

Brussels, November 20th 2018,

Dear Member of the European Parliament,

We, the signatories, represent SME innovators in software application (app) development and broader technology services. We kindly ask that the European Parliament consider our views to inform its understanding of the **mutually beneficial relationship** between app companies and digital platforms.

Our community of app developers welcomes the initial goal in the draft Regulation on Platform to Business relation of ensuring further transparency and predictability in the platform economy. However, we believe that some of the proposed amendments before Parliament could jeopardise the partnership we have with digital platforms and undermine the potential for further growth and innovation.

We commit to assisting Parliament in developing alternative approaches and offer the following considerations before the Parliament before its co-legislatures take further action.

Below we illuminate key features of the symbiotic relationship between apps and digital platforms here to further the Parliament's understanding.

1. Lower overhead costs, simplified market entry and Instant access to international markets

With the advent of centralised platforms, app developers no longer have to absorb significant costs and manage various relationships to distribute their product to a wide consumer base. With access to over 3.4 billion app users worldwide, through the app stores European app developers have access to international markets instantly. The regulation should avoid creating conditions that lead to **market fragmentation** and **legal uncertainty** preventing app developers from scaling products and services into new markets. Thanks to app stores, developers can instead focus their valuable time into product development and customer engagement. Platforms have substantially **lowered the barriers to entry** that affected hundreds of thousands of software developers and companies around the world. Important to our success is that all app developers have access to platforms on the same **terms and conditions** (Article 3) as others, creating a **level playing field** between developers big and small and **legal certainty** for all users.

Meanwhile, online intermediaries make it easier for app developers to reach markets cross-border, thereby helping achieve the Digital Single market.

However, some of the European Parliament's amendments will undermine this state of play:

- Leaving too much space for national legislation in this space will lead to further market fragmentation, undermining the scale of online intermediaries and their reach they offer to business users. The European Parliament should strive towards maximum harmonisation.
- The introduction of broad concepts of fairness and proportionality will lead to legal uncertainty for the business user and intermediary alike. Different interpretation from court to court and competent authority to competent authority will also lead to market fragmentation.
- Some of the prohibited so-called 'unfair commercial practices' actually help sustain a level playing field. For example, the tracking of payments facilitating refunds to customers is a legitimate business practice that lowers costs for app developers in the event that customers are unsatisfied with their purchase. Giving the choice of payment system to larger business users will give them an advantage over smaller ones.

2. Consumer trust built through platforms' trusted brands allow developers to clear the critical hurdle of achieving trust from consumer adoption

The regulation should not limit the **consumer protection** role of platforms. In the internet economy, end consumer trust is extremely difficult to earn and maintain, especially when a single incident (e.g., a breach or cyberattack) can permanently damage any business's trust with their customers. Meanwhile, the trust gained and maintained by online intermediaries, intimately linked to its reputation, benefits its smaller business users.

The European Commission's proposal did not sufficiently reflect this consumer protection role. We therefore welcomed the introduction in some of the amendments in article 3 and 4 of further flexibility to allow online intermediaries to react fast to emerging harmful practices online and to combat fraud.

However, the introduction of a strict notice period before an intermediary can suspend content is very worrying. This will undermine the usefulness of their terms of services, to the detriment of an intermediary's reputation, the protection of its end-users and of its business users. Increased transparency in the terms of service up-front and when delisting content will achieve the goal of predictability for business users.

3. Enabling innovation in the digital economy

It is important for app developers that the digital economy continues to innovate and remain competitive. Online intermediaries and device manufacturers play a key role in developing functionalities, tools and technical solutions that enable third party innovation.

Including technical platforms, like operating systems, that do not play a role of intermediation in the scope of the draft Regulation has not been sufficiently analysed to understand the effect of such requirements on technical innovation, which would be to the detriment of the digital economy as a whole.

Similarly, some of the unfair contractual practices added to the draft could significantly change the current state of play in the digital economy, targeting perfectly legitimate commercial practices. Making intermediaries like application stores fully liable for the apps they host is disproportionate and limit their openness to taking risks with new products and services offered by third parties. Furthermore, forbidding vertical integration for non-dominant players would be very problematic – our members who are becoming platforms themselves will be deprived of a normal business growth strategy.

We appreciate the opportunity to discuss this important issue and hope we can continue this dialogue throughout the legislative process.

Sincerely,

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