EUROPEAN ASSOCIATION OF COMMUNICATIONS AGENCIES

THE DIGITAL MARKETS ACT

AND ITS IMPACT ON COMMUNICATIONS AGENCIES

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Background

The European Union has finally reached a political agreement on its landmark Digital Markets Act (DMA) legislation.

The EU-wide DMA will be applied in addition to competition law rules and targets the largest digital platforms. The legislation introduces a broad-based regulation of digital markets which should be formally adopted in the coming weeks and will enter into force at the beginning of 2023.

What is the DMA trying to achieve?

The DMA intends to **ensure a higher degree of competition** in the European Digital Markets. It **prevents large companies from abusing their market power** and allows new players to enter the market. It establishes a list of obligations for large online platforms and in case of non-compliance, there will be enforced sanctions mechanisms, including fines of up to 10% of the worldwide turnover.

Who is concerned?

The DMA targets large online platforms that offer several online services such as online intermediation, search engines, advertising services, social networking, video-sharing platform, interpersonal communication, operating systems, or cloud computing. To be targeted by the DMA, a platform must, inter alia, have had an annual turnover of at least **€7.5 billion** within the European Union (EU) in the past three years or have a market valuation of at least **€75 billion** *(Article 3(2)(a))*.

For now, companies concerned should be: Alphabet, Apple, Facebook, Amazon, Microsoft, Yahoo (Verizon), Twitter, Zalando, eBay, Spotify, Netflix, SAP, Slack, Schibsted, Vivendi, Booking Holdings Inc, Otto Group, Expedia and Salesforce.

The Commission will regularly assess the market situation and new companies might be designated under the DMA in the future.

Why does the DMA matter to communications agencies?

The DMA matters to our industry mainly for the three following reasons:

1. Transparency in advertising

The Commission considers that the conditions under which big online platforms provide online advertising services to both advertisers and publishers are often non-transparent and opaque. This leads to a lack of information and knowledge for advertisers and publishers about the conditions of the advertising services they purchased and undermines their ability to switch to alternative providers of online advertising services. Furthermore, the Commission believes that the costs of online advertising are likely to be higher than they would be in a fairer, more transparent and contestable platform environment. These higher costs are likely to be reflected in the prices that advertisers pay.

Therefore, the DMA sets transparency obligations to allow advertisers and publishers to understand the price paid for each of the advertising services provided as part of the relevant advertising value chain:

- **Price transparency** *(Article 5(1)(g))*: The DMA will require large platforms to disclose to advertisers and to publishers for each advertisement:
  - the remuneration received and fees paid by the publisher including any deductions and surcharges;
  - the price and fees paid by the advertiser, including any deductions and surcharges;
  - the measures on which each of the prices and remunerations are calculated;
  - in case the publisher or the advertiser do not consent to these information being shared, the platform will provide information regarding the daily average.

- **Ad performance measuring tools** *(Article 6(1)(g))*: Large online platforms will have to give advertisers access to the performance measuring tools and the aggregated and non-aggregated data necessary to run their own verification of the ad inventory. This will improve the ability of advertisers to assess the efficiency of platforms' services.

2. Collection of personal data for targeted advertising

Through their highly diversified presence online, platforms caught under the DMA have access to large amounts of personal data both from several of their services, and through third-parties that transmit data to them. The Commission believes that this is a problem, both for consumers and for competition between platforms. When combining personal data, platforms have the ability to create increasingly microtargeted advertising. Consumers are often unaware of the platforms' practice of aggregating personal data.

The DMA addresses this by requiring platforms to obtain consumers' consent in order to aggregate personal data collected across services and through third-parties.

- **Combining personal data for advertising** *(Article 5(1)(a))*: Platforms will need end-users' explicit consent along the lines of the GDPR rules in order to combine, process and cross-use personal data sourced from:
  - several online services, such as across social media channels
  - third-parties, for instance when providing several types of services to a business user

For communications agencies, this means that platforms will be able to aggregate less personal data overall, thus reducing their ability to offer microtargeted advertising.

3. Reuse of third-party data for competing services

As mentioned above, platforms have access to large amounts of data from third-parties. These third-parties are any business users, including communications agencies. Platforms can use the data generated through businesses' activities to improve their own services. The Commission believes that this gives larger platforms an unfair competitive advantage when offering services that are in direct competition with businesses, for instance agencies. The DMA seeks to remedy this by:

- **Restricting the reuse of third-party data for competing purposes** *(Article 6(1)(a))*: Platforms will no longer be able to use data that was transmitted to them by communications agencies in order to conduct their own advertising or communications services such as campaign management or making of ad content.

The Commission expects this to result in fairer competition between large platforms and their business users, such as communications agencies.

Sanctions against platforms for non-compliance

Offenders can expect a fine of up to 10% of worldwide turnover; and up to 20% in case of repeated behaviour. In case of systematic violations, the Commission will still have the ability to open antitrust investigations and when necessary, impose remedies.