



EUROPEAN COMMISSION
Competition DG
The Director General

Brussels, 30 March 2021
COMP/A-1/ GestDem 2021/0758

LobbyControl
Mr Max Bank
Am Justizzentrum 7
50939 Cologne
Germany

By e-mail
ask+request-9091-c983a953@asktheeu.org

Subject: GESTDEM 2021/0758 – Your request of 16 February 2021 for access to documents pursuant to Regulation (EC) No. 1049/2001 relating to the Digital Services Act and the Digital Markets Act

Dear Mr Bank,

Thank you for your submission of 16 February 2021 concerning the Digital Services Act and the Digital Markets Act, in which you request access to documents in accordance with Regulation (EC) No. 1049/2001¹ ("Regulation 1049/2001").

1. DOCUMENTS CONCERNED

In your submission, you request access to the following documents concerning the Digital Services Act and the Digital Markets Act:

- All documents - including but not limited to minutes, (hand-written) notes, audio recordings, verbatim reports, operational conclusions, lines to take, e-mails, and presentations - related to the meetings members of DG Competition below the level of Commissioner and Cabinet have held with interest representatives on the Digital Services Act and the Digital Markets Act (including previous iterations of the proposals such as New Competition Tool and Markets Investigation Tool) since 01 August 2020 until today;

- All correspondence (i.e. any emails, correspondence, telephone call notes, and/or text messages including WhatsApp exchanges) between members of DG Competition below the level of Commissioner and Cabinet have held with interest representatives on the Digital Services Act and the Digital Markets Act (including previous iterations of the proposals such as New Competition Tool and Markets Investigation Tool) since 01 August 2020 until today.

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

A number of documents to which you have requested access are already in the public domain. These documents can be accessed via the following links:

1. https://ec.europa.eu/competition/consultations/2020_new_comp_tool/index_en.html
(under A, B and F)
2. <https://www.aim.be/wp-content/themes/aim/pdfs/20201209%20AIM%20Position%20DSA%20DMA.pdf? t=1607520928>
3. <https://static1.squarespace.com/static/53864718e4b07a1635424cdd/t/5f9c392507d2aa5b3e812459/1604073766050/Developers+Alliance+Standpoints+On+The+Digital+Service+Act+And+The+Digital+Markets+Act+Next.pdf>
4. <https://www.aereurope.org/wp-content/uploads/2020/12/aer-statement-commercial-radio-on-the-publication-of-the-dma-and-dsa-proposals.pdf>
5. <https://www.monckton.com/wp-content/uploads/2020/11/Paper-on-EU-Proposals-for-Ex-Ante-Regulation-of-Digital-Platforms.pdf>

I therefore refer you to these public sources.

In addition, we have identified the following documents, which have not been published on internet:

6. Airbnb comments on potential DMA
7. Airbnb DSA PC response-Gatekeepers
8. Posición Booking.com – DMA
9. AT&T - DMA - Slides
10. GSMA ETNO on NCT
11. DMA Austrian Stakeholders 27 January 2021 (DE)
12. Teilnehmerliste 27.1.21_(List of participants at the meeting under 11.)
13. Document submitted by BDZV Bundesverband Digitalpublisher and Zeitungsverleger e. V. VDZ Verband Deutscher Zeitschriftenverleger e. V.

Having carefully examined your request in light of Regulation 1049/2001, I have come to the conclusion that some of the documents you have requested access to fall under the exceptions of Article 4 of Regulation 1049/2001. Therefore, access has to be refused as regards document 13 and only partial access can be granted to documents 9, 10 and 12 listed above. Please find below the detailed assessment as regards the application of the exceptions of Article 4 of Regulation 1049/2001. The documents fully or partially disclosed are enclosed in the annexes to this letter.

2. APPLICABLE EXCEPTIONS

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

Pursuant to Article 4(2), first indent of Regulation 1049/2001 the Commission shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person.

Economic entities have a legitimate commercial interest in preventing third parties from obtaining strategic information on their essential, particularly economic interests and on the operation or development of their business.

Documents 9 and 13 are third parties documents. In accordance with Article 4(4) of Regulation 1049/2001, the third parties concerned have been consulted. As regards document 13 and parts of document 9, the third parties concerned consider that they are covered by the exception laid down in Article Article 4(2), first indent of Regulation 1049/2001.

These documents contain commercial and market-sensitive information regarding the activities of the involved third parties whose public disclosure would undermine the latters' commercial interests. In particular, documents 9 and 13, as specified above, have not been brought into the public domain and are known only to a limited number of persons. The information contained therein concerns in particular commercial strategies. Therefore, disclosure of these documents could seriously harm the third parties' commercial interests.

In view of the foregoing, documents are covered by the exception set out in Article 4(2), first indent of Regulation 1049/2001.

Article 4(1)b, privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data

Pursuant to Article 4(1)b of Regulation 1049/2001 the Commission shall refuse access to a document or part of the document where disclosure would reveal personal data.

With regard to documents 9, 10 and 12 as listed above, a complete disclosure of the identified documents is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation 1049/2001. This is because these documents contain personal data, i.e. the names/initials, title and/or positions, or contact details of natural persons.

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

Pursuant to Article 4 (2) 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 documents 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 indent of Regulation 1049/2001.

In your submission, you have not established arguments that would present an overriding public interest to disclose the documents to which you request access. Consequently, the prevailing interest in this case lies in the commercial interests of the third parties concerned.

4. MEANS OF REDRESS

If you would like this position to be reviewed, you should write to the Commission's Secretary-General at the address below, confirming your initial request. You have fifteen (15) working days in which to do so from receipt of this letter, after which your initial request will be deemed to have been withdrawn.

The Secretary-General will inform you of the result of this review within fifteen (15) working days from the registration of your request, either granting you access to the documents or confirming the refusal. In the latter case, you will be informed of how you can take further action.

All correspondence should be sent to 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: xxxxxxxxxx@xx.xxropa.eu

Yours faithfully,

[e-signed]

Olivier GUERSENT
p.o. Guillaume LORIOT

Annexes: copies of 7 documents