Background Note which the members received before the meeting.

Adoption of the agenda

The agenda was adopted without further comments and amendments by the members of the sub-group.

¹ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (OJ L 265, 12.10.2022).

² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016).

Article 5(2) DMA and its interplay with GDPR

The Commission introduced the questions concerning consent granularity under Article 5(2) of the DMA. In that context, the Commission explained that during the discussions with the designated gatekeepers on the compliance with Article 5(2) of the DMA the question arose how the requirement for purpose granularity derived from the conditions of “specific” and “freely given” consent as defined in the GDPR has to be understood. The Commission sought the views of the members of the sub-group on how purpose granularity is handled in practice under the GDPR and to explore how to ensure consistency regarding this concept between the GDPR and the DMA enforcement, taking into account the specific objectives of the DMA, while balancing user experience. The members of the subgroup exchanged experiences and preliminary views in the sense of an alignment of the approach to consent granularity under the different instruments, while remaining faithful to the specific objectives.

“Subscription for No Ads” offers

Under this agenda point, the Commission introduced the obligations laid down in Article 5(2)(a and b) of the DMA and how they are to be understood in the context of sharing of data across gatekeeper’s services when one of the services is a designated online advertising service. Article 5(2) allows the sharing of data between services only where the end user has been presented with the specific choice and has given consent within the meaning of Article 4(11) and 7 GDPR. Additionally, Recitals 36 and 37 of the DMA clarify that gatekeepers should offer a less personalised but equivalent alternative, without making the use of the core platform service (“CPS”) or certain functionalities thereof conditional upon the end user’s consent. As a consequence, the combination of personal data between for instance an online social network service CPS and an online advertising service CPS would require consent under Article 5(2)(a and b) of the DMA. Moreover, the Commission recalled that some gatekeepers offering an online social networking service CPS have introduced or are planning to introduce so called “subscription for no ads” offers to end users who would refuse consent under the GDPR to ads personalisation with the intention to comply with the GDPR following the judgment of 4 July 2023 of the Court of Justice in case C-252/21³.

The members of the subgroup exchanged their respective experiences on “subscription for no ads” models from the perspective of the respective instruments.

12:45-13.00 AOB

No point was discussed as AOB.

13:00-13:15 Closing remarks and next steps

Alberto Bacchiega, Director J of COMP, delivered the closing remarks. He thanked the members of the sub-group for their contributions and highlighted that it was of added value to hold the inaugural meeting of this sub-group before the end of the six-month compliance deadline in March 2024 following the designation decisions pursuant to Article 3(10) of the DMA. Finally, he expressed the intention to convene the second meeting of this sub-

³ CJEU, Case C-252/21, EU:C:2023:537, Meta Platforms and Others, para 150.

group shortly after the expiry of this deadline. He also confirmed that the second subgroup on Article 7 DMA would also be convened in the next few weeks. The next meeting of the High-Level Group would also be convened in the weeks after the deadline for compliance and take stock of the work of the subgroup.