

ANNEX

DOS AND DON'TS FOR GATEKEEPERS

Pursuant to **Article 5 DMA**, GKs must:

- not process, for online advertising purposes, the personal data of end-users of third-party services provided through the GK's CPS without the qualified consent of the end-user;
- not combine or cross-use end-users' personal data across CPS or between CPS and other services, or sign in end-users to other services for the purpose of combining personal data, without the end-user's qualified consent;
- not impose either 'wide' parity clauses (restricting business users from offering lower prices and better conditions on any other online sales channels) or 'narrow' parity clauses (restricting business users from offering lower prices and better conditions on their own sales channels);
- allow business users to communicate and promote their products and services (including under different conditions) to end-users acquired via the GK's CPS (or through other channels) free of charge and to conclude contracts with those end-users;
- allow end-users to access and use content, subscriptions, features or other items through the GK's CPS by using a business user's software application, including those acquired outside of the GK's CPS;
- refrain from preventing business users or end-users from raising the issue of GK non-compliance with EU or national laws with the relevant public authorities or national courts;
- not require end-users or business users to subscribe to or register with any other of GK's CPS as a condition for using one of the GK's CPS;
- not require end-users to use, or business users to use, or offer, or interoperate with, an identification service, a web browser engine or a payment service, or technical services that support the provision of payment services, such as payment systems for in-app purchases, of that GK in the context of services provided by the business users using that GK's CPS;

- provide advertisers and publishers (or their authorised third parties) to which a GK supplies online advertising services, on request and free of charge, with information on a daily basis concerning the prices and fees (including any deductions and surcharges) paid by the advertiser and publisher, as well as the amount of remuneration (including any deductions and surcharges) paid to the publisher, and the metrics on which each of the prices, fees and remunerations are calculated for the publishing of a given advertisement and for each of the relevant advertising services provided by the GK.

Pursuant to **Article 6 DMA**, GKs must:

- not use non-publicly available data acquired by the GK in relation to business users using a GK's CPS to then compete with those business users;
- allow and technically enable end-users to easily uninstall any software applications or change default settings in the GK's operating system, virtual assistant and web browser;
- allow and technically enable the installation and effective use of third-party software applications or software application stores and to allow them to be accessed by means other than the GK's relevant CPS, as well as relating to the setting of downloaded software applications or stores as default (subject to certain carve-outs relating to safety measures);
- not treat services and products offered by the GK itself more favourably than similar services or products offered by third parties in the ranking and related indexing and crawling, and to apply transparent, fair and non-discriminatory conditions to such ranking (self-preferencing);
- not restrict end-users, technically or otherwise, from switching between and subscribing to different software applications and services accessed under a GK's CPS;
- allow hardware and service providers and business users, free of charge with effective interoperability and access to the same hardware or software features that are accessed or controlled via the operating system or virtual assistant of the GK (subject to certain carve-outs relating to safety measures);
- provide advertisers and publishers and their authorised third parties, on request and free of charge, with access to the GK's performance measuring tools and the data necessary for advertisers and publishers to carry out their own independent verification of the advertising inventory;

- provide end-users or their authorised third parties, on request and free of charge, with effective portability of data (including tools to facilitate the effective exercise of such data portability) provided by the end-user or generated through its activity;
- subject to personal data restrictions, provide business users, or their authorised third parties, on request and free of charge, with effective, high-quality, continuous and real-time access to and use of aggregated and non-aggregated data (including personal data), that is provided for, or generated in the context of, the use of the relevant CPS (or services provided together with or in support of the relevant CPS) by those business users and the end-users engaging with the products or services provided by those business users;
- provide any third-party providers of online search engines, on request, with access on fair, reasonable and non-discriminatory (FRAND) terms to ranking, query, click and view data in relation to free and paid searches generated by end-users on the GK's online search engines, subject to the anonymisation of personal data;
- apply FRAND general conditions of access for business users to the GK's software application stores, online search engines and online social networking services (the GK must publish general conditions of access, including an alternative dispute settlement mechanism);
- not impose disproportionate general conditions for terminating the provisions of CPS and ensuring that these conditions are exercised without undue difficulty.

Pursuant to **Article 7 DMA**, GKs, which have been designated for CPS constituting a number-independent interpersonal communications services (NIICS, *i.e.*, a messenger service), must make the basic functionalities of their NIICS interoperable with the NIICS of another provider offering or intending to offer such services in the EU, by providing on request, free of charge and within a gradual timeline, the necessary technical interfaces or similar solutions to facilitate interoperability.

This publication is purely informational and is not meant to be a source of legal advice, nor does it contain a comprehensive review of all aspects of the law and practice referred to. The information contained herein refers to the date of first publication, readers being warned to take legal advice before applying it to specific issues or transactions. The contents of this publication may not be copied, disclosed or distributed in whole or in part without prior consent. For more information please contact us at comunicacao@mlgts.pt.