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EGDF position paper Horizontal Block Exemption Regulations (HBER)

About EGDF

1. **The European Games Developer Federation e.f. (EGDF)[1]** unites national trade associations representing game developer studios based in 19 European countries: Austria (PGDA), Belgium (FLEGA), Czechia (GDACZ), Denmark (Producentforeningen), Finland (Suomen pelinkehittäjät), France (SNJV), Germany (GAME), Italy (IIDEA), Lithuania (LZKA), Netherlands (DGA), Norway (Produsentforeningen), Poland (PGA), Romania (RGDA), Serbia (SGA), Spain (DEV), Sweden (Spelplan-ASGD), Slovakia (SGDA), Turkey (TOGED) and the United Kingdom (TIGA). EGDF represents more than 2 500 game developer studios through its members, most of them SMEs, employing more than 45 000 people.

2. **The video games sector represents one of Europe's most compelling economic success stories.** In terms of consumer spending, the European video games market was worth an estimated €23bn in 2020 and registered a growth rate of 22% over the previous year. The industry now includes some 5,100 European game developer studios and publishers that enjoy an estimated combined annual turnover of €12bn and that employ approximately 90,000 people across the continent.[2]

3. **In ultra-competitive global games markets, access to data and knowledge sharing are among key elements enabling the success of European game developers.** During recent years, rapid consolidation has started to reduce market competition by creating data access barriers. The rapid rise of gatekeeper platforms has created significant competition endangering asymmetries in access to information on constantly changing platform rules. The European competition law framework must be updated to tackle these new challenges.

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[1] For more information, please visit www.egdf.eu
[2] EGDF-ISFE Report On The European Game Development Industry In 2019
http://www.egdf.eu/egdf-report-on-the-european-game-development-industry-in-2019/

1. Data pooling and data sharing

4. Rapid games industry market consolidation leading to new data access barriers is step by step starting to hinder the competition in the games industry.

The consolidation of service providers

5. A few huge global data conglomerates increasingly control the games industry data value chain. For example, game developers and publishers do not just use Alphabet's services Google Play as a distribution platform for their game. They also use Alphabet's ad networks for advertisement, attribution and analytics services to measure the effectiveness of the advertisement, the operating system for running the game, cloud services for hosting the files, crash analytics, performance measurement tools, hosting services, machine learning tools, database services and authentication and cloud messaging services.

Rise of closed data spaces

6. As an outcome of the recent Apple iOS14 update significantly limiting access to player data for third-party service providers, we are starting to see the rise of walled data gardens dominated by big platforms and major publishers fighting over direct access to the biggest amount of accumulated unified first-party customer data. When a corporate group can reach enough players globally, they can use their internal data to run the same processes for advertising and analytics internally that were run before iOS14 changes by external service providers. Naturally, SME game developers, relying on third-party service providers instead of their internal tools and technologies, face significant competitive disadvantages in the new market.

7. In practice, this means that big publishers and developers will be interested in acquiring companies with a significant user base or ad tech expertise. Increasing ad tech acquisition by big game developers and publishers are a risk for their competitors as it means that your competitors are buying your data.

8. One of the key elements hindering the innovation and development of other cultural and creative sectors in Europe is the fact that they have so far had much more limited access to data on their audience than the games industry. As long as digital content is generated on user devices, game developers have complete control over technologies that enable artistic expression and interaction with their audience. On games streamed from the cloud to user devices, this is no longer the case. The rise of a "Netflix for games" kind of cloud streaming platform with limited data access endangers this competitive advantage for European game developer studios.

9. The Digital Markets Act (DMA) hopefully solves the problems related to data access. If Data Governance Act (DGA) and Horizontal competition rules fail to create a solid framework for data sharing, becoming part of a usually non-European corporate group, instead of competing with them, might be the only way forward for European SMEs.

The challenges of data pooling and data sharing

10. The main challenges on sharing data between game developer studios are not technological:

   a. **Lack of trust between parties involved in B2B data sharing:** Often, a neutral third party is needed to facilitate data sharing so that it remains fair and non-burdensome to manage

   b. **The data holder refused to give data on the basis of competition law concerns:** There is significant regulatory uncertainty related to how much non-historical and confidential data companies are allowed to share under European competition law rules.

   c. **The data holder is prevented by law to give access to data and there is no legal basis for the data holder to give access to data:** GDPR sets strict, but understandable limitations, on B2B sharing of personal data.

   d. **The data holder gave access to data at an unreasonable price:** As an outcome of the limited B2B data access, there is little competition in the markets. Therefore many leading games industry benchmarking services are able to price their services in a way that they are not accessible for micro-companies.

11. Therefore, EGDF warmly welcomes steps taken in the Data Governance Act to introduce more legal certainty through data sharing services that European SMEs could use for pooling both personal and non-personal data. The goal of these data syndicates/ data sharing providers should be to keep both the responsibilities and control completely in the hands of European game developer studios and publishers. To secure the privacy of players, these data sharing providers should be GDPR processors acting for the game developer studios acting as GDPR controllers. The data should not be shared with any third parties.

12. Data sharing services would create an alternative way for European SMEs to enrich their data in a controlled environment without becoming part of a global corporate group. However, this kind of data sharing can only work if it is supported by a solid competition law framework allowing and encouraging data sharing between competitors.

2. Information exchange

13. Game markets are by their nature global, not regional. On the other hand, this means that the exchange of information through, for example, industry events forms a crucial part of the innovation enabling knowledge transfer. On the other hand, there is room for everyone in the global markets, so information exchange rarely significantly impacts the competition.

The state of the information exchange in the games industry

14. The game industry information exchange, facilitated by games industry trade associations, focuses, for example, on public policy and regulatory matters, educational and scientific developments, demographic trends, generally acknowledged industry trends, publicly available information and historical information. Members of trade associations may display or demonstrate new or existing products and discuss public R&D (but not non-public) plans.

15. Furthermore, in some cases, self-regulation, code of conduct, standardisation, and best practices are adopted as long as they are based on pro-competitive and legitimate objectives. All interested parties have an opportunity to participate in these processes, and these standards and practices are accessible for anyone in the industry. Compliance with these standard practices is voluntary (unless required by the law).

New challenges information exchange

16. During recent years, giant gatekeeper platforms have taken an equal or even more important role in setting market restrictions for European businesses than public governments. For example, the terms and conditions are often unclear on what kind of games are allowed on the platforms, and the implementation of these rules is often inconsistent. In addition, there is often a significant information asymmetry between big market players having direct discussion channels to these platforms and small SMEs that rely on standard information available on the website without access to personal support.

17. The more dominant the role of these gatekeeper platforms becomes, the more crucial it becomes to facilitate the exchange of information on actual concrete practices gatekeeper platforms are imposing on companies operating in their platforms. More transparent the rules are, the fairer the competition on platforms becomes. Consequently, the European competition rules should specifically allow and encourage information exchange on the market restrictions set by gatekeeper platforms. The information exchange should be clearly allowed even if the information would be not

publicly available, confidential, commercially sensitive and not historical (e.g. based on experiences of individual companies on how the rules are enforced).

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