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Feedback of

**ACT | The App Association
Rue Belliard 40,
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to the

Belgian Competition Authority

regarding its

**Public consultation on the Draft brochure about
“The Digital Markets Act – A short guide for tech
challengers”**

ACT | The App Association’s feedback to the Belgian’s Competition Authority public consultation on the Draft brochure about “The Digital Markets Act – A short guide for tech challengers”.

Introduction

ACT | The App Association (App Association) welcomes the opportunity to submit comments to the Belgian Competition Authority’s public consultation on the Draft brochure about “The Digital Markets Act (DMA) – A short guide for tech challengers”.

The App Association is a policy trade association for the **small business technology developer community**. Our members are entrepreneurs, innovators, and independent developers within the global app ecosystem that engage with verticals across every industry. We work with and for our members to promote a policy environment that rewards and inspires innovation while providing resources that help them raise capital, create jobs, and continue to build incredible technology. Today, the ecosystem the App Association represents—which we call the app economy—is valued at approximately €830 billion globally and is responsible for over 1.3 million jobs in the European Union (EU)¹.

While the App Association’s members are unlikely to ever be considered gatekeepers, their success is closely linked to a small and medium-sized enterprise (SME)-friendly implementation of the DMA. The purpose of this document is to share the perspective of our member companies and our key policy points to help the Belgian Competition Authority ensure, as it implements and creates guides on DMA through the Draft Regulation, that SMEs can continue to thrive and innovate in the app ecosystem.

Fragmentation Mainly Harms SMEs

Even at this early stage, the DMA is already causing some inadvertent challenges for SMEs, particularly in the developer community. As gatekeepers update their rules and business models to comply with the DMA, SMEs must adapt to a constantly changing environment, increasing their workload. For SMEs, which often have limited resources, it is crucial that fragmented national application and interpretation of the DMA will not result in additional burdens. Coherent and consistent national enforcement practices as well as additional guidance related to the DMA are essential to ensure streamlined processes and predictability, helping SMEs navigate the new digital landscape more effectively.

Overlapping rules can create legal uncertainty and fragmentation which harm the functioning of the EU single market as well as the business of enterprises. We believe that clear rules and harmonised regulations should be the main objective of European and national regulators in implementing the DMA.

Please Consider the DMA’s Impact on SMEs

While we understand that this consultation primarily addresses procedural guidance for the implementation of the DMA as well as the opportunities the DMA brings to small developers, we

¹ See <https://actonline.org/wp-content/uploads/Deloitte-The-App-Economy-in-the-EU-2020.pdf>.

believe it is important to provide substantive feedback on how the DMA can also bring unintended consequences for consumer and SME developers. We hope that highlighting the broader challenges faced by SMEs as an inadvertent consequence of the DMA can inform the design and implementation of procedural frameworks. We urge the Belgian Competition Authority to consider the DMA's impact on SME developers during the entire process of DMA implementation and any related enforcement activities.

The App Economy Depends on Consumer Trust

Platforms have transformed the software industry, enabling smaller companies to reach new markets and customers. Before app stores, distribution and marketing was much more complex for SMEs. The service and security provided by platforms enables app companies to focus their valuable resources on developing and updating their products. With lower costs and barriers to entry, both fledgling and established app developers can succeed. The single most important factor in the app ecosystem's dynamic growth and unrivalled success is the presence of curated platforms that allow end users to install third-party apps with confidence.

SME developers can compete more effectively by having access to tools provided by platforms, such as data analytics and profiling. Because the guidelines and requirements apply to all developers equally, platforms enable SMEs to operate on a level playing field and have the same negotiating power as big tech companies when it comes to app stores. This competitive environment makes the app economy one of the most innovative spaces on the internet-enabled ecosystem.²

SME developers can gain immediate consumer trust by providing apps on trusted platforms. Consumer trust is essential for a software developer's success, especially for smaller companies. In the digital age, building immediate trust with consumers is challenging without a strong online reputation. Trust is vital because it ensures that consumers believe the app delivers on its promises, is safe, won't jeopardise the user's sensitive data, and that it's easy to cancel a subscription.

Without trust, consumers are unlikely to hand over a credit card or other essential information to a company of which they've never heard. The immediate consumer trust embedded in these platforms levels the playing field for smaller developers. When users have confidence in the standards upheld by app stores, they are more likely to explore and embrace new and emerging offerings.

When implementing the DMA, new app marketplaces should be encouraged to have high standards of consumer protection, app quality, and cybersecurity protections, fostering trust and protecting European consumers.

Safeguarding Privacy and Security

Privacy and security protections offered by platforms not only enhance consumer trust but also allow small businesses to benefit from the established consumer trust of larger platforms, levelling the playing field against bigger brands that already enjoy network effects and consumer loyalty.

² TEDx Talks, The New New Startup Economics: Stephen Forte at TEDxHUKST, Youtube (Apr. 2, 2013).

Through access to these trusted platforms, SMEs can compete more effectively and foster innovation in the digital marketplace.

Therefore, when implementing the DMA, these privacy and security protections should be encouraged to apply to all app stores both to protect the consumers and to foster innovation.

SMEs Depend on Platforms for Accessibility

Platforms also offer game-changing features for disability access. Such features historically existed as add-ons for consumers to seek on their own and too often did not present themselves as practical options for integration into the app everyone downloads. Requiring people with disabilities to lean on others to integrate these features for them as aftermarket tools is a costly method of providing accessibility and is not ideal for app companies that want their offerings to be accessible immediately upon installation, without extra steps.

In light of the above, when implementing the DMA, the current features for disability access should be encouraged to apply to all app stores.

A Deterioration of Intellectual Property (IP) Protection will be Devastating for SMEs

Before the age of platforms, software developers struggled to safeguard their IP against piracy and theft. Software companies faced serious challenges in protecting their products in retail stores because the licensing codes remained active and easy to steal. License control by platforms has drastically improved the landscape for small developers. Nevertheless, piracy is still a serious issue for app makers – the app economy still loses €2.5 - 3.3 billion from the theft of apps.³ Legitimate applications are stolen, their copy protection is removed, and the apps are mainly distributed through sideloading or illicit stores for download, where no revenue goes to the original developer.

Gatekeeper platforms currently provide dispute resolution mechanisms when apps are introduced into the store that are either outright copies or include content that was not properly licensed. App developers can then leverage these mechanisms to confront entities that have allegedly infringed their intellectual property. Without these mechanisms, developers are left with the oppressive and expensive burden of copyright infringement litigation in court, which can leave the legitimate IP owner with several thousand euros per month in legal fees, and months or years of time diverted from company matters.

App developers and copyright holders have benefited from platforms' cost-effective avenues to distribute and protect the integrity of their products. Platforms provide a vital avenue for app developers and copyright holders to dispute and address intellectual property theft and infringement. As new app stores emerge under the DMA regime, we hope to see robust IP protection across the evolving app ecosystem, because even if one 'weak link' or non-protective

³ John Koetsier, *App Developers Losing \$3-4 Billion Annually Thanks to 14 Billion Pirated Apps*, Forbes (Jul. 24, 2017, 5:55PM). Available at <https://www.forbes.com/sites/johnkoetsier/2017/07/24/app-developers-losing-3-4-billion-annually-thanks-to-14-billion-pirated-apps/>

platform emerges, it creates opportunities for malicious copycat apps and damages overall consumer trust in the app ecosystem.

Conclusion

We hope that the Belgian Competition Authority will continue to take into account SMEs' perspectives. The App Association appreciates the opportunity to provide our insights, and we remain at your disposal for further questions and discussion. We thank the Belgian Competition Authority in advance for its consideration of our comments, and we look forward to continued engagement and collaboration.

Sincerely,



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