



EUROPEAN COMMISSION
Competition DG
The Director General

Brussels, 01/12/2021
COMP/A1/AGDG/ks

Mr Alexander Fanta
Schönhauser Allee 6-7
10119 Berlin
Germany

Advance copy via e-mail:
ask+request-10087-9d849e4a@asktheeu.org

REGISTERED LETTER WITH ACKNOWLEDGEMENT OF RECEIPT

Subject: Your application for access to documents – GestDem 2021/6146

Dear Mr Fanta,

We refer to your email dated 14 October 2021 wherein you make a request for access to documents pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (hereinafter ‘Regulation 1049/2001’), registered on 15 October 2021 under the abovementioned reference number. We also refer to our email, dated 9 November 2021, our reference Ares(2021)6879893, whereby we informed you that the time limit for handling your application was extended by 15 working days pursuant to Article 7(3) of Regulation 1049/2001.

1. SCOPE OF THE APPLICATION

In your application you requested access to the following document:

“The most recent draft list of gatekeepers that the European Commission has prepared according to Article 4 (3) of the Digital Markets Act. The existence of such a draft list has been confirmed by Commission officials in technical meetings with the EP rapporteurs.”

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST AND ASSESSMENT

We would like to inform you that the DG COMP does not hold a list corresponding to the description given in your application.

Please note in this regard that Article 4(3) of the Digital Markets Act is not in force yet. The future list will have to be drawn up based on official data sources once the Regulation is in force and the powers to request data from private companies are in place. As the Regulation is not in force yet no draft list pursuant to this provision is available.

In accordance with Article 2(3) of Regulation (EC) No 1049/2001 the right of access provided for in that Regulation applies only to existing documents held by the institutions.

Given that no such documents, corresponding to the description given in your application, are held by the DG COMP, DG COMP is not in a position to fulfil your request.

Furthermore, the exception provided for in Article 4(3) first subparagraph of Regulation 1049/2001 will apply to preparatory works. Pursuant to this Article, *‘[a]ccess to a document, drawn up by an institution for internal use or received by the an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution’s decision-making process, unless there is an overriding public interest in disclosure.’*

Preparatory works concerning the setting up of a draft gatekeepers list will be covered by the abovementioned exception as they contain information with regard to ongoing policy initiatives relating to the Digital Markets Act. Such works could only be based on incomplete and inaccurate information, as the means to obtain the data under the DMA are not yet in force. There is therefore a real and non – hypothetical risk that disclosure of any preparatory works would negatively affect and seriously undermine the relevant ongoing decision-making process.

Finally, we would also like to refer you to points 139 to 149 of the Impact Assessment accompanying the proposal for a Digital Markets Act¹, where you will find explanations for the quantitative parameters used and also including an analysis of selected, as well as non-selected, proxies identifying gatekeeper companies and their core platform services. The analysis concerning the scope of the Digital Markets Act has been undertaken based on both public and commercial available data, which provide the best available estimates. On that basis, the impact assessment also contains analysis of modifications of the quantitative thresholds and their combinations, which shows possible impacts of such modifications and combinations, as well as the number of gatekeepers possibly caught by the different combinations of parameters.

3. CONFIRMATORY APPLICATION

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretariat-General of the Commission at the following address:

¹ <https://digital-strategy.ec.europa.eu/en/library/impact-assessment-digital-markets-act>

European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Bruxelles

or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

(e-signed)

Olivier GUERSENT