

Questions

The Competition Directorate (“CD”) of the Spanish National Markets and Competition Commission (“CNMC”) has opened an investigation against APPLE Distribution International Ltd. and APPLE INC. (jointly referred to as “APPLE”), for possible anti-competitive practices related to the distribution of applications on their devices¹.

In the context of this investigation and, in accordance with the provisions of articles 39.1 and 50.1 of Law 15/2007, of July 3, 2007, on Competition Defense (“LDC”), your company is requested to provide this CD with the following information in relation to the Apple App Stores in Spain (“AAS”):

1. Describe your association (number of members, type and size of the members, functions and objectives of the association, as well as the activity(ies) it carries out).

ACT | 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 €86 billion and is responsible for over 1.3 million jobs in the European Union (EU).¹

We represent a unique perspective within the app economy, reflecting the views of our members who are predominantly start-up and micro-sized businesses.

We actively engage with our members to keep them informed and educated about upcoming policy and legal developments that may impact their businesses, while maintaining close communication to understand their concerns, which form the foundation of our policy priorities and objectives. This collaborative approach enables us to effectively advocate on their behalf to policymakers worldwide.

Our policy priorities reflect the opportunities and challenges today’s small business app developers and internet of things (IoT) innovators face in the app ecosystem such as access to broadband, workforce development, and economic growth. We also contribute our thought leadership to broader issues affecting our members and consumers like data privacy, digital healthcare, and accessibility.

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

2. APPLE's relationship with developers is governed by three main documents: the Apple Developer Agreement (“ADA”), the Apple Developer Program License Agreement (“DPLA”) and the App Review Guidelines (“Guidelines”).

Pursuant to Article 11.2 DPLA, APPLE has the right to terminate/terminate the contract with the developer if the developer breaches any term of the contracts governing the relationship between the developer and APPLE.

If the account of any of the developers who are members of your association has ever been closed as a result of a breach of contract:

To the best of our knowledge, our members have not had their accounts closed as a result of a breach of contract.

- a) Explain whether APPLE prevented them from receiving money from their applications for the supply of services to the end users who already had them installed prior to the breach. If so, identify the developers members of your association affected.**

To the best of our knowledge, our members have not had their accounts closed as a result of a breach of contract.

To the best of our knowledge, our members have not been prevented from receiving money from their applications for the supply of services to the end users.

- b) Explain whether APPLE withheld payments due to them for the provision of applications and services through the AAS prior to the termination of the contract that had not yet been transferred to them by APPLE. If so, identify the developers members of your association affected.**

To the best of our knowledge, our members have not had their accounts closed as a result of a breach of contract.

- c) Whether APPLE requested from them the reimbursement of refunds paid by APPLE to the end users (in case the withholdings were not sufficient to do so). If so, identify the developers members of your association affected.**

To the best of our knowledge, our members have not had their accounts closed as a result of a breach of contract.

- d) Explain whether APPLE received the commissions for all copies of the developers' applications downloaded even if the quantities paid by the end users were reimbursed to those end users by APPLE. If so, identify the developers members of your association affected.**

To the best of our knowledge, our members have not had their accounts closed as a result of a breach of contract.

3. Explain whether, after the developers account was closed (if this is or was the case), they requested APPLE to reopen their account and, if not, the reasons why they did not do so.

To the best of our knowledge, our members have not had their accounts closed as a result of a breach of contract.

4. Explain whether, after the developers account was closed (if this is or was the case), they were refunded any of the \$99 annual fee payable to APPLE to join their developer program.

To the best of our knowledge, our members have not had their accounts closed as a result of a breach of contract.

5. Explain whether any of the developers members of your association have ever been affected by clauses 13 and 14 of the DPLA limiting liability for damages caused by APPLE and explain such situations (e.g. how was the communication process with APPLE, what was the damage, whether they made any claim to APPLE and how it was resolved).

To the best of our knowledge, our members have not been affected by clauses 13 and 14 of the DPLA.

6. Explain whether any of the developers members of your association have ever had to go to California courts, according to clause 17 of the ADA, to make any claims against APPLE in connection with the AAS. If so, please explain the situation and the status of their claim.

To the best of our knowledge, our members have not had to go to California courts in accordance with clause 17 of the ADA.

7. Explain whether any of the developers members of your association have ever been affected by clause 9.4 of the DPLA according to which they may not make public statements or press releases in connection with the contracts governing their relationship with APPLE and explain such situations.

To the best of our knowledge, and our understanding of the meaning of 'have ever been affected', our members have not been affected by clause 9.4 of the DPLA.

8. Explain whether APPLE has ever charged any of the developers members of your association its commission for the distribution of their application(s) even in cases where APPLE had been unable to collect the price from the end user (in accordance with clause 3.5 of Schedule 2 of the DPLA).

To the best of our knowledge, our members have not been charged for its commission for the distribution of their application(s) in cases where APPLE had been unable to collect the price from the end user (as described in clause 3.5 of Schedule 2 of the DPLA).

9. According to clause 3.1 of Annex 2 of the DPLA, in case of distributing paid content (applications, subscriptions, in-app purchases, etc.), the developers must determine

their prices according to a pricing schedule established by APPLE. Explain whether this is also the case for the app store of devices using an Android operating system (developed by Alphabet/Google), Google Play, or any other app store that is available for APPLE and/or Alphabet/Google operating systems.

While app stores generally provide pricing policies and guidelines to protect users, app developers have both the freedom and the responsibility to determine their own prices. App stores often provide pricing structures with different categories and flexible options, minimum and maximum prices, currency and regional regulatory considerations, and recommendations for in-app purchase pricing and discounts. Developers consider multiple factors in their pricing decisions, such as revenue sharing with app stores, competition with other apps on the platforms, and user feedback and ratings.

The main purpose of pricing guidelines on app stores is to protect users from unfair or predatory pricing, such as the ‘bait and switch’ and other dark patterns. For example, the App Store Review Guidelines for app developers states: ‘And while pricing is up to you, we won’t distribute apps and in-app purchase items that are clear rip-offs. We’ll reject expensive apps that try to cheat users with irrationally high prices’.²

Many platforms have policies and guidelines on pricing for sellers, developers, and service providers. Platforms, as larger players with extensive market knowledge, can provide significant insight to sellers and service providers, especially for small and medium-sized enterprises (SMEs) with limited resources. Pricing guidelines enable SMEs to competitively price their products and services, removing the need for extensive market research. Moreover, platforms have access to valuable user data and analytics, which further helps with shaping competitive pricing guidelines and policies. In global markets, where conditions and pricing expectations vary greatly between countries, platforms offer support not only for pricing but also for navigating complex regulatory details, including taxation. By using their expertise and resources to simplify global pricing and distribution, platforms empower small businesses to thrive on a global scale.

The Apple App Store and the Google Play store have similar approaches to app pricing. Many of our members develop on both platforms because they complement each other, providing slightly different but equally valuable opportunities for innovation and growth.

10. If there were other application stores alternative to the AAS for the distribution of applications to users of APPLE products, explain whether there is any interest from any of the developers members of your association in using them and explain why.

Our members are generally looking for more clarity and business certainty to emerge around the challenges and opportunities presented by alternative app stores. Most of our SME members have been satisfied with the current app ecosystem, which provides centralised platforms with extensive global reach. This model has been invaluable for SMEs with limited resources, simplifying distribution and enabling them to connect with a broad customer base efficiently. Overall, our members are curious about the opportunities new app stores might present while also being mindful of the potential challenges, such as the additional burden of

² See <https://developer.apple.com/app-store/review/guidelines/#business>.

adapting offerings to multiple platforms and managing distribution across a fragmented marketplace. For SME app developers, expanding into new app stores represents a significant business decision that requires careful evaluation of market developments and resource allocation.

11. In this regard, as of March 7, 2024, the Digital Markets Act (DMA) requires APPLE operating systems to allow alternative app stores such as AltStore, Aptoide or Mobivention App Marketplace. Explain whether any of the developers members of your association use them (in that case, identify such developers and stores).

To the best of our knowledge, our members are currently not offering products on alternative app stores on iOS or iPadOS.

12. Provide any other information that you consider relevant regarding APPLE and the operation of the AAS and that affects the account of any of the developers members of your association and the distribution of their apps, or of any other store they use for the distribution of their applications (in that case, identify such stores).

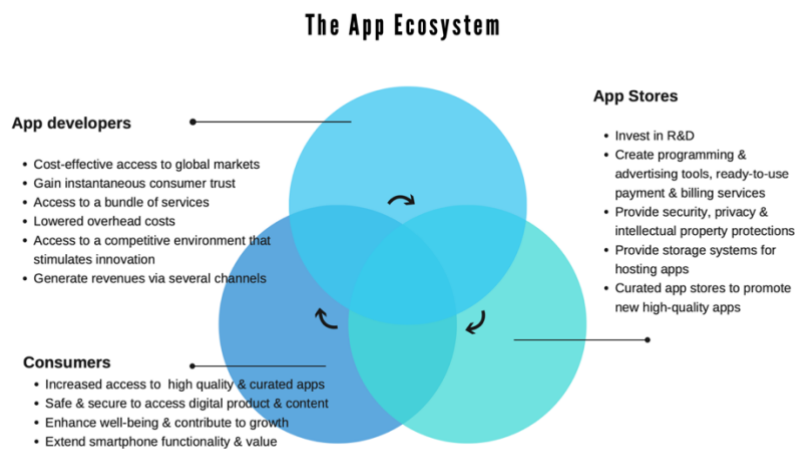
Platforms have revolutionised market access for smaller companies in a way that has transformed how these businesses connect with consumers. While the advent of the internet itself was a significant leap forward in enabling global connections, platforms have streamlined this process even further, making it easier for businesses to enter markets and interact with consumers.

*‘App stores facilitate developers’ – and especially small business developers’ – entrance into markets. The platforms effectively enable fast and inexpensive access to smartphone users around the world. Having low barriers to entry means that even the smallest businesses have access to 3.5 billion smartphone users globally. Facilitating market entrance of small innovative companies increases the sustainability of this dynamic ecosystem’.*³

There is a **sybiotic relationship between app stores, developers, and users**. Increased platform traffic attracts more developers, which brings in more consumers who then benefit from a higher quantity of high-quality apps. For SMEs and startups, the network effects of this multi-sided market are particularly beneficial. They allow small developers to reach new consumers instantly across borders. This also makes it possible for app stores to invest substantial resources into research and development (R&D). Investment in R&D means app stores can offer a variety of high-quality services and other benefits to developers. Programming and advertising integration tools, ready-to-use payment and billing services are particularly advantageous for the smallest app developers who would not otherwise have the resources to develop such features. The more attractive these offerings are, the more app developers flock to the app stores. Today, the largest app stores compete for app developers’ products. All developers pay

³ p.13. Deloitte Finance, The App Economy in the European Union: *A Review of the Mobile App Market and Its Contribution to the European Economy*, June 2020. <https://actonline.org/wp-content/uploads/Deloitte-The-App-Economy-in-the-EU-2020.pdf>

the same low entry fee to make their products available online. No matter their size, they all have access to the same built-in benefits and compete under the same terms and conditions.



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The app economy exemplifies the success of this model. The mobile app sector in the EU reached direct revenues of 86 billion euros in 2019, and the overall contribution of the app economy, factoring in both direct and indirect effects, amounted to 187 billion euros.⁵ This staggering figure highlights how competition on digital platforms can drive significant economic growth.

Today, platforms such as app stores offer the easiest entry point for small businesses to reach consumers. The low barriers to entry mean that anyone—from startups to hobbyists—can become app creators. This accessibility fosters competition and innovation, making app development one of the most dynamic and competitive markets.

Consumer Trust

One of the most important aspects of digital markets today is **consumer trust**. While online buying and selling have made transactions more accessible, they’ve also increased the threat of fraud, scams, and privacy risks. This has made consumers more cautious about protecting their personal data and privacy, driving a growing interest in cybersecurity.

Platforms play a crucial role in fostering consumer trust. By offering consumer protections such as secure payment systems, data privacy guarantees, and vetting processes for products and services, platforms create an environment where users feel more comfortable exploring offerings. This built-in consumer trust benefits all providers on the platform, but it is especially valuable for small businesses, which often lack the brand recognition and established reputation that bigger competitors enjoy.

⁴ <https://actonline.org/wp-content/uploads/ACT-The-App-Association-DMA-Position-Paper-March-.pdf>

⁵ p.32 Deloitte Finance, *The App Economy in the European Union: A Review of the Mobile App Market and Its Contribution to the European Economy*, June 2020. <https://actonline.org/wp-content/uploads/Deloitte-The-App-Economy-in-the-EU-2020.pdf>

In digital markets like app marketplaces, one of the largest barriers to entry for small businesses is overcoming the **network effects** and brand loyalty enjoyed by more established players. In these highly competitive markets, platforms help smaller providers by giving them access to the trust and loyalty consumers have in the platform itself. This allows consumers to feel safer exploring products from less-established businesses, levelling the playing field and making it easier for small companies to thrive.

Because consumer trust is so vital to the **competitive capacity of smaller businesses in the app ecosystem**, we caution against regulatory interventions that could disrupt this delicate balance and erode consumer confidence.

Preserving the Competitive Integrity of the App Ecosystem

We advocate for a competitive environment that both inspires and rewards innovation while providing resources to support raising capital, promoting growth, and creating jobs. Policymakers should take great care to avoid disrupting existing competitive dynamics and avoid basing policy changes on edge use cases or theoretical harms, allowing the market to resolve issues on its own unless a demonstrated market failure exists.

Recent regulations in the European Union targeting online platforms, such as the **Digital Markets Act (DMA)**⁶ and the **Digital Services Act (DSA)**⁷ have introduced new challenges.

In the context of platform regulations, we believe it is important to remind regulators and enforcers to consider the app ecosystem as a whole. Today's online markets are extremely complex and interconnected, and regulatory actions have widespread effects across the entire ecosystem. Platforms, which serve as hosts for many businesses, are integral to the success of countless small companies that rely on their smooth functioning. Any regulatory measures must carefully balance intervention with maintaining the competitive and interconnected nature of these markets, ensuring that the app ecosystem remains robust and accessible.

DMA

In the context of the Digital Markets Act (DMA), the most important point we continue to highlight is the varying developer needs at different levels of the market, in large part depending on the size of the business. While some apps, particularly larger ones, have been vocal in advocating for unbundling the services provided by app stores, it's crucial to recognise that these larger apps stand to benefit the most from this. For example, changes introduced by the DMA, such as the requirements for side-loading and offering unlimited alternative app marketplaces, benefit larger apps with established network effects — such as strong brand recognition, user bases, and reviews. These options, however, offer little utility for micro-sized businesses and startups, which rely heavily on platforms for seamless distribution, reach and visibility; curation by platforms to support privacy, security, and intellectual property needs; and interoperability and accessibility features and tools.

For micro-sized businesses and startups with small teams and limited resources, platforms serve

⁶ <https://eur-lex.europa.eu/EN/legal-content/summary/digital-markets-act.html>

⁷ <https://eur-lex.europa.eu/eli/reg/2022/2065/oj>

as crucial one-stop shops. It's important to recognise that for these businesses, exploring other app stores or marketplaces is not just a simple switch but a significant business decision. This involves dedicating additional resources to adapt their apps and codes to different platforms, manage updates, and monitor performance across multiple stores.

We continue to advocate for implementing the DMA in a way that maintains consumer trust in the app ecosystem, especially in promoting strong data and privacy protections and maintaining robust cybersecurity measures. Additionally, it's essential to promote strong intellectual property (IP) protections for app developers in the evolving digital markets landscape, as these protections not only support small app developers in safeguarding their innovations but also protect consumers from malicious copycat apps, which in turn helps to preserve the integrity and trust of the app ecosystem.