



EUROPEAN COMMISSION

Competition DG

The Director General

Brussels, 20 May 2022

COMP/A1

Mr Schindler
c/o Büro Domscheit-Berg, MdB
Platz der Republik 1
11011 Berlin
Deutschland

By e-mail

[ask+request-10900-
b6e7e548@asktheeu.org](mailto:ask+request-10900-b6e7e548@asktheeu.org)

Subject: GESTDEM 2022/1833 – Your request of 25 March 2022 for access to documents pursuant to Regulation (EC) No. 1049/2001

Dear Mr Schindler,

Thank you for your application of 25 March 2022, registered on 29 March 2022 under GESTDEM number 2022/1883, in which you request access to documents in the Commission's case files in accordance with Regulation (EC) No. 1049/2001¹ ("Regulation 1049/2001"). We also make reference to our holding reply, dated 22 April 2022, 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 YOUR APPLICATION

In your message, you requested “*all information in the context of the Digital Markets Act (DMA) concerning*

- *remuneration for digital content OR*
- *the role of publishers OR*
- *rules on fairness for the provision of services OR*

¹ Regulation (EC) N° 1049/2001 regarding public access to European Parliament, Council and Commission documents, OJ L145 of 31.5.2001, p. 43.

- *the inclusion of search engines in the context of the DMA (in particular in the context of article 6) OR*
- *FRAND provisions OR*
- *the relationship of the DMA with the Copyright in the Digital Single Market Directive OR*
- *any communication with publishers or their representatives, associations or people acting on their behalf in the context of the DMA”.*

You particularly specified that the request “*includes but is not limited to any proposals, such as drafting suggestions or table documents for Art 6.1.k and the relevant recitals in preparation for or during the Digital Markets Act trilogue of 24 March 2022. (...) content in possession of the Commission provided by third parties, such as lobbyists, outside legal counsel and member states*”.

Based on this request, we searched for information and communications between publishers or their representatives and associations, on the one hand, and Directorate General for Competition (“DG COMP”) staff, on the other hand, related to the abovementioned topics.

Please note that this reply refers to documents identified in relation to your access to documents request GESTDEM 2022/1833 submitted to DG COMP. Documents held by other Directorate Generals (DGs) are covered by those DGs in reply to their respective requests for access to documents.

1. IDENTIFICATION AND ASSESSMENT OF THE RELEVANT DOCUMENTS

We have identified the following types of documents as part of the scope of your request:

- Documents related to the DMA concerning correspondence in order to set up meetings between DG COMP staff with representatives of publishers, book, audiovisual and media associations; as well as
- Emails concerning comments, amendments and positions of the above-referenced organisations on the DMA.

Those documents fall, in part, under the exceptions of Article 4 of Regulation 1049/2001. However, I am glad to inform you that partial access can be granted to several of the documents identified under this section.

Please find below in Section 3 the detailed assessment as regards the application of the exceptions of Article 4 of Regulation 1049/2001 to the aforementioned documents.

2. APPLICABLE EXCEPTIONS

As the effects of granting access to documents under Regulation 1049/2001 are *erga omnes*, in the sense that such documents become public, the disclosure of some of the requested documents at this stage might hurt the protection of lawful interests, as set forth in Article 4 of Regulation 1049/2001. Once access is granted, any potential requester receives access to the documents in question, irrespective of its legal standing, involvement in the competition case or not or other specific interests it may have, as "*the purpose of the regulation is to guarantee access for everyone to public documents and not just access for the requesting party to documents concerning it*".²

3.1 Exceptions applicable to the documents identified above under section 3

i. Article 4(1)(b), Protection of privacy and integrity of individuals

Full disclosure of documents provided is prevented by the exception concerning the protection of privacy and integrity of the individual outlined in Article 4(1)(b) Regulation 1049/2001, since they contain the following personal data:

- the names/initials and contact information of Commission staff members not pertaining to the senior management;
- Names, functions and contact information of other natural persons.

Article 9(1)(b) of the Data Protection Regulation³ does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you do not express any particular interest to have access to these personal data nor do you put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Consequently, I conclude that, pursuant to Article 4(1)(b) Regulation 1049/2001, access cannot be granted to the personal data contained in the requested document, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

ii. Article 4(2), first indent, protection of commercial interests

² See Joined Cases T-110/03, T-150/03 and T-405/03, *Sison v Council*, paragraph 50; Case T-181/10, *Reagens SpA v Commission*, paragraph 143.

³ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.

Article 4(2) first indent of Regulation 1049/2001 provides that the institutions shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property, unless there is an overriding public interest in disclosure.

This provision must be interpreted in light of Article 339 of the Treaty of the Functioning of the European Union (TFEU), which requires staff members of the EU institutions to refrain from disclosing information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

Some of the documents requested by you, as specified above, have not been brought into the public domain and are known only to a limited number of persons. In particular, several documents you request access to contain commercial and market-sensitive information regarding the position and activities of the involved undertakings whose public disclosure, including the identification of the companies concerned, would undermine the latter's commercial interests. Full disclosure of these documents identifying the companies involved could bring serious harm to the companies' commercial interests.

In view of the foregoing, the documents listed below are covered by the exception set out in Article 4(2), first indent of Regulation 1049/2001, and partial access is granted (i.e., the names of the companies and associations involved have been protected following the requests by the parties that submitted the documents):

- “DSA AV Sector Proposed AMs Plenary Vote Jan 202244”
- “FW_ DMA - Trilogue _ Request for meeting _ AV and book position”
- “RE DMA book and audiovisual sector”
- “Re_ DMA _book and audiovisual sector - Follow up on amendment 14a - DMA Ancillary services”
- “20210619 DMA amendments”
- “DMA_ suggested amendments”
- “RE_ Meeting request and national representatives - Digital Markets Act (DMA)”

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

Pursuant to Article 4(2) and (3) of Regulation 1049/2001, the exception to the right of access contained in that Article must be waived if there is an overriding public interest in disclosing the document requested. In order for an overriding public interest in disclosure to exist, this interest, firstly, has to be public (as opposed to private interests of the

applicant) and, secondly, overriding, *i.e.* in this case it must outweigh the interest protected under Article 4(2), first and third indents, and 4(3) of Regulation 1049/2001.

In your application you have not established arguments that would present an overriding public interest to disclose the documents under points 1 and 2 to which access has been hereby totally or partially denied pursuant to Articles 4(2) and (3) of Regulation 1049/2001. Consequently, the prevailing interest in this case lies in protecting the effectiveness of the Commission's investigations, its decision-making process and the commercial interests of the concerned undertakings.

4. REUSE OF DOCUMENTS

Documents under Section 3 originate from third parties. Please note that they are disclosed to you based on Regulation (EC) No 1049/2001. However, this disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released documents without the agreement of the originators, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from their reuse.

5. CONFIRMATORY APPLICATION

In accordance with Article 7(2) of Regulation (EC) No 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:

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 faithfully,

e-signed

Olivier GUERSENT