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Second Workshop on the DMA – This is not a Blueprint for the DMA: Reconciling the Technical with the Legal

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The DMA will start to apply in March 2024. The European Commission (EC) has acquired the compromise to make the process of the DMA's future implementation, monitoring and oversight of compliance as transparent as possible. After the first stakeholders' workshop on the ban on self-preferencing, on the 27th of February, the Commission held its second workshop around the interpretation of Article 7 of the DMA, i.e., facilitating interoperability between messaging services.

This entry is the overview of the second workshop, which will be followed by other entries on the subsequent events the EC will hold during 2023 around the interpretation and discussion of the different provisions of the DMA. The outline of the previous workshop may be found [here](#).

The provision in Article 7 of the DMA

The Digital Markets Act establishes prescriptions both in terms of vertical and horizontal interoperability. The first set of rules concerns the interoperability between hardware and software to provide access to alternative services and hardware providers to the same operating system (vertical). This is the substance of the obligation set out in Article 6(4) of the DMA. The second set of rules considers the mandated interoperability upon gatekeepers to ensure, free of charge and upon request, access with certain basic functionalities of their number-independent interpersonal communications services that they provide to their own end users to third-party providers (i.e., competitors) of such services.

These obligations are set out in Article 7 of the DMA and are established with regard to text messaging, video and voice calls.

The workshop organised by the European Commission revolved around the technicalities surrounding the mandate of interoperability in the context of text messaging, given that its implementation is programmed in an incremental manner. In 12 months' time, interoperability from the (designated) gatekeeper's text messaging services will be applicable -at least in one-to-one messaging-, whereas the latter mandates of interoperability will be gradually applied in time (within 2 years from the designation of the gatekeeper, for groups of individual end users and within 4 years for end-to-end video and voice calls on a one-to-one and group basis, as per Article

7(2)(b) and (c) of the DMA.

Moreover, the text of the DMA is quite flexible when it comes to mandating interoperability through Article 7. The limitations to its exercise are posed by:

- The level of security of end-to-end encryption in text messaging, as set out by Article 7(3) of the DMA. In this regard, the gatekeeper shall, at least, preserve the same level of security when interoperating with third parties.
- The collection and exchange with the access seeker to the personal data of end users that is strictly necessary to provide effective interoperability, *ex* Article 7(8) of the DMA.
- The capacity of the gatekeeper to safeguard the integrity, security and privacy of its services before the access seekers' requests to interoperate, only when those measures are strictly necessary and proportionate and are duly justified by the gatekeeper, in line with Article 7(9) of the DMA.

Aside from these open-ended limitations to interoperability, the model of governance and standards that will prevail in the future design and implementation are yet to be decided upon by the Commission. In its simplest terms, the ideal scenario resulting from mandated interoperability between text messaging services would imply that the end user could send a text message from her service provider (e.g. WhatsApp) to a third-party service provider (e.g. Signal) without losing on the level of security and confidentiality catered for the former (and original) service provider. The second workshop portrayed the attempt to capture the range of legal and technical possibilities at the gatekeeper's and EC's disposal to make this possible.

The Question of Standards: Gatekeeper/Industry-Led vis-à-vis an Open Standards Model

The main point of contention looming over this second workshop on the DMA indicated as follows: what would be the best way in which to implement Article 7 of the DMA into text messaging? And the answer provided by the range of intervening stakeholders in the workshop was equivocal in this sense. The participants of the three panels proposed different technical solutions and existing models/languages to descend interoperability into the reality of text messaging.

However, this decision lies completely upon the Commission. Following Article 46(1)(c) and Recital 96 of the DMA, the EC may adopt an implementing act laying down the operational and technical arrangements to put interoperability into place, with the possibility of taking recourse of existing (or new) technical standards to do that. Thus, the question is not whether a particular technical proposal is more or less suitable for attending to the needs of implementing interoperability into text messaging (even though the workshop did not respond to the call of the substantive provisions of the DMA), but what standard should be followed starting from day 1 of the DMA's implementation.

One would imagine that the state of things and the steps to be adopted towards implementation will remain quite different if the European Commission opts into a particular standardisation model or the opposite one. Taking the interoperability mandate at its highest, there is a possibility that Article 7 of the DMA is implemented by the designated gatekeepers through public APIs or SDK libraries, where they bear all of the burden of its implementation but they thrive upon the design of an unenticing reference offer for third-party service providers. Within this scenario, the obligations set out in Article 7 of the DMA would not bring barriers to entry down in terms of platform

envelopment: interoperability would be channelled through by gatekeepers in a cosmetic manner, away from the need of opening up the markets for third-party service providers.

On the opposite side of the axis, Article 7 of the DMA may also be implemented taking into account an open standards-setting where all of the relevant stakeholders participate on equal footing to design the outset of interoperability for the future. Recital 96 of the DMA establishes that the EC may even request existing European standardisation bodies to develop technical standards for the implementation of interoperability. However, the process may take time and to expect a straightforward solution as soon as 2024 may be a quite daring bet to make. For reference, the standardisation body Internet Engineering Task Force (IETF) already launched its [More Instant Messaging Interoperability \(MIMI\) Working Group](#) to overcome the suboptimal user experience where messaging services are not interoperable at the end-user and enterprise level as well as to specify the minimal set of mechanisms required to make modern Internet messaging services interoperable.

Assuming that the European Commission takes a step forward in terms of the implementation of Article 7 of the DMA, its translation into reality will only come in a shade of grey in terms of the outright expression of a normative preference: either one wishes for a gatekeeper-in-control top-down approach towards interoperability (mirroring regulatory intervention upon incumbents in liberalised markets) or another form of governance, be that through common and open standards, or through collaboration from a bottom-up perspective arising from the shared (not only legal) responsibility and the fate of text messaging service providers.

Stemming from this initial decision, the implementation of Article 7 of the DMA may well crystallise into an all-or-nothing scenario. On one side, mandating interoperability does not necessarily and automatically imply that third-party service providers may be enticed to collaborate with a top-down governance standardisation model. On the other side, the changes triggered by the substance of the DMA may not directly translate into an open-standards revolution where a seldom locked-in user into a particular messaging service is ‘freed’ into the open and free market.

If anything, the European Commission’s task at hand is to set out in stone the future of text messaging in terms of its governance, which will look alike the progressive transformation of other seldom locked-in functionalities and sectors, such as the open banking standards conversion or the e-mail revolution. Nowadays, it seems weird to think that one may interoperate through text messaging services in the future, but one does not question the capacity of e-mail service providers to reconcile their interests in favour of a federated project where end-users may learn in minutes whether they typed the wrong address or whether their proprietary e-mail provider is able to send out messages to third-party providers. The question of the DMA’s mandated interoperability boils down to unequivocal normative preference for a particular governance model, where operators will have to adapt or watch as their user base dries up in favour of the next-best federated solution.

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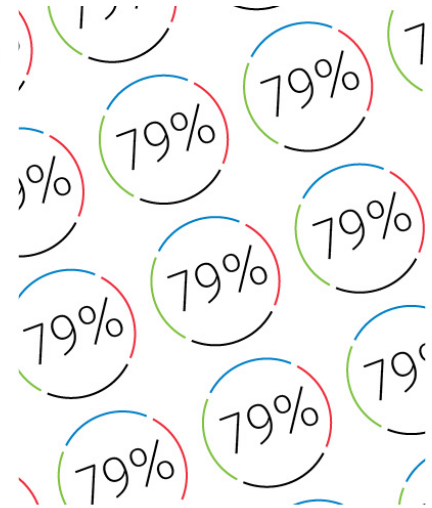
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