

From Gatekeepers to Open Books: The DMA's Tell-All on Advertising

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Since March 7th, all core platform services designated by the European Commission (EC) as gatekeepers under the DMA must comply with the DMA's obligations and submit comprehensive compliance reports. In these reports, they must show in a detailed and transparent manner all relevant information needed by the EC to assess effective compliance with the DMA.

In our series of briefings, we recap the key milestones of the DMA implementation, deep dive into the various obligations that gatekeepers are facing, lay out the DMA's implications for stakeholders who are not (currently) within the direct scope of the legislation and update you on the current status of affairs in the DMA's implementation.

*This time on: **Advertising provisions** under the DMA.*

What do the provisions say?

Ever received a promotional email from a brand and wondered how they knew you were just looking for that product? Or noticed how, after messaging a vacation destination to a friend, ads for flights and hotels in that area start appearing across your social media feeds? These moments of unforeseen advertising are no accident; they're the result of complex algorithms and opaque digital advertising practices that decide what ads you see, often without clear insight into why or at what cost.

The DMA introduces new rules designed to shed light on the shadowy corners of **online advertising**. By mandating **transparency** from 'gatekeeper' platforms, the DMA not only aims to explain the "how" and "why" behind the ads we see but also to ensure fairness and competition in an industry that touches nearly every aspect of our digital lives.

Under Article 5 (9) DMA, gatekeepers are obliged to provide advertisers with **detailed information** about each advertisement placed on their platforms on a **daily basis**. This obligation encompasses the provision of data to either the advertiser directly or a third party authorised by them, **free of charge**. The information to be provided includes:

- the **price and fees** paid by the advertiser, including any deductions and surcharges, for each online advertising service offered by the gatekeeper,
- the **remuneration** received by publishers (e.g. providers of online advertising space like online newspapers, blogs, apps), subject to the publisher's consent, including any deductions and surcharges, and
- the **metrics** upon which the prices, fees, and remunerations are calculated.

Parallel to this, Article 5 (10) DMA imposes a **mirroring obligation** on gatekeepers **vis-à-vis publishers**. This provision requires the disclosure of similar information regarding advertisements placed within the publisher's inventory.

Article 6 (8) DMA further broadens the scope of transparency by granting advertisers and publishers the **right to access performance measurement tools and other necessary data** for an independent review of the advertising inventory.

What's the provisions' context?

The DMA's advertising provisions emerge in response to concerns over the opacity with which certain large online advertising service providers, notably gatekeepers **Amazon, Alphabet** and **Meta**, structure the terms and conditions of their services.

Competition authorities have perceived this lack of transparency as a barrier to advertisers' and publishers' access to essential data, hindering their ability to compare the performance of various advertising platforms and thereby limiting competition.

The advertising provisions are designed to foster a more competitive environment between gatekeepers and their commercial users by, inter alia,

- demystifying the pricing structure along the value chain, thereby **lowering prices for advertisers, publishers, and ultimately end-users** and ensuring market pricing mechanisms,
- enabling publishers and advertisers to make **more informed decisions**, thereby increasing their ability and willingness to **switch providers**, and
- encouraging market entry and competition by allowing **better placement and effectiveness of advertising services** through increased market transparency.

The increasing use of **AI in advertising**, while beneficial for efficiency and targeting, exacerbates the challenges of transparency. AI's ability to generate and test vast numbers of ad variations at scale presents a **dual-edged sword**. It offers unprecedented capabilities for market engagement but also risks entrenching the market power of platforms that can leverage such technologies most effectively. By demanding transparency, the DMA implicitly requires that the operations of AI-driven platforms be made understandable to their commercial users. For more details regarding competition-related challenges in the context of AI see our latest [briefing](#).

What's the provisions' implication for gatekeepers and third-party businesses?

The DMA's advertising provisions carry substantial implications for gatekeepers and third-party businesses operating within the ecosystem of digital advertising.

Implication for gatekeepers

Gatekeepers need to provide unrestricted access to their pricing and remuneration structures and performance measurement tools. The data must be accessible in a **machine-readable** and **systematically organized form**. Access must be provided **free of charge**, with two exceptions:

- Gatekeepers retain the **right to charge for any additional services** beyond the basic transparency requirements. This includes specialized analyses or the deployment of advanced software tools to measure advertising performance.

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- Where information requests are deemed to be **manifestly unfounded or excessively burdensome**, gatekeepers may levy a **reasonable fee** that reflects their administrative costs in handling such requests.

Implication for third party businesses

For **third party businesses**, the advertising provisions translate into an unparalleled level of insight into the performance and cost-structure of online advertising services offered by gatekeepers.

This opens the door to significant competitive advantages for advertisers, publishers, and others. For example:

- **Online Retailers** can optimize ad spends based on detailed performance data, thereby refining their advertising strategy which can lead to potential cost saving and improved return on investment.
- **News Publishers** can access the gatekeepers' performance measurement tools and data, and learn which ads are performing well, helping them make strategic decisions that can lead to increased revenue streams.
- **Tech Startups** specializing in advertising analytics can leverage transparency to develop tools that improve advertising budget optimization.

The DMA provides third party businesses with robust **private enforcement tools** to effectively challenge non-compliance. Third parties are advised to engage with both the formal and informal enforcement mechanisms, as outlined in our recent [briefing](#) on DMA private enforcement, as understanding these elements is critical to using the DMA to drive business innovation, market entry and overall growth.

BLOMSTEIN will continue to monitor and assess the developments and practical application of the DMA provisions. If you have any questions on the topic, [Elisa Theresa Hauch](#), [Jasmin Sujung Mayer](#) and the entire BLOMSTEIN competition law team will be happy to assist you.

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