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IMPLEMENTING THE DMA: EARLY FEEDBACK

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Issue Paper

DMA Implementation Forum

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1. Introduction

In this Issue Paper, we identify themes arising from the implementation of the DMA to date. In large part, **we draw on evidence obtained from 21 semi-structured interviews with DMA stakeholders**.[1] We interviewed senior members of 3 designated Gatekeepers, 14 firms who described themselves as Business Users, two civil society organisations and two national regulatory agencies. Nearly all of the Business Users and all civil society organisations were actors that have had significant exposure to the DMA, with each engaging repeatedly with the European Commission (hereafter 'the Commission'). Two Business Users had relatively less exposure to the DMA, one in particular had not contacted the Commission at all. The two national authorities have made efforts to be involved in the DMA. All stakeholders wished to remain anonymous.

We consider that this sample allowed us to gain a good understanding of **the early process of DMA implementation going beyond what is publicly available**. As we discuss further below, although this may appear to be a simple two-stage process in theory, implementation in practice involves an ongoing and complex set of interactions between many different parties.[2] Implementation requires both that the Gatekeeper take certain actions to comply with the obligations in Articles 5, 6, and 7 of the DMA and that the Commission take actions to assess whether compliance is achieved and, if not, take actions which seek to ensure compliance.

In the first section, we present views from the key participants in the **implementation process** – the Commission, the Gatekeepers, the Business Users, and other third parties– on the way they have interacted with each other. As already noted, we would characterise this as a series of ongoing dialogues or repeated interactions with various feedback loops between the participants in order to arrive at a view of what compliance means. These dialogues may also be a way in which the Commission can exercise 'soft power 'by guiding or influencing the actions of Gatekeepers without or before resorting to more formal legal measures.

The second section considers the more **formal legal measures and the various tools** that were included in the DMA to allow the Commission to ensure effective implementation or sanction non-compliance. These include the Compliance Reports which Gatekeepers are required to produce and publish,[3] the Compliance Officer which Gatekeepers are required to appoint, the process for obtaining or providing further guidance by way of specification decisions under Article 8 DMA and decisions about when and whether to initiate proceedings which may result in a finding of non-compliance and fines. We do not in this paper or at this stage consider what measures might be taken in the event of 'systematic 'non-compliance or how other aspects of the market investigation regime might be used by the Commission. This is because there is no practical experience of these aspects of the DMA at this stage, although the changes we recommend in this paper do not depend on, and need not await, implementation of these other aspects of the DMA.

[1] Most interviews were carried out in September and October 2024 and a smaller subsequent tranche of interviews occurred in January and February 2025. The authors benefitted from the extremely helpful assistance of Max van Iersel (PhD candidate, Tilburg University) in carrying out the interviews that form the basis of this paper.

[2] The report does not address the experience of the process of designation which took place prior, or other aspects of the DMA such as market investigations.

[3] We ignore the consumer profiling reports which Gatekeepers are required to submit under Article 15.

The third section considers some **longer-term or cross-cutting issues** that have been highlighted in our interviews. Some of these may be more difficult and will take longer to resolve, and may be issues to return to once work on the initial implementation of the DMA has been completed.

In the Annex, we report the results of the responses to the questions we asked. Given the relatively small number of responses and the diversity of answers we do not provide statistical data but, when possible, we have explained how many and which type of stakeholder took a particular position.

We note that the DMA is a new law which is enforced in complex and evolving markets and the DMA is at the beginning of its implementation. We realize that, at this stage, the Commission, the Gatekeepers and the Business Users are still in a learning phase. This Issue Paper aims to report on this initial implementation phase and is complemented by another Issue Paper which, on the basis of this early feedback, gives recommendations to improve the implementation process.

2. Informal Interactions Between the Participants

In this section, we consider the bi-lateral interactions between the Commission and Gatekeepers (following their designation), between the Commission and Business Users (and other interested parties such as consumer or civil society groups) and, between Gatekeepers and Business Users as well as multi-lateral interactions. This draws on the responses found in section 1.1 of the Annex.

2.1 Commission and Gatekeepers

2.1.1. Different Forms of Dialogue and Engagement

The first observation is that there has clearly been **extensive interaction between the Gatekeepers and the Commission** both prior to and after 6 March 2024, the date at which Gatekeepers providing the initial set of designated core platform services were expected to have complied with the DMA. This partly reflects the realisation on both sides that many aspects of the DMA are not 'self-enforcing' in the way that some have claimed (or hoped). The Commission appears to have been keen to understand the actions which Gatekeepers proposed to take or were taking prior to March 2024 and the Gatekeepers told us they had sought clarification from the Commission as to how different actions which they were contemplating would be viewed by the Commission.

Gatekeepers

It seems that **different Gatekeepers adopted different engagement strategies, although all appear to have engaged in some form of dialogue with the Commission**. The DMA does not require Gatekeepers to enter into any formal or informal or regulatory dialogue with the Commission outside of the formal specification decision process found in Article 8 of the DMA and does not prescribe how any such dialogue should be conducted. It is difficult to see how it could do so. This leaves the Gatekeepers with considerable freedom in deciding when and how to engage, and we assume they will do so in a way that they judge to best suit their commercial objectives. Similarly, the Commission is under no legal obligation to engage in an informal dialogue with Gatekeepers and it too can decide, based on its interactions with Gatekeepers, whether and how to engage in informal dialogues. This aspect of the DMA compliance process is therefore unregulated terrain.

It will be difficult for any individual Gatekeeper to determine how their engagement with the Commission compares with that of another Gatekeeper given that Gatekeepers are free to decide how they choose to engage with the Commission. It is for the Gatekeeper to decide whether to only send in a compliance report, or, at the other extreme to seek a specification or as a middle way, to engage with the Commission informally to discuss its compliance choices.

As a side note, we do not have any information on whether the DMA **Whistleblower Tool** which the Commission has established has been used or what impact, if any, it has had on the Commission's work.[4] One interviewee said it did not work.

[4] https://digital-markets-act.ec.europa.eu/whistleblower-tool_en

European Commission

On the Commission side, stakeholders have suggested that there are some differences in the approach taken by different officials and teams. This is perhaps not surprising if we recall that the teams which the Commission has assembled to oversee the implementation of the DMA are drawn from different Directorates-General (COMP and CNECT), that the internal organisation had only been established a few months prior and that the workload during this initial engagement phase was, by all accounts, very demanding. The combination of COMP and CNECT staff may have been necessary in order to assemble the resources and expertise required in the time available, but we think it has added complexity to the Commission's internal decision-making processes (to co-ordinate views between Directorate-General and between teams) as well as resulting in differences in approach and outlook.

DG COMP has a well-established and clearly defined approach to engagement with external parties that are suspected of having infringed competition law or are engaged in a merger. Some Gatekeepers see this approach replicated in the DMA. As we have said in previous CERRE reports,[5] this approach is very different from the more informal regulatory dialogues which sectoral regulators engage in. DG CNECT has experience engaging on a repeated basis with regulated firms and with national regulators, but most of this relates to high-level policy discussions and new legislative initiatives rather than to the implementation or enforcement of those policies (which is generally undertaken by national regulatory authorities). Our impression from some of the interviews is that the DG COMP approach to engagement has tended to dominate so far, with some complaints about an overly formalistic reliance upon lengthy Requests for Information (RFIs) from the Commission to gather information (including some duplication of requests between different Commission teams) and an overly legalistic approach in general. Other Gatekeepers reported that DG CNECT is also responsible for a high number of RFIs and engages in minimal discussion while another observed that there should be more coordination among the two DGs.

This may, however, also to some extent reflect the approach to engagement being taken by the Gatekeepers themselves, who may lack experience in engaging in regulatory dialogues in Europe. In one of the authors''experience, regulatory dialogues in the United States (e.g., with the Federal Communications Commission) tend to be more legalistic and more akin to antitrust procedures. Gatekeepers are also likely to be more familiar with antitrust proceedings in Europe, particularly in recent years.

It has also been suggested that the **Commission may have been consciously experimenting with different engagement models in order to assess which was most effective** and that, at some point, it will consolidate around a particular model. It may also reflect the fact that staff from DG COMP will have prior knowledge of some Gatekeepers' lines of business and some obligations from previous antitrust procedures, whereas other Gatekeepers and/or other issues may be unfamiliar to them. In some cases, the Commission may also have a clearer idea about what good compliance means, while for other obligations it remains more open to Gatekeeper proposals.

We think it is important that, in considering any changes we might recommend, **the Commission retains a degree of freedom in deciding what the most effective way is to engage with any particular Gatekeeper at any particular point in time. That said, we would expect that a greater degree of**

[5] https://cerre.eu/publications/implementing-the-dma-substantive-and-procedural-principles/

consistency and predictability in the engagement between Gatekeepers and Commission will develop over time. This may occur as the DMA units develop their own internal culture and approach which is distinctive from the parent Directorates-General from which the staff have been drawn. The prospects for this may depend on how long the staff inside the DMA units remain in post. If staff are constantly being cycled through the organisation from other parts of the Commission, then it will be more difficult to develop a coherent culture. It may also be improved if the DMA team were to have simpler reporting lines to a single individual.

Although we are conscious that individual Gatekeepers will often hold information advantages over the Commission during these interactions, the Commission will hold an information advantage if it is engaging with a number of Gatekeepers on implementation of the same obligation. Interviewees told us that they think the Commission has adopted a matrix organisation so that, in addition to staff dedicated to particular Gatekeepers, staff also have horizontal visibility of the actions being taken or proposed by different Gatekeepers in relation to the same obligation. How useful this is will depend upon differences in the business models employed by different Gatekeepers. One Gatekeeper reported to us in a follow-up discussion post-interview that its compliance on certain obligations and the quality of its compliance report has been benchmarked against other Gatekeepers. Most Business User interviewees had not seen evidence that the Commission is comparing or benchmarking different Gatekeepers, although this does not mean the Commission is not doing so more systematically. One Business User suggested that the organisational structure of the Commission could be used for benchmarking. We think the **capacity to 'benchmark' performance across Gatekeepers is important in offsetting other informational disadvantages and the Commission should ensure that it is able to do it and that, more generally, it avoids silos in its organisational structure**. This should not come at the expense of affording Gatekeepers the liberty to design and differentiate their products in the way they feel is most appealing for consumers

At the end, the biggest challenge is likely to be that any resetting of the engagement model (away from what some see as a more adversarial posture which might also reflect a strategy on the part of Gatekeepers to test the limits of the regime and the Commission's reaction at an early stage) will require change on both sides; this may be difficult if one party changes and the other does not as a dialogue requires constructive engagement by both sides. In our view, **a key requirement for effective dialogue is a degree of trust between those involved**. This is something that is developed over time and through repeat interactions. It may also involve parties being more prepared to take risks from time to time.

2.1.2. Guidance on Compliance Acceptability and Enforcement strategies

Compliance Acceptability

A recurring theme in interviews has been the **Commission's reluctance to provide guidance,** with Gatekeepers tending to recommend that the Commission develop guidelines on substantive issues in in order to help Gatekeepers self-assess whether their proposed actions are compliant. One Gatekeeper also suggested in a post-interview follow-up, that guidelines on fines would also be desirable. Various explanations have been offered for the absence of guidelines. In our view, there are four important considerations.

First, we have already suggested that the Commission's expectations about the extent to which the obligations in the DMA could be self-executing may have been misplaced (or may have been rhetorical). When talking about the need for informal guidance, interviewees have **not drawn the clear distinction between Article 5 obligations and Article 6 obligations** in the way that the DMA itself does.

Second, the approach to **assessing and providing feedback on remedies** in antitrust proceedings does not generally require the Commission to specify in detail what a compliant remedy might be. The Commission tends to proceed instead by rejecting proposals which it considers would be insufficient to address concerns until it arrives at something which it considers acceptable (another interviewee described this as a process of narrowing down options, although options still remain at the end of the process). In this case, we also consider that even if the Commission had wished to specify what a Gatekeeper should do, in many cases it may not have the technical information or knowledge of the product to be able to do so confidently, at least at the outset.[6]

Third, it has been suggested that there is an **asymmetry in risk and risk appetite** and the Commission is concerned that any guidance will be exploited by the Gatekeeper (or possibly a Business User or other aggrieved party) in subsequent litigation. The Commission may think that Gatekeepers are seeking guidelines not in order to improve their compliance but for other strategic purposes (e.g. the Commission provides guidance whilst it is still subject to an information disadvantage and is unable to change its position later). We do not think that RFIs and input from Business Users can resolve this informational asymmetry completely.

Finally, it has also been suggested by both Business Users and Gatekeepers that the Commission has **lacked a clear assessment framework against which to judge proposals that are being put** to it. In other words, Commission staff are not sufficiently clear about how to weigh up different considerations or trade-offs when assessing proposals that are being put to them and different staff may have different approaches or arrive at different conclusions. In such circumstances, the Commission may find it difficult to arrive at a clear view itself, irrespective of whether it would be willing to share it with the Gatekeeper or not.

The perceived reluctance on the part of the Commission to provide informal guidance to Gatekeepers appears to have **had a number of consequences**. *First*, some have suggested that some Gatekeepers have, since March 2024, turned to other third parties who they perceive may influence the Commission's thinking and who may be more prepared than the Commission itself to tell the Gatekeeper what they think it should do. This seems reasonable when we have argued elsewhere that Gatekeepers ought, in any event, to be consulting directly with Business Users and third parties where appropriate to do so.[7]

Second, some Gatekeepers have adopted an incrementalist approach to compliance, in which some actions were taken prior to March 2024 and others at different times since. We think this is to some

[6] We have received mixed views on the level of technical expertise within the Commission, but most interviewees think there is still room for improvement and for greater ad hoc involvement of academics or other independent expert advisers (if the Commission's procurement rules allow). The Commission has issued tenders for consultancy reports on interoperability and emerging technologies, but it is not clear how interested parties can engage with them, whether they will be published or how they will be used to inform the Commission's work or specific enforcement activity.

[7] R. Feasey and G. Monti, DMA Process and Compliance' in A. de Streel (coord), *Implementing the DMA: Substantive and Procedural Issues* (CERRE, 2024).

extent unavoidable when complex changes have to be made and as Gatekeepers develop and change their existing products and services. However, to the extent that this contributes to delays in compliance or undermines the effectiveness of the changes being implemented (e.g. repeated changes to choice screens could lead to consumer fatigue and so undermine their effectiveness as a measure to improve contestability) or is a consequence of the lack of guidance provided by the Commission, it is a concern.[8]

We note these points whilst at the same time recalling that Article 8(3) of the DMA allows a Gatekeeper to formally request that the Commission provide guidance on how to comply with a particular obligation under Article 6 or 7. **No Gatekeeper we interviewed appears to have given this serious consideration** and we are not aware that any such requests have been made. We discuss this further in Section 3.

Enforcement Strategies

Another theme from interviews which we also return to in Section 3 is the perception that, having been reluctant to provide guidance on the actions required to comply with the DMA, the **Commission is also reluctant to signal when it will escalate its enforcement activity** by moving to a more formal mode of interaction, either through opening a non-compliance proceeding under Article 29 or a specification proceeding under Article 8 of the DMA. We think there is a balance to be struck here between on the one hand providing Gatekeepers with an opportunity to address the Commission's concerns as part of the informal regulatory dialogue and without that dialogue breaking down and, on the other, allowing Gatekeepers to engage in strategic behaviour by delaying actions until the last minute in the knowledge that no sanctions will follow from this.

2.2 Commission, Business Users, and Other Parties

As with Gatekeepers, the DMA does not expressly require informal engagement or dialogue between the Commission and Business Users or other third parties such as consumer representatives or civil society organisations, but such engagements have occurred, both before and after the compliance deadline of March 2024. **The perception of individual business users that the Commission has engaged more intensively and more extensively with Gatekeepers than with them** is consistent with the evidence we have received. Most Business Users have particular interests in the DMA which relate to a subset of the obligations which the Gatekeepers are being required to implement.

Business Users tended to take the opposite view to Gatekeepers in telling us that they thought the actions required to comply with the DMA were relatively clear, or at least that it was clear that certain actions that had been taken by the Gatekeepers were non-compliant and that the Commission ought to be initiating non-compliance proceedings as a result. **This leads us to wonder whether and to what extent the Commission's reluctance to say what actions it would consider to be compliant reflect the difficulty Business Users have in determining what actions the Gatekeeper should take (as opposed to what they should not do) or the lack of agreement amongst different Business Users as**

[8] See section 2.2 for the business user perspective on this.

to what that should be. We would expect there to be greater agreement that a certain action is not compliant than agreement over what should be done instead.

Some Business Users also thought that the Commission was more reluctant to provide guidance on economic and pricing issues (such as the level of access fees) than on technical issues. They attributed this partly to the Commission's reluctance to be seen to be dictating commercial terms between Gatekeepers and Business Users.

The majority of Business User-Commission interactions that were reported by Business Users were initiated by them. In general, Business Users have engaged more frequently since 6 March 2024. One Business User reported that the Commission was relatively more active in soliciting its views than the other Business Users we interviewed. One civil society organisation was also active in providing detailed information to the Commission explaining what it saw as compliant and non-compliant behaviour. Some Business Users engage with the Commission via trade associations. While Business Users welcomed the Commission's open door policy, they said the uncertainty about how the information they provided is used makes it difficult to plan their engagement or allocate resources, and means that they often can only guess at the context within which a particular question is being asked if clarifications are sought. Once they have responded to the Commission request, they generally have no insight into what happens next or what the impact or consequences of their engagement might be.

Most Business Users felt that better visibility (including of Gatekeeper responses to points which they had made to the Commission) would allow them to engage more effectively with the Commission and that this, in turn, should enable the Commission to engage more effectively with the Gatekeepers. Some felt there had been a lot of activity and announcements in March and April 2024 but had very little visibility of progress since then. Some described their interactions with the Commission as occurring within a 'black box 'in which it is difficult to determine what the Commission does with the information it has received, what it thinks of it, or what effect it has on the conduct of the Gatekeeper.

We discuss greater multi-lateral engagement, which we think is one way to provide greater visibility for all parties, below. In the meantime, one concern that arises is that Business Users and other third parties may become discouraged and disillusioned with the DMA if they perceive that their engagement is not having any demonstrable impact. Some interviewees thought they could see the effect of their input on changes in the conduct of some Gatekeepers, but others were less sure and almost all expressed frustration about the extent of compliance achieved by the Gatekeepers as of March 2024. There is a question as to whether the expectations of some Business Users about what the DMA will achieve and how it will operate have been realistic (and whether the Commission ought now to reset expectations, including by specifying new deadlines for substantive compliance) but even if that were so **the active engagement and participation by Business Users remains critical feature if the DMA is to be successful. We would be concerned if perceived failures in the implementation process to date were to result in Business Users disengaging from it**. This is not only because the Commission depends on input from Business Users and other parties to reduce the disadvantages in terms of technical expertise and market knowledge which it otherwise faces in its interactions with the Gatekeepers but also because the effectiveness of the measures in the DMA depends upon

Business Users and consumers actively engaging with the opportunities that the DMA is intended to create for them.

2.3 Gatekeepers, Business Users and Multi-lateral Dialogues

It appears that **bi-lateral interactions on the DMA between Gatekeepers and Business Users (without Commission involvement) have been infrequent and limited**, both before March 2024 and since then, although some thought Gatekeepers had become more engaged with third parties since March 2024 and some Gatekeepers claimed extensive engagement with Business Users both before and after March 2024. From our sample of Business Users, it seems that a minority are able to engage frequently with Gatekeepers, but the majority report infrequent interactions. Where these interactions have occurred, some Business Users say that they have involved Gatekeeper account managers doing outbound communications rather than soliciting feedback from customers or being willing or able to enter into a meaningful dialogue about the approach being taken. Some Business Users reported useful bi-lateral engagement with some Gatekeepers, but overall, our impression is that this has not been undertaken in a systematic way and has had relatively limited impact on the measures that Gatekeepers have chosen to adopt.

There was a mixed response to the public workshops organised by the Commission.[9] About half of respondents felt that these were useful in forcing the Gatekeeper to explain its position, while the other half felt there was not sufficient space for constructive discussion. Although the tone and approach varied between the meetings, two interviewees felt that well-rehearsed points were repeated but questions were not comprehensively answered. Nobody suggested that these meetings had a significant impact on Gatekeeper conduct or implementation. Most Business Users and one Gatekeeper felt the Commission was uncertain about what it was seeking to achieve from these meetings and appeared reluctant to intervene or direct the meeting towards any particular objective.

We suspect that the reliance on bilateral engagement with the Commission rather than bi-lateral engagement between Gatekeepers and Business Users has a number of consequences. Most obviously it places the Commission in the position of intermediary between the Gatekeeper and the Business Users. The effectiveness of the implementation is then entirely dependent on how effective the Commission is at fulfilling this role. The Commission has to know the right questions to ask each party to elicit the information it requires, and to be able to communicate information from one party to another in order to elicit useful responses from each. It also means that the speed and scope of the process are, to a large degree, determined by the resources that are available to the Commission and the way it decides to allocate them, as well as the speed at which the Commission can co-ordinate and make decisions internally. Most interviewees felt that the Commission had insufficient resources and a complex decision-making structure, although many recognised that the staff is working very hard.

Some interviewees[10] **felt there should be more (but selective) multi-lateral engagements involving the Commission, Gatekeepers, Business Users and perhaps other relevant national authorities if necessary**. This was true both of one Gatekeeper and some Business Users, which we think is

[9] https://digital-markets-act.ec.europa.eu/events/workshops_en

[10] 5 business users, one Civil Society Organisation and one Gatekeeper.

important. Most accepted that the precise configuration of the meeting (public or private) and the type of attendees (lawyers or engineers, one Gatekeeper or several if the same obligation is discussed) would depend on the objectives being pursued. Most thought the Commission would need to take the lead to ensure these engagements were effective, both in terms of initiating the dialogue and specifying who is expected to contribute and in terms of chairing and refereeing the meeting itself (to a greater extent than it has appeared willing to do to date). In order to do this, the Commission will itself need to have a clear set of objectives for each meeting.

We think that, after a series of these multi-lateral dialogues are concluded, the Commission should evaluate how to make this approach more effective and how best practices are identified across the various workshops. It may be that additional legal powers to oblige Gatekeepers to participate in the manner decided by the Commission are necessary. However, in the first instance, the key considerations should be about identifying relevant participants to these multilateral dialogues so as to ensure that all parties affected are represented, develop a process to facilitate exchanges of relevant information, and establish processes to structure the dialogue.

One issue that arose in this context and which requires further thought is the **concern on the part of some Business Users over the threat of retaliation by some Gatekeepers** if they complained or otherwise engaged with the Commission on the DMA. This concern was reported more or less explicitly by the Business Users who mentioned it. We do not take a position on whether this concern is well founded or not, but perceptions also matter if their effect is to exclude some Business Users from participating in the regulatory dialogue with the Commission or in direct discussions with Gatekeepers, and this were to distort the way in which the DMA is implemented or favour some interests over others. It is recognised that trade bodies or other representative organisations can go some way towards aggregating and reconciling views and shielding individual members but in our view, there are also benefits in regulators dealing directly with individual companies rather than representative organisations that are constrained in what they can say.

Some Business Users thought that others would seek to launch commercial services that were enabled by the DMA before seeking to engage with the Commission in order to improve further the terms of trade with the Gatekeeper. We see this as primarily a commercial matter for the Business Users. It might accelerate the introduction of new services but might also deprive the Commission of important feedback from Business Users whilst implementation was being discussed with the Gatekeeper.

An example of where a **multi-lateral dialogue might assist is the design and testing of choice screens**. Implementation has tended to proceed incrementally, with Gatekeepers making a series of modifications, presumably in response to feedback from the Commission and others that the existing measures were not judged to be effective. An alternative approach would have been for the Commission to convene a series of meetings for all parties to agree an A/B testing programme and research methodology for testing different choice screen formats which could be undertaken either by the Gatekeeper itself or by some mutually agreed third party. The results of these tests could be used by the Gatekeeper to inform their implementation programme before introducing it into a live environment and would provide Business Users and third parties with an understanding of why the Gatekeeper had chosen one approach rather than another. This might have allowed all parties to arrive at a consensus on what changes to be made, either more quickly or even at all. We recognise,

however, that decisions about what and how to implement following this engagement will ultimately remain a matter for the Gatekeeper itself.

Another suggestion based on conversations with stakeholders is that **the Commission use other tools to capture feedback in a multi-lateral setting**. For example, the Commission could oversee chatgroups to which Business Users and others could contribute, and could decide whether or not to do so on an anonymised basis (in which case the Commission might need to control entry into the group). This would allow participants to see what others were saying and to assess the extent to which a consensus on a particular issue might be possible and the extent to which their own position aligned or did not align with others.

More generally, we think the **Commission should consider how digital communications tools could be used to support the implementation of the DMA, and how the normal business processes which Gatekeepers already use to interact with counterparties can be applied in a regulatory context**. Instead of the traditional approach of face-to-face meetings and written documents favoured by the Commission and legal services, there may be opportunities to use the kinds of digital tools that are already employed by the Gatekeepers and the Business Users in their ordinary course of business.

If multi-lateral engagements were to become more common, we think it possible that Business Users and others might co-ordinate more amongst themselves than they have done to date. Some were concerned that multi-lateral engagement would expose conflicts between Business Users which the Gatekeepers would then seek to exploit in order to delay compliance. Business users might have incentives to resolve some of these disputes before engaging with the Commission, rather than leaving it to the Commission to do so.

3. Formal Instruments

We have already emphasised that the informal interactions between the Commission, the Gatekeepers and Business Users and other parties which have been reported in interviews are not formally recognised or legislated for in the DMA. They occur both because it would be impossible to implement the DMA without some dialogue of this kind and because such informal dialogues and the exercise of soft power and persuasion can often be faster, more flexible, and require fewer resources than the application of the formal legal instruments which are contained in the legislation. On the other hand, regulated firms are more likely to be susceptible to the influence of soft power if formal instruments and sanctions represent effective deterrents and provide for effective remedies.

To recap briefly, the DMA envisages that there will be both internal and external mechanisms to ensure implementation and compliance by a Gatekeeper. Internally, the Gatekeeper is required to appoint a Compliance Officer with duties to inform and advise the management of the company as to its level of compliance and to organise, monitor and supervise the actions being taken by the Gatekeeper to implement the DMA.[11] Externally, the Gatekeeper is required to produce a Compliance Report, a public version of which is available to Business Users and other third parties who are expected to scrutinize it and draw the Commission's attention to those areas where they consider the actions taken by the Gatekeeper have fallen short.[12]

Whether as a result of this feedback or on the basis of its own assessment, the Commission can at any time commence proceedings under Article 20 of the DMA to assess whether the actions taken by the Gatekeeper are or are not compliant and may adopt a decision under Article 29 of the DMA if it concludes they are non-compliant. This decision will require the Gatekeeper to cease the non-complaint actions and inform the Commission of the actions it plans to take to comply with the decision. The Commission may (but is not required to) consult with Business Users and third parties prior to coming to a non-compliance decision.[13] It is then for the Gatekeeper to report to the Commission with the measures it has taken to ensure compliance.[14]

In addition (or perhaps alternatively, as we discuss below), the Commission can at any time initiate proceedings under Article 20 to specify the actions a Gatekeeper should take to ensure compliance with any aspect of Articles 6 and 7. In this instance, the Commission is obliged to consult with Business Users and other third parties after it has come to a preliminary finding and before it adopts a final decision.[15]

3.1 Gatekeepers Compliance Formal Tools

3.1.1. Compliance Officers

Business User interviewees had very little to say about **compliance officers, who do not appear to be very visible outside of the Gatekeeper organisations**. It is not clear, to them for example, if the

[11] DMA, Article 28(5)(a).
[12] DMA, Article 11 and https://digital-markets-act-cases.ec.europa.eu/reports/compliance-reports.
[13] DMA, Article 29(4).
[14] DMA, Article 29(6).
[15] DMA, Article 8(6).

formally designated compliance officers are leading or are responsible overall for the informal engagements between that Gatekeeper and the Commission over the DMA. Most Business Users were not aware as to who the individual was and had had no contact with them and some thought the Commission had not paid much attention or attached much priority to this aspect of the DMA.

Our sample of Gatekeepers is modest – one explained that the role of the compliance officer is not useful when there is compliance and the right communication lines with the Commission already exist. It indicated that this role is more useful for some Gatekeepers than others. The other two Gatekeepers considered that the role was clear and one said that the Commission had provided guidance on the role of the compliance officer.

We think the compliance officer function can be viewed in two ways: a **'minimalist 'approach**, which is what we think is the case today, and a potentially more expansive role (which may require changes to the DMA to achieve). The minimalist view is that the compliance officer serves as an adviser to the senior management of the Gatekeeper and performs a pseudo-independent audit function to assess implementation of a set of specified actions. On this view, the compliance officer may not have a role in deciding what the actions to be taken actually are or what their consequences might be (but only to assess and report on whether or not they have been taken). Management may confer such responsibilities on the compliance officer but this is not required under the DMA.

However, a **more expansive approach would be for the Compliance Officer to provide a focal point for external engagement** – for example as someone to whom Business Users could appeal (rather than going to their account manager) if they consider that the Gatekeeper organisation is failing to implement appropriately or if they perceive a mismatch between what the Gatekeeper says it has done or is doing and their own experience; we recognise this is possible today, but received no evidence of it happening. The compliance officer could be required to certify not only that the contents of the compliance report were factually accurate, as required by the Commission's template, but to provide an opinion (akin to a solvency report in a financial audit) as to whether or not the actions thereby described meant that the Gatekeeper was in compliance with the DMA. The Officer would then be concerned not only with whether actions were being taken with, as Article 28(5) of the DMA states, 'the aim 'of ensuring compliance but with assessing whether or not they are actually having that effect.[16]

Our aim here is to explore whether there might be a need for greater internal challenge within the Gatekeeper over the actions it is taking to implement the DMA (and maybe also for the Gatekeeper to itself be able to demonstrate this) and, if there is, how this might be achieved.

3.1.2. Compliance Reports

Comprehensiveness and Comparability

We have not seen or discussed the confidential versions of the compliance reports that Gatekeepers have submitted to the Commission in March 2024 and so are not able to assess how far they diverge from the different formats which different Gatekeepers have chosen to adopt for the public version

[16] This degree of personal accountability would be closer to the function of Senior Management Functions in financial services regulation and Senior Managers under digital content regulation in the UK: https://www.fca.org.uk/firms/approved-persons and https://www.legislation.gov.uk/ukpga/2023/50/section/110.

of the report. It is clear that, **notwithstanding the Commission's Template,**[17] **different Gatekeepers have taken different approaches to the public versions of the compliance report**. This may reflect different views on the intended audiences or purpose of the report, or other strategic considerations. One Gatekeeper reported that the Commission has a preference for the public version to be a redacted version of the confidential version and that this was sub-optimal because the public would benefit from a more accessible document and targeted information could be supplied in other ways that would benefit Business Users and others.

The general view of Business Users and others is that the reports have fallen some way short of expectations. Both Gatekeepers and Business Users seem generally supportive of the idea of a document that presents in one place the various actions and measures which a Gatekeeper has taken and which it may otherwise be communicating to a range of different audiences through a range of different channels. Business Users thought that the Commission will need to be more prescriptive in defining the contents and format of the compliance report, including specifying KPIs (a topic which CERRE researched previously)[18] and that it would need to enforce these requirements.

There is also some support for a multi-lateral meeting in which the Gatekeeper is required to explain the contents of the document and take questions on it in front of the Commission, although many thought the format of these meetings should differ from those organised in March 2024 in order to be more constructive and informative.

Some stakeholders noted that despite most (public) compliance reports not meeting the requirements of the Commission template, no action had been taken as a result; revised or more compliant reports had not been required or published since March 2024. Most accepted that the Commission has limited resources and may have decided to prioritise other issues, but at some point, we think it will need to take action to ensure that the compliance reports better perform the role that was envisaged in the DMA, or that they find other and better ways to enable Business Users and third parties to understand the actions that have been taken and whether and why the Gatekeeper considers that they ensure compliance with the DMA. Having said that, the Commission template is not legally binding on Gatekeepers. They may be penalised for failing to demonstrate compliance adequately or for providing wrong information, but the choice about how to present information remains theirs. Two Gatekeepers reported that they received feedback on the format of their reports.[19]

Dynamicity

This point links to another, which is that both Gatekeepers and Business Users criticise the **existing arrangements as being a series of 'set piece 'or snapshot events** including the annual publication of a compliance report and an annual meeting to discuss its contents. This sits uncomfortably alongside the continuous process of regulatory dialogue in which the various participants are otherwise engaged and normal Gatekeeper commercial practice, which is to release software updates on a regular basis and to explain them in their developer blogs. One consequence of this is that Gatekeepers can be expected to make changes to implement the DMA much more frequently than once a year, which will

[17] https://digital-markets-act.ec.europa.eu/legislation_en#templates.

[18] https://cerre.eu/publications/implementing-the-dma-substantive-and-procedural-principles/.

[19] One Gatekeeper reported that the requirements in the Commission Template go beyond what is legally required by the DMA.

mean the compliance report is out of date until the next version is published. Although we recognise that some Gatekeepers will also provide updates about changes, including to implement the DMA, in the ordinary course of business, they have no obligation to do so under the DMA. We therefore think would be better if the compliance report was regarded and managed as a 'live' document which would be updated as soon (or before) substantial changes were made. This would serve to formalise the approach of some Gatekeepers who already provide information to users in this manner.

If Gatekeepers regularly change the way in which they implement measures to comply with the DMA, then this is likely to have implications for those Business Users who are seeking to benefit from the opportunities which those changes give rise to. The current arrangements (as interpreted by Gatekeepers) seem to envisage that Business Users will be informed after the event of the actions which the Gatekeeper has taken and, there is **no requirement in the DMA for the Gatekeeper to provide advance notice to Business Users of changes it plans to make**. Some platforms have such duties on the basis of other EU laws.[20] This leaves Business Users with uncertainty, not only because they do not know what changes are likely to be made in future but also because they do not know when they might be made. This may affect the launch plans of services which the Business User intends to offer and other related commercial activities which it wishes to undertake. Conversely Business Users reported that they expected greater ex ante engagement by Gatekeepers to facilitate quick entry by Business Users.

Many regulated access regimes require the regulated firm to provide advance notice of changes to arrangements with third parties and there is a change management process that is approved by the regulator. This may result in some delay in implementation of those changes, but in our view this cost is likely to be more than offset by the benefits to the intended beneficiaries of the DMA, being the Business Users and their end customers. **In requiring Gatekeepers to update 'live 'versions of compliance reports, the Commission could also require Gatekeepers to give notice of changes well in advance of implementing them**. This may require an amendment to the DMA but it is in line with the existing requirements some platforms already have under the Platform-to-Business Regulation.

3.2 Commission Enforcement Tools

Although some Business Users and others argued that Gatekeepers were expected to be in full compliance from Day 1 of the new regime and that non-compliance proceedings should be initiated whenever that was not the case, most interviewees accepted that **implementation will be an iterative process rather than a single shot game**. This still leaves room for disagreement about how quickly the process should move. Two Business Users explicitly noted that compliance was expected on 6 March 2024 but observed changes made after that date. Of the Business Users who contacted the Gatekeepers, all indicated that further discussion with a Gatekeeper was necessary to ensure they could benefit from the DMA. Business users who contact the Commission likewise do this in order to ensure there is compliance. The question for these interviewees was how long it would now take to achieve substantial compliance with the DMA given that any expectation of achieving full compliance in March 2024 has been abandoned.

[20] Article 3(2) of the Platform to Business (P2B) Regulation 2019/1150 provides that the providers of online intermediation services shall notify, on a durable medium, to the business users concerned any proposed changes of their terms and conditions at least 15 days in advance of the change.

The experience to date suggests that setting arbitrary deadlines is not likely to be helpful and that what is reasonable to expect will depend on the nature of the obligation and the business model to which it is being applied, a point also noted by one Gatekeeper. Some are clearly more straightforward than others. The Commission may have its own milestones and deadlines, and may share these with Gatekeepers, but Business Users and others remain unaware. It may be that more can be shared by the Commission.

3.2.1. Specification Proceedings

Specification Initiated at the Request of a Gatekeeper

We have already noted that no Gatekeeper has yet, so far as we know, used Article 8(3) of the to oblige the Commission to consider a request for clarification as to the actions it is expected to take in order to comply with the DMA. At the same time, Gatekeepers have told us that the Commission has not always provided sufficient or sufficiently clear guidance on the actions they are expected to take to comply and that they would have liked the Commission to do so. This suggests to us that this aspect of the specification decision regime is not working as intended.

Given the limited sample of Gatekeepers surveyed, we can only speculate as to why this might be the case. It may be that Gatekeepers assume the Commission would reject such a request if it were made, since if the Commission is unable or unwilling to provide more specific guidance under the informal regulatory dialogue there may be no reason to think the Commission would be any more willing to do so because it has received a formal request under Article 8(3). In addition, Gatekeepers may feel that moving to a formal request will be interpreted by the Commission as a breakdown in the informal dialogue, or may in any event precipitate that (as indicated by two Gatekeepers, for example). Gatekeepers may consider that they are more likely to obtain a favourable interpretation of their actions from the Commission under the informal process than in a specification decision (e.g. because the Commission is subject to inflexible timelines once it initiates formal proceedings) and/or that the publication of specification decision may have consequences for the Commission's subsequent approach to enforcement (e.g. by recording its expectations in a decision which is published, the Commission may consider that it must take enforcement action if the Gatekeeper subsequently fails to comply, whereas any expectations set in an informal dialogue between the Gatekeeper and the Commission will remain between them). All Gatekeepers favoured informal dialogue to the specification process.

Taken together, these mean that **Gatekeepers currently face considerable uncertainty about how the specification process will work and what the consequences might be relative to alternative courses of action**. Although the Commission might develop guidance on how it would approach such requests were it to receive them, the only way these uncertainties will really get resolved is if Gatekeepers exercise the option provided to them by Article 8(3).

Specification Initiated by the Commission

The situation is different for Article 8(2) of the DMA because the Commission has, in September 2024, initiated a specification procedure in relation to various interoperability matters.[21] However, there is uncertainty amongst our Business User interviewees as to the Commission's thinking in deciding to initiate such proceedings and, indeed, what the purpose of specification decisions might actually be. One Business User suggested that these were essential, while another expressed a preference for dialogue.

One question is **what purpose specification decisions might serve which could not be achieved by guidelines**. One important difference is that specification decisions are addressed to a particular Gatekeeper and so the decision cannot, as a matter of law, have general applicability to other Gatekeepers or be enforceable against them. Nonetheless, it seems likely that specification decisions directed at one Gatekeeper will be closely read by others and that at least some aspects of the decision will have wider relevance. It may be that the Commission will explain what it considers to be of wider relevance in the decision itself or that it may then incorporate those aspects of the decision into a separate set of guidelines.

There is also **uncertainty**, at least amongst Business Users and third parties who are not party to the dialogue between the Commission and Gatekeeper, about the **relationship between specification decisions and non-compliance proceedings**. Is a decision to initiate a specification proceeding with a 6-month deadline a (faster) way for the Commission to accelerate compliance by the Gatekeeper than initiating a non-compliance procedure which is likely to take 12 months or more? Or are they directed at fundamentally different purposes? Will it be possible for the Gatekeeper to make changes prior to the issuing of a specification decision which would mean that no decision is produced, as appears envisaged under the non-compliance proceedings of Article 29 which we discuss next? If so, the specification process does not improve transparency much and, depending on whether preliminary findings are produced or not, compliance may end up being achieved through the same kind of informal dialogue as preceded the opening of the specification procedure. On the other hand, it may be that the specification procedure is a way of committing both the Commission and Gatekeeper to greater transparency, with the outcome of their engagement being clear to all in the contents of the public version of the specification decision.

One Gatekeeper was concerned that the deadlines for specification decisions (3 months for preliminary findings and 6 months for a final decision) are too tight (both for the Commission and the Gatekeeper) and that a '**stop the clock 'procedure should be allowed**. We would expect that the opening of proceedings is likely to be preceded by extensive engagement between the Commission and Gatekeeper before the clock starts and note that the decision as to when to formally initiate the proceeding lies with the Commission.

However, this concern raises a wider issue that we have observed above that stakeholders find the informal dialogue helpful but lacking in structure. A better understanding of the role and relationship

[21] https://digital-markets-act-cases.ec.europa.eu/cases/DMA.100204 and https://digital-markets-act-cases.ec.europa.eu/cases/DMA.100203.

between the informal dialogue process and the specification decision process is required. We discuss this more fully in the Recommendations paper.

3.2.2. Non-compliance Proceedings

Commission Prioritisation

Views on non-compliance proceedings have been influenced by the Commission's decision to initiate a number of such proceedings in March 2024, the same month as the first set of designated Gatekeepers were required to comply with the DMA.[22] Two Business Users expressed the view that enforcement was too slow already. Most Business Users are unsure why the Commission had chosen to initiate them in relation to some matters but not others. Six Business Users, one Civil Society Organisation and one Gatekeeper said that they felt the Commission prioritised easy cases, one Gatekeeper expressed concerns about political considerations. Three Business Users felt that the enforcement efforts were not in the right direction and two stakeholders felt that the volume of complaints affected enforcement choices.

This is a reflection of a general uncertainty about how the Commission is prioritising its cases. It is perhaps inevitable that Business Users whose issues were addressed in the non-compliance proceedings welcomed them whereas those whose issues had not been addressed and who considered there was evidence of blatant non-compliance were frustrated by the Commission's approach**. Everyone recognises that the Commission has limited resources and will need to prioritise how it allocates them, but most want more clarity from the Commission to enable them to understand how it does this**.

We noted earlier that the Commission's understanding and position on different issues and in relation to different Gatekeepers will have depended to some degree on whether DG COMP had engaged on the issue with a particular Gatekeeper under a previous antitrust proceeding. In such cases, the Commission may have started with a better-defined view of what compliance means than for those cases where the Gatekeeper's business model and services are unfamiliar to the Commission. On the other hand, if there are different case-handlers under the DMA then the officials will also lack familiarity even if there has been a prior antitrust proceeding. To the extent that the DMA allows the Commission to resolve concerns which it had previously been unable to address adequately using competition law, it seems reasonable that the Commission would focus on these issues first before moving on to less familiar territory. Some interviewees also suggested that other criteria may be being applied – for example, that the Commission was prioritising actions that were more visible to the consumer, such as choice screens, or thought to be more self-executing than other obligations, or issues that had attracted the most attention, publicity, or lobbying activity from Business Users.

This led to concerns amongst Gatekeepers that some might be being unfairly targeted as compared to others and concerns amongst Business Users that the concerns of other Business Users were being prioritised over theirs. We think this is to some extent inevitable in any regulatory regime, but we would be concerned if the Commission were thought to be acting in an arbitrary or politically-

[22] https://digital-markets-act-cases.ec.europa.eu/search.

motivated manner.[23] **Without guidance on how the Commission will prioritise its work, concerns about unfair conduct or political influence are likely to remain**. The new Commissioners in charge of the DMA are expected to ensure rapid and effective enforcement of the DMA so the political steer is clearly about prioritising the key challenges in digital markets.[24] but this commitment needs to be communicated more precisely, particularly in a rapidly evolving geopolitical environment.

Relationship between Enforcement Tools

Whilst Business Users were concerned that some issues were being prioritised but others neglected, some Gatekeepers were concerned that the Commission had initiated non-compliance proceedings so quickly. They linked this concern to what they perceived as the lack of clear guidance from the Commission as to what actions were required to comply during the informal engagement process that had preceded the start of the formal proceedings. Two Gatekeepers argued that without greater guidance from the Commission about what obligations entail, either during the informal dialogue or via guidelines, it would be difficult for Gatekeepers to avoid ending up in non-compliance proceedings. Even then, there is concern that it may remain unclear to the Gatekeeper what actions it must take to avoid a non-compliance decision at the end of the formal process and that there is not enough time for this clarity to emerge.

We assume the Commission would dispute this claim and without being directly involved it is impossible for us to judge. The fact that the Commission has now initiated two specification proceedings may suggest that the **Commission draws a distinction between issues about which it considers there is a legitimate degree of uncertainty (for which specification decisions are an appropriate pathway) and issues on which it considers it is already clear what actions the Gatekeeper must take (for which infringement proceedings are the appropriate choice)**. There may be legitimate disagreements about this but again we note that Gatekeepers also have the opportunity to request further clarification under Article 8 of the DMA. A Gatekeeper that had had such a request rejected by the Commission and then been subject to a non-compliance proceeding might have stronger grounds to raise this concern.

There is a perhaps an even more **fundamental question about what the non-compliance procedure is intended to achieve, given that the DMA also includes the option of a specification procedure**. Is it primarily intended to penalise Gatekeepers for non-compliance when it is already clear what actions should be taken or is it intended to be a mechanism for obtaining compliance when there may be some uncertainty about what actions are required? Article 29 of the DMA requires the Commission to issue a 'cease and desist 'order in relation to existing actions but places the onus on the Gatekeeper to decide what actions it will take 'to comply with the decision'.

However, the issue may not be that the actions already being taken by the Gatekeeper cause it to be non-compliant but that the Gatekeeper needs to take additional actions alongside those that it is already taking (i.e. compliance is not just about removing barriers but also about taking steps to enable). The question is whether the Commission will specify what those additional actions are in the decision or whether it will simply state that the existing actions are insufficient to ensure compliance.

[23] One stakeholder suggested that the Commission's recent conduct has been influenced by the transition from one set of Commissioners to another.
[24] Mission Letter from Ursula von der Leyen to Executive Vice Presidents Ribera Rodríguez and Virkunnen (17 September 2024).

The specification of those additional actions might be something we would expect to be in a specification decision, making the interaction between non-compliance procedures and specification procedures an important issue, but one which remains unclear at this stage.

We note that the approach in Article 29 is different from that envisaged in Article 18 for systematic non-compliance, whereby the Commission can specify and impose specific structural or behavioural remedies on the Gatekeeper. In such a case, the Commission is clearly expected to define the actions which the Gatekeeper is required to take in order to bring itself into compliance. The same is not obviously the case for individual cases of non-compliance that have been assessed under Article 18. Whilst we recognise that Article 29 introduces the possibility of structural remedies and merger prohibitions which are not envisaged under Article 18, it is not clear to us why the approach to behavioural remedies should differ between Article 18 and Article 29 in the way that it does.

The position may be **more straightforward in circumstances where compliance is achieved by simply removing barriers or ceasing a particular form of conduct**. In these situations, the DMA envisages the Commission being able to apply interim measures to stop problematic conduct in the same way that it can do (but has rarely done in practice) under competition law. This provision has yet to be tested but may be difficult to apply when, in many cases, the damage to Business Users and consumers is not the removal of some choice or opportunity which previously existed or on which firms were previously relying but a failure to introduce new choices or opportunities which have never previously been a feature of the market. The Commission has not adopted interim measures yet, to the frustration of some Business Users.

Gatekeepers would like **greater clarity on when the Commission is likely to initiate non-compliance proceedings and how and when opportunities to resolve them might then be available**. There are clear provisions in a market investigation into systematic non-compliance under Article 18 for commitments to be offered by the Gatekeeper and accepted by the Commission under the Article 25 procedure. There is no such explicit provision in relation to a non-compliance procedure under Article 29, but we do not consider this would exclude a Gatekeeper from offering to change its conduct to remedy the non-compliance concern or the Commission accepting such commitments and closing the proceeding if it sees no reason to impose a fine.

On the other hand, the deterrent effect of the enforcement regime is weakened if the regulated firms can always predict the regulator's response and calibrate their actions so as to do the minimum necessary to avoid escalation or fines and delay full compliance for as long as possible. **Some reasonable degree of unpredictability about the way the Commission will act is, in our view, an important part of the deterrence function of an effective enforcement regime that should be retained**.

Another area of uncertainty is how a move by the Commission to initiate formal proceedings in relation to one aspect of the DMA might affect the informal engagement between the Commission and the Gatekeeper in relation to other aspects. Will both sides be able to compartmentalise the issues and engage with each other in different ways depending on the issue at hand? Or will a move to formal proceedings reduce the opportunity for informal dialogue or its effectiveness? It is probably too early to say. Similarly, Business Users and others are uncertain at this stage as to how they will participate in the proceeding. Article 29 of the DMA says that the Commission may consult third parties but it is under no obligation to do so. We noted earlier that Business Users have found the

informal regulatory dialogue to be rather opaque and their concerns about the more formal non-compliance procedure no doubt reflect this. This is another issue on which further guidance from the Commission would generally be welcomed by many interviewees.

Procedural Aspects

Given that the non-compliance procedure remains untested, there is bound to be some uncertainty about how it will work. One issue is about the access to the file and whether Gatekeepers should be able to obtain information before formal proceedings begin. This goes back to the reactions of stakeholders to the informal process: it is both welcomed as a pragmatic approach to secure compliance, but suboptimal in lacking procedures and safeguards.

Another issue is about what happens if the Gatekeeper changes its course of conduct. It seems to be anticipated that the Gatekeeper may make changes during the procedure, likely after preliminary findings, which could lead the Commission to close the case without issuing any formal decision, as sometimes occurs in antitrust proceedings. Alternatively, the Commission may be persuaded that the actions the Gatekeeper has already taken are sufficient to ensure compliance, in which case the Commission is also not required to issue a formal decision.

Gatekeepers also had concerns about the procedure and their ability to challenge aspects of it. These comments extend beyond formal enforcement and are also discussed in section 4 below. Many of the **procedural aspects of the formal enforcement regime in the DMA** are modelled on those found in competition law, but it is unclear whether the Commission intends, for example, to allow Gatekeepers to request an oral hearing (and, if so, whether other parties would be invited to participate) or whether there will be a Procedural Officer to whom parties can appeal (e.g. in relation to issues of legal privilege). These are matters on which the Commission could either give guidance at the outset, or where it may wish to experiment with different procedures for a while before alighting on the one that works best.

Many interviewees recognised that some questions relating to the interpretation of certain obligations in the DMA, would likely only be resolved in the European courts.[25] This aspect of the regime is unlikely to differ from the experience of implementing competition law and we expect it will take years for some of these issues to be fully litigated.

[25] One interviewee thought the Tik Tok/Bytedance designation judgement (Case T-1077/23) by the General Court of the EU ought to embolden the Commission, another considered what restorative remedies might be imposed in a non-infringement decisions.

4. Longer-term Considerations

In this section, we highlight a number of points that have been made to us, and which look beyond the immediate implementation of the DMA.

4.1 Horizon Scanning and DMA High Level Group

A number of interviewees thought that the current implementation issues under the DMA were largely directed at resolving issues which had arisen over the past decade or so and which had proved incapable of being effectively resolved under competition law. However, the **aim of the DMA is not simply to resolve, ex post, issues that are already a feature of the market or the industry but also to anticipate and resolve, ex ante, emerging and new issues which may affect contestability and fairness in the future**. It is not yet clear how the various elements of the DMA will do this. Some Business Users went beyond this and were concerned that Gatekeepers were seeking to delay implementation of the DMA for existing technologies until new technologies such as AI superseded them, at which point regulating the existing technologies would be irrelevant.

Many saw a role for the **DMA High Level Group in identifying these new and emerging issues**[26] and so informing the evolution of the DMA as the Commission considers new core platform services or new obligations in the future. We know the High Level Group is already considering AI in the context for the DMA.[27] Others saw a role for working groups comprised of experts drawn from Gatekeepers, Business Users, academics, and other third parties and highlighted the work of the Security and Privacy Expert Group which we understand the Commission has established (but which has not been publicised by the Commission). We note the Commission has also tendered for experts to report in technical measures required for horizontal interoperability[28] (which appears more directed at existing implementation issues) and on the impact of emerging technologies.[29] Some interviewees thought that the Commission should already be investigating new candidate core platform services.

Interviewees welcomed these forward looking initiatives but felt that they should be part of a clearer structure and roadmap, likely overseen by the DMA High Level Group, which ensured that third parties knew how to engage effectively with them. **Some thought the DMA High Level Group should be more transparent** in its workings and publish more information about the topics it discussed, the composition and functions of working groups, etc.

4.2 Promoting the Benefits of the DMA

Some Business Users and others were concerned that the Commission had done little to explain the (longer term) benefits of or opportunities provided by the DMA to consumers or SMEs in Europe, whereas Gatekeepers had highlighted the potential (and immediate) costs in terms of alleged risks to

[26] Similarly to what the DRCF does in the UK: https://www.drcf.org.uk/projects/projects/horizon-scanning/

[27] https://digital-markets-act.ec.europa.eu/high-level-group-digital-markets-act-public-statement-artificial-intelligence-2024-05-22_en

[28] https://digital-markets-act.ec.europa.eu/dma-call-tenders-study-interoperability-tools-digital-single-market-2024-06-25_en

[29] https://digital-markets-act.ec.europa.eu/study-how-emerging-technologies-may-impact-digital-market-regulation-2024-10-14_en

consumers downloading third party apps or by announcing that they would not launch new services in Europe and attributing this to uncertainty arising from the implementation of the DMA. Most recognised that there was a question about where the Commission should be allocating its resources (and welcomed the conference for SME Business Users which was organised by the ACM)[30] but we think it may also reflect a lack of clarity about how the outcomes of the DMA should be assessed or measured.

This may be something the Commission will consider as it prepares its second annual report under Article 35 of the DMA.[31] Business users proposed different **ways and actors to promote the benefits of the DMA**. Some suggested highlighting compliance measures that have led to changes, others suggested that National Competition Authorities (NCAs) could promote the benefits of the DMA to local audiences. Five stakeholders welcomed the workshop organised by the Dutch Authority for Competition and Markets which fostered awareness of the opportunities that the DMA creates.

4.3 Role of National Authorities

Finally, we asked interviewees about their engagement with and the role of national authorities in implementing the DMA. Most Business Users and Gatekeepers thought the involvement of national authorities had been very limited to date. Three Business Users reported limited engagement based on their requests but reported a lack of interest. Two Business Users reported a greater willingness to take active roles and two Gatekeepers reported that coordination is necessary among national authorities. It was clear to us that **different national authorities have different levels of interest in participating in the implementation of the DMA and differing legal, economic, and technical capabilities to do so**. The two national authorities we interviewed explained that they engaged directly with Business Users and communicate what they find to the Commission. One national authority verifies these concerns before sharing them with the Commission.

One input in DMA implementation from national authorities to date has likely been through the **national telecom authorities who participate in BEREC**. BEREC directly engages with the European Commission and met with both the concerned Gatekeeper and potential competitors. It has provided three opinions to the Commission (e.g. on the contents of the Meta Reference Offer implemented under Article 7, the compliance of which is ultimately assessed by the Commission) which helped to improve the technical details of the implementation foreseen by the Gatekeeper.[32]

[30] There were different views on the benefits of this conference. Some thought it raised awareness amongst Business Users but others thought it also allowed them to share common concerns and experiences in implementing the DMA and identify allies.

[31] https://digital-markets-act.ec.europa.eu/about-dma/dma-annual-reports_en

[32] all decisions are available here: https://www.berec.europa.eu/en/all-topics/ni-ics-interoperability

Annex 1 – Interview Summary

This Issue Paper is based on 21 semi-structured interviews. 15 were carried out between September and November 2024 and 7 were carried out between January and March 2025. We interviewed persons representing three designated Gatekeepers, 14 firms who described themselves as Business Users (coded BU, except one respondent who indicated that in addition to being a Business User they were also a research institution representing the interests of consumers and this firm is coded BU/CSO), two organisations representing civil society (coded CSO) and two regulatory bodies (coded NRA). One respondent indicated that in addition to being a Business User they were also a research institution representing the interests of consumers. All the parties to the interviews had experience with the DMA.

All stakeholders wished to remain anonymous. To retain anonymity the report merely identifies the kind and number of stakeholders that have provided certain responses. The questionnaire used has a common core of questions but varied somewhat depending on the type of DMA stakeholder and all variations may be found in Appendix 2 to this paper which also explains the information provided to the parties we interviewed.

The results are reported below. Each conversation lasted approximately 1 hour. We went through the questions and asked follow-up questions based on responses given. This enabled the interviewees to develop certain observations and identify themes that were relevant to how they understood the process to be. This allowed us to gain a deeper understanding of the way they perceived the DMA's enforcement process to have gone so far.

Given the relatively small number of respondents and the diversity of answers, we do not always provide precise quantitative data but when possible, we have explained how many and which type of stakeholder took a particular position. While the sample is relatively small, we have discussed matters in depth with each interviewee and a number of common themes arose.

All BUs except one are actors that have existing and new services that are offered via Gatekeepers and are thus familiar with the technological and regulatory landscape. This allowed us to obtain well-informed responses. While this improved the quality of the discussion, newcomers may well have different experiences that we are unable to report on.

For each question set the paper opens with a general overview of the answers given and then reports on what emerged from the various discussions.

Engagement with the European Commission

Business Users and Civil Society Organisations

All Business Users report that engagement with the Commission has become more frequent and regular since 6 March 2024.

Two BUs highlighted a lack of consultation during the pre-compliance phase, while all others report sporadic engagement before 6 March. Some BUs were more active than others and no pattern emerged. CSO participation varies, one reported significant more engagement with the Commission

than the other. One CSO supplied written observations and engaged to explain Gatekeeper compliance and non-compliance. Most CSO conversations were initiated by the CSO.

The majority of Business Users report that they have been the ones to initiate dialogue with the Commission and that since 6 March 2024 this is regular (quarterly or monthly). However, One BU reports that at times the Commission initiates contact (indicating roughly 40% of contacts are started by the Commission). In our sample, this is the exception as all other respondents indicate that they are in the lead in contacting the Commission. For example, one BU noted that it expected to be contacted by the Commission but this did not happen. One BU contacted the Commission because the Commission announced an open door policy. One BU reports that the Commission sought some clarifications from it on issues that it had raised. One BU reports that the Commission reached out to members of a trade association with a questionnaire about the DMA to secure industry views.

Most Business Users contact the Commission directly but one BU reports that they contact the Commission via a trade association (some interviewees referred to these as business associations, we have retained the phrase trade association for consistency). One BU engaged with the Commission both individually and via a trade association. Two BUs explained that the trade association is beneficial because BUs can gain a better understanding of the position of members and align their viewpoints. Three BUs engaged via a trade association as well as individually. One BU did not report participating via a trade association but explained that these would be better than bilateral meetings because the trade association could coordinate BU positions.

One BU explained that it was not aware which person to contact about compliance issues, but this is a point no other interviewee made.

One BU indicated that the Commission has an open-door policy and actively engages with Business User, a sentiment shared by many others. Indeed, nearly all BUs are satisfied with the ability to communicate their views and information to the Commission. All Business Users report that there is more engagement from 6 March and all Business Users feel they are able to contact the Commission to air their views, for example one BU explained that the Commission is open to understanding technological matters that it may not be aware of, a point repeated by many stakeholders. A different perspective was offered by one BU who considered that the Commission does not collect BU feedback systematically. One BU remarked that the Commission gave more attention to the prominence of a BU rather than more objective factors like market share.

However, while there is general satisfaction at the ability to inform the Commission, a majority of Business Users identify a lack of transparency and feedback from the Commission. For example, one BU sent a paper with some issues but did not get a response. One BU notes that while engagement is positive, it is not clear how the Commission follows up. One BU expects that its input is used to address compliance issues but that it is difficult to see how issues are followed-through. One BU explained that it saw the Commission as an intermediary between Business Users and Gatekeepers: it seeks to protect the users' identity in communicating with the Gatekeeper, but there is an opaque process of interaction, described as a "black box" insofar as one BU considers that it does not know how the Gatekeepers respond to its observations. One BU advocated greater transparency and another BU suggests that dialogues should be more structured, including regular follow-ups and opportunities to submit additional information. One BU also observed that there is uncertainty about how information is used by the Commission and a lack of updates. The BUs spoke of a "black box" explaining that while

they are satisfied with the speed of Commission enforcement, they feel a lack of information and feedback about how the concerns raised are utilised. One BU thought that the Commission's openness to representations was designed to compensate for the absence of procedural rights for Business Users. However, one BU remained concerned that they are currently entirely reliant on the Commission's willingness to share information as a means of understanding how issues are addressed.

One BU shared many of the points made in the paragraph above adding that it would help for the Commission to communicate how BU input is used by the Commission. One BU suggests a "complaints filing" system that allows for tracking of the status of complaints. One CSO and three BUs express concern that they are not aware whether the Commission ultimately agrees with its suggestions and how these are managed.

Four BUs and one CSO understand that the Commission works on specific obligations and Gatekeepers with the same staff/teams. This understanding of the operation of the Commission was also noted by others, although in less detail. One CSO adds that the level of outreach varies between teams, with some being more proactive in engaging with shareholders. One BU also says that this setup where teams specialise is a good idea because it allows for consistency in enforcement and allows for benchmarking. At the same time, the same BU also notes that the Commission is able to see the bigger picture. One BU noted that each team has officials from both DG COMP and DG CONNECT and considered that the organisation allows for consistency as meetings are with the same officials. One BU however noted that there should be more coordination among the various teams highlighting that there is no information sharing among teams so that it had to convey the same information more than once to each team.

One BU, echoing the opinions of other Business Users, indicates that the engagement with third parties is not systematic. One BU suggests the need for more structured three-way discussions that include Gatekeeper, Business Users and the Commission. Two CSOs both echoed the importance of a structured way for the Commission to secure input from third parties fearing that dialogue at the moment is mostly between the Commission and Gatekeepers. CSOs made some suggestions: improving Commission transparency regarding its activities and a timeline for its actions which would allow it to provide more meaningful and informed feedback.

Some respondents commented on the Commission's expertise and resources. There is agreement that the Commission is resource constrained but one BU noted that the Commission is looking into the right things. One BU worries that the enforcement stage is already too slow at this point in time, however another two BUs though enforcement was speedy. Turning to expertise, six BUs considered that the Commission lacked expertise. Normally BU express concerns about expertise relating to the technology but one BU noted that the Commission also lacked expertise in economics. Related, one BU explained that it makes its engineers available to the Commission to address technical issues. One BU sees an improvement in the Commission's technical knowledge and that this has improved since the time the DMA was proposed. One BU considered that at times the Commission should take a broader approach to assessing compliance and should gain a better understanding of how businesses engage with proposed solutions. One BU also considered that the Commission was open to exploring how to achieve the best results. One NRA indicated that the Commission initially lacked expertise but then has developed significant technical expertise and for certain specific issues it has sufficient in-house expertise.

One BU reports on work on a technical paper by the Commission to which it has been asked to comment. This paper is designed to assist compliance with some DMA obligations. It is not clear whether this will be made public or result in guidelines.

One BU observed that the Commission becomes more formal and guarded once infringement proceedings commence. One BU considered that the use of RFIs was a positive step in securing valuable information with adequate time to provide information being available.

Reflecting more recent developments, one BU noted that Gatekeepers modify their compliance (which was due on 6 March 2024) only after the Commission commences enforcement proceedings. Two BUs wonder if in this setting the Commission must continue to pursue infringement proceedings anyway since compliance was due on 6 March, which would lead to non-compliance findings that could later add up to facilitate a finding of systematic non-compliance.

One BU explained that the Commission encourages Business Users to engage via collective groups or trade associations so that consensus among members can drive changes in compliance. The Commission uses associations as a key tool to gauge consensus on various issues. Two BUs report that efforts are made to find a common denominator among members. One BU confirms these meetings of trade associations but takes the view that these are more relevant for smaller actors who might not otherwise be reached by the Commission. The Commission still engages with larger firms bilaterally. One BU supports efforts to aggregate Business Users in coalitions which could assist those with fewer resources. However, they note remaining concerns about potential retaliation as it may be possible for a Gatekeeper to identify who is a member of an association.

In terms of substance, one BU and one CSO explained in high level terms that they provide information to the Commission about their business model, what they consider to be compliance with the DMA and their interpretation of the rules of the DMA.

Gatekeepers

Gatekeepers report on pre-designation and pre-compliance discussions with the Commission. Pre-compliance meetings were already held before 2023 but after designation. These were regular but that these became more ad hoc since 6 March. Two GKs report that compliance meetings are preceded by a written submissions and that the Commission and Gatekeeper both take the lead depending on the issue under discussion: the Commission being more interested in certain topics. One GK reports that it has to also explain the working of its services during these discussions.

All GKs report that the dialogues are constructive. One observed that they have become more so as time passes indicating that at the start the Commission expected the Gatekeeper to come up with compliance but shifting more recently to an approach which is more dialogue driven. However later in the conversation One GK also pointed out that the Commission may also move to a more formal process (e.g. requests for information). Two GKs noted that at times they wished for more guidance on how to comply although one GK noted that by the end of 2023 the Commission became clearer about what it considered compliant conduct while noting that the Commission seems to have some latitude in determining what compliance is and some more fixed goalposts would help.

GKs report that they meet with the same officials during compliance meeting, Two GKs noted that more coordination should take place between officials from DG COMP and DG CNECT, not least in streamlining information requests.

Two GKs report that there are varying levels of expertise among EC officials. One GK considers it necessary to explain how its services work. At the same time all GKs report that the content of meetings is largely legal, one GK estimating that 70% of content is legal and 30% is on technical matters.

Two GKs report that the way the Commission engages with GKs relies on a more traditional antitrust approach with RFIs post 6 March 2024. One of them would prefer a continuation of a dialogue-based approach.

One GK reports that there is a difference in engagement from designation to compliance, with the latter being more constructive.

Regulatory Bodies

One NRA's engagement is limited to giving feedback on specific issues at the request of the Commission. Another has been more active: (a) it has regularly engaged with the Commission through various fora (ECN, Advisory Committee); b) it has seconded some officials to the Commission, which is seen as reciprocally beneficial: helping the Commission by adding expertise, and helping NCAs by gaining exposure to new issues. It is also expected to bring greater trust between the two enforcer groups. One NRA reports similar initiatives are planned by other NRAs.

One NRA suggested that looking forward ways of working together (e.g. via join teams like in banking supervision may be considered but this remains speculative until greater experience is obtained.

Compliance Reports

Business Users, NRAs and CSOs

Business Users were generally dissatisfied with the compliance reports. Only one CSO reported studying the compliance reports and also expressed dissatisfaction with them. Business Users considered the template provided by the Commission was useful but that few Gatekeepers followed it.

Eight BUs found compliance reports unhelpful because they lacked sufficient information to assess if the Gatekeepers were compliant. One BU also indicated a lack of detail and felt that they contained an excessive amount of legalese. Three BUs report that compliance reports should be more helpful for Business Users by making it clear how they may request certain entitlements from a Gatekeeper. One BU considered that the reports gave no meaningful answers to allow Business Users to take action. One reports that some compliance reports contain conflicting information. One BU considered that the reports lacked detail and did not reveal how the Gatekeeper had achieved compliance. One BU observed inconsistencies in the reports as well. One BU did not use the reports for any of its business decisions. One BU felt there should be an opportunity to challenge the reports during

workshops. and also felt that BUs should be called to engage much earlier in the process for a more effective dialogue.

Two BUs noted that Gatekeepers change the way they comply after the compliance reports are published so that these are out of date very quickly. This point was also observed in passing by other Business Users. One CSO suggests that compliance reports should evolve across time as several Gatekeepers have made adjustments to their compliance efforts since submission. Having an up-to date document can assist both beneficiaries of the DMA and CSOs.

One BU reports that it has provided feedback on the compliance reports via a trade association. It saw these reports as useful but remarked that on substantive matters the proposals benefit Gatekeepers and not Business Users. This BUY also remained uncertain about how compliance will be actually executed. One BU also observed that the compliance reports reveal a mismatch between the Gatekeepers and the Commission about what compliance with the DMA means.

Most Business Users felt that the Commission template was adequate and reports would have been more helpful had they followed it.

One BU reports on a meeting in January 2024 which was initiated by the Commission and which included some Gatekeepers and stakeholders where Gatekeepers provided proposed compliance measures to which stakeholders have feedback but it did not consider that this feedback was reflected in the final version of the compliance reports.

One BU expressed the view that benchmarking across Gatekeepers can improve enforcement. The suggestion made was to create a hub for the latest compliance proposals that could stimulate competition among Gatekeepers to comply with the DMA.

One NRA reviewed the compliance reports as a basis for both (i) examining compliance and (ii) helping understand other market signals it receives about the market. NRAs are not privy to confidential versions of the report. Overall, This NRA's opinion of the compliance reports has commonalities with answers by GK and BUs, specifically that the NRA saw compliance as an iterative process allowing the Commission to assess areas for improvement. Contrary to BSs' largely negative responses, this NRA considers these as a good initial step.

Compliance Efforts by Gatekeepers

How Gatekeepers Report that they Design Compliance Before the Deadline

One GK explained that the compliance measures required of it were limited and took the view that engagement with consumers and Business Users before 6 March 2024 was of limited relevance but remained open to feedback. After 6 March 2024, one GK sought feedback on the compliance measures that it had implemented and explained that it wishes that Business Users see the benefit of using its services. One GK received comments on its compliance plan from stakeholders and the Commission and adjusted its compliance accordingly. Another GK however reports that most developers were silent at this stage.

Two GKs report that compliance was planned in-house with one securing the support of external consultants. Two GKs also report that the Commission provides feedback, one of these notes that this was mostly about the format of the compliance report.

One GK suggests that the Commission appears to have had a preference for the public reports to be a redacted version of the confidential ones.

How Gatekeepers Report Compliance Assessment Post the Deadline

One GK explained that it has a significant workforce dedicated to compliance which audits and monitors the steps taken. For some obligations, compliance may be achieved by self-executing reports but this is not feasible for all obligations. Nevertheless, its good is to measure compliance with automated systems in a way that is durable, allows for reports to be provided and which may be audited.

One GK reports that it is working on indicators, including tracking complaints and counting numbers of requests and how may are approved.

One GK reports that it interacts with end-users through surveys and meets with developers to ensure they receive necessary information. It has developed a workflow to consolidate feedback from developers and end users and communicating this to the Commission.

One GK reports that the Commission has sought some clarification about the points raised in the compliance report but that otherwise the feedback was positive.

One GK observed that in its view measuring compliance is difficult because of the lack of clarity about the obligations.

Specification Decisions

Two GKs see this option as risky, prioritising dialogue. A Gatekeeper making a request could be perceived as a breakdown in dialogue and is not a preferred option.

One GK did not consider making a request preferring to engage in dialogue with the Commission which proved useful as the Commission was able to clarify its understanding of the obligations and this was taken into account.

One GK criticised the procedures for regulatory dialogue in Article 8 noting that the timescale is too tight and the feedback period after a summary of specifications is too brief.

Compliance Officer

One GK is unclear about the precise role of the compliance officer especially when a company is already compliant and has established communication lines with the commission. It emphasises that it is more important to involve the right teams within the firm than a specific individual. One GK believes that this office may be more useful for others but not when the company is willing to engage and cooperate.

One GK thinks the role of the compliance office is clear and see this as a compliance backstop and referee. The compliance officer was present at the compliance workshops and attends all meetings between the Commission and Gatekeeper. One GKGK felt the Commission provided guidance on various aspects of the compliance officer's role and that its officer is a senior manager who oversees compliance with KPIs – when goalposts are unclear these are set based on the GK's understanding of the intention behind the DMA.

Engagement with Gatekeepers

Bilateral

Most Business Users report that there was no (2 BUs) or very limited (7 BUs) interaction with Gatekeepers before 6 March and that this did not change significantly since. One CSO engaged with Gatekeepers before 6 March and obtained two sorts of responses: (a) some meetings were constructive; (b) others were less open to feedback. It reports that the input provided had some impact on the final compliance report. Another BU reported that in its view enforcement is for the Commission and it was not for the BU to contact Gatekeepers.

Another BU reported that a Gatekeeper contacted it to persuade the BU to advocate for the Gatekeeper's position at the Commission.

One BU reported ongoing discussions which appear to be more frequent than the other users. That said, this BU also reported that its requests go unanswered. One BU reported that one Gatekeeper cut a conversation short without addressing the substantive questions that were raised. One BU considered that a Gatekeeper had not provided concrete or precise answers to the BU's questions. One BU said that an informal group of stakeholders initiated conversations with Gatekeepers but this did not result in an open dialogue between the two sides. One BU indicated that one Gatekeeper reached out with proposed compliance measures one week before the deadline. One BU indicates that it proactively reached out to several Gatekeepers but only one Gatekeeper arranged a workshop which was attended by a number of other Business Users. One BU considers that the pre-compliance period needed to offer greater opportunities for users and experts to provide input and comment on Gatekeeper plans. One BU engaged with a Gatekeeper via a trade association, at first at the initiative of the Gatekeeper. One BU reports contacting several Gatekeepers and one of these engagements proved fruitful as the conduct of the Gatekeeper changed. However, one BU saw bilateral meetings as sub-optimal favouring multilateral meetings where the Commission's involvement can facilitate quicker solutions.

One BU reports that it is not well informed of compliance measures. Frequently there are updates to compliance post 6 March 2024 and these are linked to software updates but Business Users are not informed. One BU reported some better awareness in that one Gatekeeper provides it with data delivered through an API about the reach of the Business User's services

One BU reports that Gatekeepers are not willing to discuss the design of compliance measures with Business Users. It considers these discussions as essential to ensure contestability. Two other BUs confirmed this suggesting an unwillingness for deeper engagement. One BU expected more data from GK to understand how compliance affects its operations.

One BU however met a Gatekeeper to provide information on proposed compliance measures - it considered that it had been able to put its views forward but without any follow-up to the meeting. It also indicated that the meeting was about the Gatekeeper presenting its understanding of the DMA rather than being an interactive discussion.

One BU reports that its meetings were with account managers of the Gatekeeper which is not the most helpful point of contact to secure compliance. Another BU confirms that some Gatekeepers have appointed relationship managers for specific sectors, though their remit is wider than the DMA.

One BU did not consider that the compliance officer would be a useful point of contact unless the issue was of major importance, while another BU reported to not being aware who the compliance officers are and often information about changes in compliance were obtained from the Commission rather than the Gatekeeper.

Five BUs and one NRA report on privately held workshops on specific obligations and considered that these allowed for a more interactive Q&A session than public workshops. Two BUs supports a wider use of these kinds of workshops. Another BU considered that these were useful for bringing together BUs that have differing opinions. Its impression is that the Commission used these workshops to find a compromise position between the two sides. (One BU felt that the Commission preferred to facilitate finding of a compromise solution.) One BU took the view that the Commission seeks solutions from Gatekeepers but that it could play a greater role in moderating these discussions and felt the Commission could be more pro-active. One BU was more critical because it felt that the Commission did not share its views about what conduct is compliant, but it supported these multilateral meetings because they allow the Commission to observe the various viewpoints directly. This BU also reported that they were not included in certain multilateral meetings, and this was one of the reasons for which it decided to participate via a trade association.

One NRA explained that a roundtable was organised by the Commission with one Gatekeeper on a specific obligation which allowed in-depth discussion on technical means of compliance. This NRA considered this was the most valuable meeting of all because it addressed the informational asymmetry between Gatekeepers and Business Users. The NRA explains that other roundtables were also organised by the Commission which allow it to obtain better information and for Business Users to be heard by the Gatekeepers and to speak freely. This NRA was not aware of who had been invited but observed that participants included firms that had shown an interest in public and larger companies that could benefit from the DMA obligation. One BU who did not appear to be aware of these meetings suggested that three-way meetings would be highly beneficial especially if they included third -party technical experts. In the view of this BU these trilateral meetings would help overcome the informational asymmetry between Gatekeeper and Commission. One BU wonders if these trilateral meetings could be required. Likewise, another BU agreed that multilateral meetings cold be effective but wondered if these can be organised for every issue and suggested that specification decisions could be used instead.

One NRA suggests that Gatekeepers are opting for minimal compliance rather than in ensuring a level of compliance that would foster contestability in practice. It reports that pressure from third parties has led to some improvements in compliance.

One CSO reported increased engagement once it made its concerns about non-compliance public: this elicited a response by some Gatekeepers who became more willing to implement the suggestions proposed by this CSO.

Public Workshops

There was a mixed response to the public workshops, which were attended by all except one stakeholder interviewed. Some (4 BUs and one CSO) considered that they were useful in forcing the Gatekeeper to explain its position publicly. Others (7 BUs, one CSO and two GKs) felt they were not helpful: a missed opportunity to provide candid feedback to Gatekeepers, the Gatekeepers failed to answer questions, there was no follow-up after the workshops, and the meetings were too large to allow in-depth discussion. One BU said that at times Gatekeepers gave misleading and even incorrect answers. One CSO while generally positive remarked that some were scripted and made discussion difficult.

There was agreement among most Business Users that the Commission role was too passive during these workshops (at least three BUs were explicit on this); the same point was made by Gatekeepers. The feedback was that the Commission could push Gatekeepers to provide fuller answers, be more proactive in setting the agenda and in explaining the expectations for the workshops.

Recommendations for improvement were made by a number of interviewees, particularly Business Users: (i) industry-specific workshops with more than one Gatekeeper (two BUs); (ii) obligation-specific workshops (two BUs and one CSO); (iii) changing the composition of these workshops so as to involve technical staff from Gatekeepers rather than policy officers or lawyers (one GK, one CSO and two BUs). All four report that private, problem-solving workshops can be more useful than public workshops in certain instances.

Are Guidelines Needed?

Most stakeholders who responded considered there should be more guidance from the Commission. The exceptions are two BUs who felt this was too soon and the Commission should instead determine what it understands by compliance.

Those wishing for guidance identified the following issues:

- Clarifying the involvement of third parties and experts in the process (one BU, one GK)
- Commission's internal processes and workflows were remarked by many members (five BUs and one CSO), including on interim measures (one BU) and on the consequences of providing inaccurate information in reports and meetings (one BU). Two BUs considered that one objective of such guidance should be to alleviate some of the perceived nervousness on the part of Business Users when considering their potential engagement with Gatekeepers. One CSO thought that guidelines should explain that Gatekeepers are expected to test compliance measures before implementing them. The current practice of re-rolling out compliance measures after discovering that the original design is non-compliant risks compounding the harm to consumers according to one CSO. One GK took the view that there were many blank

spaces in the DMA process in particular on the stock-taking process on compliance that could be set out in advance to set expectations.

- Substantive rules on obligations (one CSO, three BUs and one GK) and more specifically to either set minimum standards (one BU) or what constitutes good compliance (one BU, and one GK), or what certain vague terms mean (one BU). One BU suggests that the Commission should provide benchmarks for good compliance rather than detailed instructions. One BU and one CSO suggested the CMA's Guidance on the DMCCA as a good example of useful guidance. Two GKs suggested that guidance is particularly important for obligations that do not align perfectly with the Gatekeeper business model which requires variations in the way compliance is achieved. One NRA agrees that guidance on substantive issues is important but stresses that this is best achieved by proper industry engagement and a three-way dialogue among Business Users, Gatekeepers and Commission is vital for the success of any guidelines. One BU took the view that guidance is better than specification decisions because they are more flexible. One GK added that guidelines are also necessary for specifying the meaning of certain terms found in the DMA. Conversely one BU considered that guidelines on substantive issues had little potential because each Gatekeeper is different.

Role of National Authorities

Overall, respondents had low expectations about the utility of national authorities but some expect this to change and identify certain national competition authorities as being interested in helping make the DMA a success. One BU remarked that cooperation with regulators outside the EU is also important.

Three BUs report limited engagement only at the BU request and regret lack of interest by NCAs. One BU has interacted actively with three NCAs at their request to discuss how NCAs can fill gaps in topics not covered by the DMA. One BU has also engaged with three NCAs all of which have expressed a commitment to ensure the success of the DMA but reports that they see their role as limited to addressing gaps in the DMA or promoting action for country-specific concerns. One BU also reports that some NCAs are willing to take active roles in DMA enforcement.

One CSO notes that there is a varied approach by NCAs as well as some coordination among them. However, two GKs are concerned that coordination can be improved especially in fields where there are overlapping issues.

One KK and 5 BUs report no engagement about DMA issues. One of these BU would like to see a more proactive approach by NCAs. One BU reports engagement with NCAs concerning a non-designated service. Three BUs think that smaller firms might find NCAs more useful as contact points.

Three BUs, one NRA and one CSO welcomed the ACM-led workshop (June 2024) that served to foster awareness of the opportunities opened by the DMA. One CSO and one NRA in particular noted that this event helped Business Users identify shared concerns and raise awareness of the opportunities that the DMA offers to them.

Four BUs and one CSO remark that NCA expertise can assist the Commission, something which one NRA is investing in by sending staff to the Commission. It is not clear how frequent this process of seconding staff to the Commission is.

Two NRAs explain that they engage directly with Business Users who see the NRAs as a channel to share issues. One NRA specified that language issues may make people more willing to bring issues to a national body than the Commission. One NRA verifies the concerns received before presenting these to the Commission and the Gatekeeper through public reports. Both NRAs share the information received with the Commission systematically. One NRA may continue to monitor the progress of these reports sent to the Commission. It noted one specific example where this involvement proved effective in improving compliance.

One NRA would like greater autonomy from the Commission so as to engage better with third parties and to be able to have direct meetings which could allow them to provide more well informed opinions. Presently all information is routed through the Commission. One NRA emphasised the importance of cooperating with the Commission. One NRA expects to have greater enforcement powers in the coming months which will allow it to be more active in DMA issues.

Do You Detect a Prioritisation Policy?

Most stakeholders prefaced their answers by saying that these were just their impressions. This tallies with our intention which was to gauge what the perceived priorities are.

Six BUs say the Commission prioritises low hanging fruit, one CSO and one GK expressed a similar view suggesting that choices are made where antitrust investigations have already occurred, and the Commission has expertise. One GK saw no such pattern and instead worried about the different enforcement approaches used by the Commission. One GK worried about the risks of political considerations informing enforcement choices. One BU thinks the Commission also pursues high profile complex cases. Two BUs see a focus on the software side (B2C) at the expense of the hardware side (B2B). One BU echoes this by indicating a perception that enforcement focuses on benefiting end users. One BU is also worried that future technologies do not get enough attention. One GK and one BU take the view that priority is based on issues receiving the most complaints and one GK thinks that certain actions are based on the principle that whatever the Commission does to one it must do to all. However, one BU reports that the Commission seems to measure compliance on a case-by-case basis and enforcement seems to be sensitive to behaviour of the Gatekeeper. One NRA suggests the one non-priority issue is interoperability. One CSO attributed priorities to resource limitations. One BU felt that priorities would allow it to plan effectively, e.g. in understanding when RFIs and consultations were expected. One BU considers priorities are based on how vocal BUs are and about longstanding antitrust issues. Three BUs would welcome more information about priorities but do not expect to see this.

One BU thinks that findings from simple cases can be used to establish guidelines for others to follow. One BU believes that not disclosing priorities is beneficial as it gives the Commission discretion to select based on available information.

One BU thinks the rationale for enforcement choices is to make people aware of the benefits of the DMA but is concerned that B2B issues are more important for long term contestability. Another BU

however thinks that some consumer-facing obligations are not prioritised. One CSO likewise thinks that priorities should be in areas where competition concerns are emerging. One BU also considers that priorities are not well selected.

One BU reports that it is too early to tell how the Commission will request to complaints about non-compliance and would like to see some guidance on what may be expected in terms of request timelines and the level of information that should be disclosed in making a complaint.

One BU expressed a concern that the Commission can ill afford to lose in court while Gatekeepers are more willing to litigate because even a defeat and a duty to comply is not particularly harmful, while a Commission losing a case has greater consequences. This may make the Commission risk-averse and may account for two BUs' concern that enforcement is slow. But one BU also questioned the merits of pursuing and punishing a Gatekeeper for not complying immediately even if they later do comply: would a penalty serve a useful purpose here?

Cooperation between Commission and Other Bodies

This question attracted the least amount of responses as nearly all stakeholders did not witness any cooperation yet. One BU remarked that while it expected some cooperation it did not observe other regulators present at workshops it attended.

Two BUs both commented that lack of openness about the high level group creates difficulties in knowing about who to engage with and how. One of these BU elaborated on this suggesting that a clear path for direct engagement or collaboration with the high level group would allow stakeholders to participate effectively. One BU did not observe any cooperation and one GK noted limited work with data protection agencies. One GK was positive about the potential of the high level group, in particular for the integration of considerations that many not be priorities for DG COMP and CNECT. One GK was the only stakeholder reporting that they had the opportunity to make a presentation to the high level group.

One stakeholder (redacted to preserve anonymity) gave some insights into the work of the high level group: the agenda is set by the Commission, and discussions are around how similar issues are addressed by different regulators. This is said to assist the Commission in understanding how to enforce the DMA. Improvements are expected by the Commission actively reaching out to the various participants to ensure that each node sends people with relevant expertise on the topic. It is expected that external experts will be included in future meetings, for example on new topics.

One CSO suggested that the high level group is not a forum to discuss individual compliance and suggests that it could be modelled along the lines of the UK system.

Other Comments

In this section, we report on additional points that were mentioned that do not fit under the headings of the questionnaire but emerged from our discussions.

Some stakeholders made additional comments about the limitations that Business Users face in engaging with the DMA. One BU thinks that NDAs may prevent Business Users from providing evidence to the Commission, which means that the Commission should be using its powers to request information more aggressively to ensure that it has the right information. More generally three BUs indicated that there is a "fear factor" among them and that one way to counter this is a campaign showing tangible effects of the DMA which may make other Business Users more ready to engage with Gatekeepers. One BU explains that they have had experience of retaliation. This BU also explains that there are specific markets that are crucial for the long-term viability of Business Users which creates a position of asymmetrical power even with the DMA in place. Retaliation risks, according to this BU, extend to markets outside the EU so that investments in opportunities created by the DMA could entail a loss in markets outside the EU as Gatekeepers retaliate there. One BU sees this as a difficulty in deciding how much to take advantage of the DMA. Two BUs thought that greater guarantees of anonymity would assist in this regard, one BU thought that Gatekeepers can play one BU against another, aware that not all BUs agree on what optimal compliance is.

One BU impression of the DMA is that it delivers only a fraction of its potential. The issue of limited resources could be addressed by involving third parties who can provide expertise and flag potential issues, helping to identify concerns that might otherwise lead to formal complaints later in the process. Another BU also confirms but is more philosophical about this - their expectations were not that there would be immediate compliance. One BU considers that the impact of compliance may differ among BUs and that this is something that the Commission risks overlooking.

One BU thinks the Commission should be more proactive in explaining what is good and what is bad compliance, by using indicators. One GK also took the view that a better understanding of what compliance means should be conveyed by the Commission. One BU takes the view that industry responses should be used to guide an assessment of whether there is good compliance.

One BU thinks that Gatekeepers are currently dominating the public conversation by focusing on 'issues' with the DMA that make technology work less well. One BU thinks greater public awareness of the benefits of the DMA is needed and responsibility is on all stakeholders. Another BU suggests that an example of effective interoperability that allows the entry of new hardware could be a useful signal of the benefits of the DMA as would evidencing data about consumer switching. One BU agreed with the importance to engage with consumers and suggests that everyone (Gatekeepers, Business Users and regulators) have a role to play in educating consumers about the changes the DMA causes. One BU suggested that NCAs would be particularly well-placed for this.

One BU noted that device-specific designations were not what the DMA intended and should be revisited as they risk under-regulating certain core platform services.

One BU suggested that specification decisions are double-edged. On the one hand they can help clarify vague terms (e.g. does uninstall mean delete or disable?) but they may also be used as weapons to challenge decisions in court. They therefore suggest that the best role for such decisions is to provide hard law guidance on matters that are unlikely to be litigated. Another BU instead considered that specifications were necessary to secure compliance in certain fields.

One BU observed that the Commission addresses compliance and remedies separately: this allows the Commission to steer Gatekeepers to comply after 6 March. One BU considered that this allowed Gatekeepers to prolong cases without becoming compliant.

One CSO raised the question of how to best secure compliance: a faster solution with dialogue versus a non-compliance decision with a sanction. A decision can help achieve redress but there are trade-offs.

Annex 2: Questionnaire Used During Interviews

Confidentiality of submissions: Questionnaire on DMA Process and Enforcement

CERRE is conducting a research project entitled the "CERRE Forum on DMA Implementation and Compliance" (hereafter the 'Project'). In the course of this project the researchers will conduct interviews with various DMA stakeholders.

CERRE has commissioned researchers to carry out the interviews for the Project. The following researchers have been commissioned (hereafter the 'Researchers'): Richard Feasey, Giorgio Monti, Alexandre de Streel.

The Purpose of the Study

As part of the Project, CERRE is investigating the systems of compliance and enforcement found in the DMA in order to produce a paper that explores the ways in which the DMA enforcement processes have been implemented so as to establish good practices and identify areas for improvement or modification.

In order to gain a better understanding of the process, the Researchers will contact a number of stakeholders in order to better understand the expectations that the DMA has created and the extent to which these have been met. These discussions will form part of the foundation from which the researchers will draw in preparing the paper on the DMA procedures. The questions asked seek to obtain two types of input: (i) information about how the DMA process is working from the perspective of stakeholders; (ii) information about how stakeholders evaluate the DMA compliance process.

Guarantee of Confidentiality and Anonymity

CERRE undertakes to guarantee the confidentiality of information provided, and the anonymity of the interviewee's identity and their affiliation.

Unless required by law, CERRE and the commissioned researchers listed above, will not disclose to any third party, nor use for any purpose other than carrying out the Project, any confidential information, or supply any document or information not publicly available to any third party.

The results of the interviews will be published by CERRE within the context of the Project without reference to the personal identity and affiliation of the interviewee, unless the interviewee has agreed in writing to the contrary.

This guarantee of confidentiality and anonymity shall remain after the completion of the Project.

Interview Process

The format of each conversation will take place the form or a semi-structured Interview. That is to say, the interview will start with a set of open-ended questions (see below) which allow the interviewee to develop further reflections on the topic.

The interview will be attended by a Research Assistant who will be documenting the contributions of the interviewee, as well as a member of the CERRE secretariat.

Anonymity: The default setting is that these interviews are anonymous. Each session will be recorded and the researchers will draw up an extended summary of the discussion. Each of these summaries will be filed but will not be made publicly available. Interviewees may waive anonymity if they wish to do so in writing.

Use of interview data: The data will be presented in various ways: it may be presented as quantitative results (e.g., percentage of respondents who have taken a particular view) and the researchers may use quotes from the summaries, albeit while retaining anonymity (e.g., Stakeholder 1 said…) unless otherwise specified by the interviewee.

Post-interview: Interviewees will receive a copy of their summary for comment and approval before the final version is filed. There may be additional follow-up/clarification through email, unless otherwise requested by interviewee.

CERRE undertakes to delete the recording of the interview after the results have been published in the context of the Project.

Questions

1. Please describe your role as a DMA stakeholder: e.g., designated gatekeeper, business user, consumer, consumer association. (It may be that you occupy more than one role, if so identify all that apply).
2. Please describe how you have engaged with the European Commission in relation to compliance with the DMA (please distinguish between engagement prior to 6 March and engagement since then):
    a. How have you engaged? (meetings, written representations)
    b. How often?
    c. Who took the initiative?
    d. What was the purpose of the engagement?
    e. Was it helpful?
    f. How might it have been improved?
3. **[GK]** Has the Commission's approach to engaging with you changed at any time and, if so, in what ways?
4. **[non-GKs]** Have you used or relied upon the compliance reports published by GKs in your engagement with the EC or for other purposes?
    a. Do compliance reports published to date serve their purpose (and what do you understand that to be)?

b. If not, how might they be improved?

5. **[GKs]** Please describe how you assessed your own compliance prior to 6 March:

   a. Did you engage directly with consumers?

      i. How and for what purpose?

      ii. Did it achieve your objectives?

   b. Did you engage directly with business users?

      i. How and for what purpose?

      ii. Did it achieve your objectives?

   c. Are there any lessons to be learned in terms of how GKs assess their own compliance?

   d. Do you consider that the public workshops organized by the Commission were useful (and if so why and how), and if not, how could they be improved?

6. **[Non-GKs]** Please describe your engagement with gatekeepers:

   a. Did gatekeepers contact you directly before 6 March to discuss their compliance projects?

   b. Have you contacted a gatekeeper directly with respect to the DMA before or after 6 March?

      i. If so, for what purpose?

      ii. Did you achieve your objectives?

   c. Do you consider that the public workshops organized by the Commission were useful (and if so why and how), and if not, how could they be improved?

7. **[GKs]** How are you assessing your compliance post 6 March?

   a. Do you use KPIs?

   b. Do you engage with business users (and how do you do this)?

   c. Has the Commission provided any feedback or asked questions in relation to your compliance report?

8. **[GKs]** Have you considered requesting a specification decision from the Commission in relation to any of the obligations in Article 6 (or Article 7)?

   a. If so, which obligations and why?

   b. If not, why not?

   c. Would you consider making such a request later and, if so, under what circumstances?

9. **[GKs]** Can anything be done (by the Commission or anyone else) to make the role of the Compliance Officer more effective or to reduce the costs to a GK of compliance (whilst still ensuring effective compliance)?

10. Should the Commission publish guidelines on any substantive or procedural aspect of the DMA? If more than one suggestion, please rank these.

11. What roles have national authorities played so far in the DMA?

    a. Do you expect this to change?

    b. Do you expect certain authorities to be more active than others, if so which and why?

12. Do you detect a prioritisation policy in the Commission's enforcement and should this policy be articulated more explicitly?

13. Is the cooperation between the Commission and other regulatory bodies (which is expected from the DMA) evident in your experience of the Commission's proceedings?

14. Do you have any other comments on the way in which the compliance and enforcement of the DMA has, in your experience, worked to date? Are there any suggestions for improvement that you wish to make?

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