

12 June 2026

The Clerk of the National Assembly
Parliament Buildings
Parliament Road, P.O. Box 41842-00100
Nairobi, Kenya

RE: Comments of the Association for Competitive Technology (ACT) on the Competition (Amendment) Bill, 2026 (National Assembly Bill No. 4 of 2026)

Dear Honourable Members,

The Association for Competitive Technology (ACT) respectfully submits this memorandum on the Competition (Amendment) Bill, 2026 (the Bill). ACT represents small business software developers and connected device companies located around the world. Our members build, publish, and distribute their products through the digital platforms, application stores, operating systems, cloud services, and online intermediation services that the Bill addresses. Kenyan micro, small, and medium-sized enterprises (MSMEs) and startups are an important and growing part of that community.

Kenya is one of the most dynamic technology economies in Africa and is widely known as the continent's Silicon Savannah. Many of our members are active in Kenya or wish to grow here, and they reach customers around the world from a Kenyan base. ACT shares the National Assembly's goal of fair and contestable markets, and we support sound competition enforcement and strong consumer protection. We offer these comments in that constructive spirit, with concrete recommendations intended to strengthen the Bill so that it advances the interests of the small innovators it is meant to protect.

ACT provided detailed comments to the Competition Authority of Kenya on the 2024 draft of these amendments, and the views below build on and remain consistent with that filing.¹ Our central message is one of perspective. The international debate over digital regulation is often framed as a contest between large platforms and the authorities that police them. For ACT's members, the platforms (and intermediation services they provide) addressed by the Bill are the partners that allow a small Kenyan or international developer to reach customers worldwide at low cost. Rules that are broad, vague, or set at low thresholds tend in practice to fall hardest on the smaller firms that lack the legal and compliance resources to absorb them, and they reduce the platform investment and tools on which our members depend.

¹Comments of ACT | The App Association to the Competition Authority of Kenya, Request for Comments on the Draft Competition (Amendment) Bill, 2024 (11 June 2024), available at <https://actonline.org/wp-content/uploads/ACT-Comments-re-Updates-to-Kenya-Competition-Act-11-June-2024.pdf>.

I. General Views

a. The platform functions on which small developers depend

Before modern platforms existed, a developer working alone or in a team of two carried the full weight of bringing software to market. That developer had to run its own website, contract with third parties to handle payments, retain legal counsel to protect its intellectual property, and negotiate with physical distributors that demanded large marketing fees and substantial payments before a product ever reached a customer. Digital platforms changed this for small developers by combining three functions that a small company could rarely build on its own:

1. A bundle of services that lowers the overhead of selling software;
2. An immediate and low-cost way to earn consumer trust; and
3. Cost-effective access to a global market.

Those functions today include distribution and marketing reach to billions of devices, built-in consumer trust through app review and vetting, cybersecurity and privacy protection that screens software for malware before it reaches a user, intellectual property protection and low-cost dispute resolution that a small developer could not otherwise afford, payment processing, data portability and migration tools, and accessibility features that let a small developer make its app usable by people with disabilities without building those capabilities from the ground up. Unfortunately, as we discuss below, the bill undermines these features.

b. Principles that should guide the Bill

As a matter of principle, ACT recommends that Kenya take a technology-neutral approach to regulation and strongly advises against singling out digital activity for separate and stricter treatment that will invite inconsistent results, definitional disputes, and rules that fall out of date as the market evolves. A flexible framework of general application will enable Kenyan regulations to keep pace with change.

Further, we reiterate that new policy changes should be based on strong evidence showing a market failure. Before advancing new digital platform regulation, ACT encourages the National Assembly to publish a cost and benefit assessment before adopting any new *ex ante* regime and to fully consider whether targeted enforcement of demonstrated harm under the existing Competition Act as an alternative option.

Finally, we urge for recognition that market power determinations are based on a holistic assessment. Digital platforms typically operate in two-sided or multi-sided markets, where low switching costs, the ability of users to multi-home, and ease of entry can discipline conduct even at high shares. Market share on its own is a poor measure of power in these settings.

c. The European Union's model offers a cautionary example for Kenya

ACT urges caution before importing the European Union's Digital Markets Act or its core concepts into Kenyan law. There is no evidence that it has improved Europe's competitiveness or empowered small firms, and Mario Draghi's 2024 report on the future of European competitiveness, prepared for the European Commission, found that Europe has produced few homegrown digital platforms of scale and that a rising weight of regulation is among the factors

holding European innovation back.² Independent reviews two years into the operation of the Digital Markets Act, including ACT's, have found no measurable benefit to consumers or to the small businesses the law was meant to help, alongside significant compliance costs and delayed access to new features and technologies for European firms.³

Kenya has the opportunity to learn from this experience rather than repeat it. A framework built for Kenya's own market, grounded in evidence of harm at home, will serve Kenyan developers and consumers far better than the wholesale adoption of a contested foreign experiment.

II. Comments on Specific Provisions of the Bill

a. The dominance threshold below 40 per cent (Clause 6, amending section 23)

Clause 6 would treat an undertaking as dominant in a digital market where it controls less than 40 per cent of the market but is found to have market power, including a significant market position. This departs from the existing one-half threshold in the Act and from international practice.⁴ A threshold this low, combined with open-ended criteria such as network effects and access to data, leaves real uncertainty about which firms are covered, including growing firms and successful local innovators that hold no entrenched position. ACT recommends that the National Assembly reconsider this threshold and require clear evidence of durable market power before the designation applies, together with published guidance on how the factors in new section 4(5) will be weighed.

b. Strategic market position (Clause 3, new section 4(4) and 4(5))

The new strategic market position concept turns on a firm's ability to influence price, quality, output, or innovation to an appreciable extent independent of competitors, suppliers, users, or consumers. As drafted, it can reach many firms that hold no entrenched or durable position in any market. ACT recommends that any designation rest on objective and transparent criteria tied to entrenched and durable significance in a clearly defined digital activity, and that the designation process give the affected firm notice, written reasons, and an opportunity to be heard. Designations that are foreseeable and reviewable protect small and growing firms from being swept in through discretion.

c. Superior bargaining position (Clause 3, new section 4(6) and 4(7); new Part IIIA, section 40B)

ACT's has significant concern with the Bill's new superior bargaining position standard and the related prohibitions in new section 40B. New section 4(7) states that it is not necessary to establish dominance or market power to find a superior bargaining position. Further, the definition in section 4(6), an imbalance in rights and obligations where a counterparty cannot find a viable and satisfactory alternative, is broad enough to capture firms of any size in any sector, whether or not

² Mario Draghi, *The Future of European Competitiveness* (European Commission, September 2024).

³ ACT's new report, *ACT Status Report: The Digital Markets Act at Two Years*, is appended to this letter.

⁴ In the United States, courts have generally required market shares well above half of a market, commonly in the range of 55 to 70 percent, before inferring market power. The European Commission has stated that a firm with a market share below forty percent is unlikely to be dominant.

they hold market power and whether or not their conduct poses any risk to competition. The list of prohibited conduct in section 40B(2) adds to the difficulty, because it reaches ordinary and often pro-competitive commercial terms such as the variation of terms, the allocation of costs and risks between parties, and conditions on termination.

In short, this provision will harm the very businesses it is meant to protect, including ACT's members who are routinely both suppliers and purchasers of digital services. A standard that is detached from market power and backed by criminal liability and turnover-based penalties introduces legal risk into everyday contracting. While larger firms can likely absorb that risk, small developers cannot and will experience scaled back and less flexible platform terms. ACT recommends that the prohibitions in section 40B be tied to evidence of harm to competition, or at the least to a meaningful threshold of market power or economic dependence. We further recommend that section 40B(2) be narrowed so that conduct supported by an objective business justification falls outside its reach, and that the Bill provide a clear defence for legitimate and pro-competitive conduct.

d. Abuse of buyer power (Clause 7 repealing section 24A; Clause 9, new section 40A)

While ACT does not object to relocating the abuse of buyer power provisions into the new Part IIIA (Unfair Market Conduct, new section 40A), the categories of prohibited conduct read most fairly when they are anchored in demonstrable harm and paired with recognised business justifications. The Bill should make clear that legitimate commercial negotiation is not recharacterised as abuse.

e. Data conduct as a competition offense (section 40B(2)(i))

Section 40B(2)(i) treats the unreasonable collection or processing of a counterparty's data as a competition offense. Data collection and processing are already governed in detail by the Kenya Data Protection Act, 2019, which is administered by the Office of the Data Protection Commissioner.⁵ Placing a data conduct standard inside the competition statute, administered by a different authority under a different test, creates a risk of duplicative and conflicting obligations, uncertainty about which forum applies, and exposure to penalties under two regimes for the same conduct. ACT recommends that section 40B(2)(i) be removed, or that it be expressly subordinated to the Data Protection Act and the jurisdiction of the Office of the Data Protection Commissioner.

f. Penalties and enforcement (Clause 13, section 89; Clause 14, new section 91A)

Clause 14 would allow the Authority to impose administrative penalties of up to 10 per cent of an undertaking's gross annual turnover in the preceding year, and Clause 13 adds a comparable turnover-based penalty for failure to comply with an order. The new Part IIIA (sections 40A and 40B) offenses also carry imprisonment of up to five years or fines of up to 10 million shillings. Penalties of this scale are difficult to reconcile with the breadth of the conduct they attach to, particularly the superior bargaining position standard and the low dominance threshold discussed above. For a small firm, exposure of this kind is a powerful deterrent to investing and experimenting in Kenya. ACT recommends that penalties be made expressly proportionate to the gravity, duration, and actual or likely harm of the conduct and to the size and turnover of the undertaking. We also

⁵ Kenya Data Protection Act, 2019, administered by the Office of the Data Protection Commissioner.

recommend that the largest turnover-based penalties apply only to the most serious abuses involving genuine market power, and that the National Assembly remove criminal liability for conduct defined as broadly as the abuse of a superior bargaining position.

g. Procedural safeguards and rights of appeal

The Bill gives the Authority broad discretion to designate firms as holding a strategic market position or a superior bargaining position, require binding codes of practice, and take a wide range of administrative enforcement actions under new section 91A. Powers of this breadth call for strong and proportionate procedural protections, and ACT welcomes the fair hearing language in section 91A(4) while recommending that it be reinforced in four ways:

1. Guarantee of a full and timely right of appeal to the Competition Tribunal and the courts against designations and enforcement actions;
2. Requirement of written reasons for every designation and penalty;
3. Genuine stakeholder consultation before any binding code of practice takes effect; and
4. A commitment that the Authority to publishing guidance so that affected firms, and small developers in particular, can understand and meet their obligations in advance.

III. Conclusion

Kenya's standing as a leader in Africa's digital economy rests on its reputation as a clear, fair, and welcoming place to build and invest. ACT shares the goal of contestable and fair markets, and we believe the Bill can reach that goal without the unintended consequences described above. We respectfully urge the National Assembly to ground new obligations in demonstrated market failure, to raise and clarify the thresholds and definitions that now reach firms without market power, to harmonise the data provision with existing privacy law, to make penalties proportionate, and to strengthen procedural protections and rights of appeal.

ACT would welcome the opportunity to provide further detail, including comparative drafting examples, and to appear before the relevant Committee. We are grateful for the chance to offer these views on behalf of the small innovators in Kenya and around the world who make up our membership.

Respectfully submitted,

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ACT Status Report: The Digital Markets Act at Two Years

About the Association for Competitive Technology (ACT)

The Association for Competitive Technology (ACT) is a global trade association for small and medium-sized technology companies. Our members are small business innovators and startups in the software development and high-tech space around the world. As the world embraces mobile technologies, our members create the innovative products and services that drive the global digital economy by improving workplace productivity, accelerating academic achievement, and helping consumers lead healthier lives. Today, the digital economy is worth more than €5.4 trillion annually.¹ 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.

Key Findings

- After two years of enforcement, there is no evidence that the DMA has delivered measurable benefits to small and medium-sized enterprises (SMEs). Instead, EU enforcement has consistently advanced the interests of a handful of large third-parties at the expense of the broader app developer ecosystem.
- DMA compliance concerns have caused or contributed to documented delays in the EU launch of major AI products and features, including Apple Intelligence, depriving EU SMEs of the same access to frontier technologies enjoyed by their U.S. and UK counterparts.
- ACT's 2025 survey of more than 1,000 small technology companies found that EU startups lose between €94,000 and €160,000 per year, on average, compared to their U.S. counterparts because of the EU regulatory environment of which the DMA is a major component.
- By imposing uniform, top-down obligations and fee structures on the largest distribution platforms, the DMA undermines the inter-platform competition for SME business on revenue share, developer tools, integrated payments, and SME-facing services that historically gave small developers meaningful negotiating leverage. Handcuffing how the largest platforms compete with one another has weakened the position of the SMEs that depend on those platforms.

¹ ACT | The App Association, *App Economy Fast Facts*, https://actonline.org/wp-content/uploads/About-the-App-Economy-2023_162023.pdf.

- The DMA's mandates effectively weaken curated app store distribution, undermining the security and trust mechanisms that disproportionately benefit small developers without established brands.
- The 2024 Draghi Report on European competitiveness warned that excessive EU regulatory and administrative burdens hinder the competitiveness of European companies.

What is the DMA?

The Digital Markets Act (DMA) is the European Union's major legislative effort to increase competition in the online platforms market. DMA focuses on limiting the market power of large online platforms, including online search engines, app stores, and messaging services. The law grants the European Commission (EC) the power to designate certain of these platforms as 'gatekeepers' if they meet certain thresholds. Today, the companies the EC has designated as gatekeepers include Alphabet, Amazon, Apple, Booking, ByteDance, Meta, and Microsoft.²

To be considered a gatekeeper, a platform must:

- Have a turnover of at least 7.5 billion euro in the European Economic Area for at least three years or a market capitalization of at least 75 billion euro;
- Have at least 45 million monthly active users and at least 10,000 yearly active business users in the EU;
- Have 'an entrenched durable position', which is a qualitative assessment made in part by whether the user numbers have been maintained for three consecutive years.

Once designated a gatekeeper, a company must comply with special obligations established by DMA. These include allowing third-parties to interoperate with their services, allow access to business data generated on the platform, provide tools and information for advertisers and publishers to independently verify the ad business activity they conduct on the platform, and allow business users to contract with their customers outside the platform. Gatekeepers are prohibited under DMA from self-preferencing their own products in rankings, preventing consumers from signing up for businesses outside their platform, preventing the un-installation of pre-installed apps, or tracking users outside of the gatekeeper's platform for targeted advertising purposes without consent. Gatekeepers who do not comply with these obligations and prohibitions could face fines of

² https://digital-markets-act.ec.europa.eu/gatekeepers_en

up to 10% of the company's total worldwide annual turnover, or up to 20% for repeated violations, as well as other remedies such as imposed behavioural or structural changes.

DMA is a prime example of an *ex ante* regulation. As opposed to *ex post* regulations that apply to behaviour after the fact, *ex ante* regulations restrict behaviour before actions are taken. Where antitrust laws in other jurisdictions such as the United States provide enforcement powers against actions that have resulted in demonstrable harm to competition, DMA restricts a wide swath of behaviours on the part of gatekeepers before any particular harm has been shown to have occurred. As a result, many behaviours that would not have resulted in harm to competition and may have in fact benefited competition are barred, reducing opportunities for innovation by companies operating within the EU.

This structural feature is the root cause of many of the DMA's most damaging effects on small business innovators. Because the law presumes harm rather than proving it, enforcement priorities are set by political and large-rival lobbying pressure rather than evidence of actual competitive injury, and obligations expand into novel markets, including cloud services that were not contemplated during the formation of the DMA as well as artificial intelligence services that did not exist when the law was drafted, without the procedural discipline that ordinary antitrust review would provide.

Evaluating the DMA's second year

Since DMA's obligations became effective two years ago in May 2024, European regulators have been active in pursuing compliance with the law's provisions. These actions have in some cases led gatekeepers to make significant changes to their business models.

- In April 2025, the European Commission fined Apple €500 million for DMA violations,³ taking issue with Apple's terms regarding whether and how app developers can direct their users to alternative offers outside of the App Store and allow them to make purchases, a practice known as steering. Given 60 days to comply or face additional fines, Apple instituted new policies that would allow for apps to steer users outside of the App Store while instituting new rules for such purchases as well as a "Core Technology Commission" of 5%.⁴ Proceedings to determine the adequacy of these changes to comply with DMA are ongoing, but the steering enforcement action illustrates the DMA's pattern of advancing the interests of large third-party developers seeking to disintermediate gatekeeper commerce systems, while imposing new complexity, new fees, and ongoing regulatory uncertainty on the small developers who depend on those systems and who lack

³ https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1085

⁴ <https://www.cnn.com/2025/06/26/apple-eu-500-million-euro-app-store.html>

the resources to negotiate bespoke distribution arrangements outside trusted digital platform.

- Also in April 2025, The European Commission fined Meta for €200 million for violating the DMA with its policies replacing a previously disallowed ‘consent or pay’ model, under which Meta provided EU users of Facebook and Instagram with an option to either consent to personal data combination for targeted advertising or paying a monthly subscription.⁵ The Commission found that this structure was not allowed under DMA, and Meta eventually replaced it with a new model that used less personal data along with targeted advertising. The €200 million fine was for non-compliance during the eight-month period between the ‘consent or pay’ determination and the model that replaced it. Meta has challenged this fine before the EU’s General Court.
- In December 2025, the European Commission opened an investigation into Meta’s policy instituted several months earlier prohibiting AI providers from using a tool within WhatsApp allowing businesses to communicate with customers, which in practice prevents third-party AI assistants from integrating into WhatsApp.⁶ Meta has offered compromise proposals while arguing that the Commission is incorrectly assuming the WhatsApp Business API is an important channel for AI chatbots. The Commission’s decision to extend DMA obligations to artificial intelligence services that did not exist when the law was drafted, and that were never the subject of any market definition or evidentiary record before designation, exemplifies the mission creep that the DMA’s open-ended *ex ante* structure invites.⁷ Each such extension creates fresh compliance uncertainty for the entire ecosystem of small developers who build on top of these services.
- In January 2026, the European Commission opened DMA proceedings against Google in two areas related to platform interoperability.⁸ The first concerns DMA’s requirement that Google must provide third-party developers with hardware and software features controlled by Android, in particular Gemini AI features. The second concerns DMA’s requirement that third-party search engine providers have access to Google Search ranking, query, click, and view data. In April 2026, the Commission sent proposed measures for Google to resolve the Search data issue, detailing the scope of the data Google must share, the means of sharing it, who is eligible to receive it, anonymization requirements, and other matters. Such forced disclosures undermine the long-term investment incentives that produced the data

⁵ https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1085

⁶ <https://digital-strategy.ec.europa.eu/en/news/commission-opens-antitrust-investigation-metas-new-policy-regarding-ai-providers-access-whatsapp>

⁷ <https://www.cnbc.com/2026/02/09/eu-interim-measures-meta-whatsapp-ai-policy-antritrust.html>

⁸ https://digital-markets-act.ec.europa.eu/commission-opens-proceedings-assist-google-complying-interoperability-and-online-search-data-sharing-2026-01-27_en

in the first place, and risk privacy and security consequences for the EU users whose queries generated it.⁹

Overall, the European Commission's actions in the second year of the DMA continued trends of the first year: focusing on the concerns of large third-parties while creating shifting policies and uncertainty for the small companies that rely on the platforms themselves.

The state of small business innovation in the EU

Statistics show that the regulatory environment in the EU has already led to significant disparities in the success and longevity of EU startups compared to those in other competitive markets. For instance, the United States boasts about three times as many startups than the EU.¹⁰ Additionally, in 2022, venture capital investment in Europe was €29.6 billion, significantly lower than the €108.8 billion invested in the United States and the €53.9 billion invested in Asia.¹¹ This investment gap reflects the impact of the current regulatory climate on EU tech startups' ability to scale, innovate, and—ultimately—exist. The stringent requirements of the DMA risk widening this disparity even further, making it more difficult for EU startups to compete globally.

In September 2024, former European Central Bank President Mario Draghi's landmark report on *The Future of European Competitiveness*, which was commissioned by the European Commission itself, warned in stark terms that EU regulatory and administrative burden constrains the growth and competitiveness of European companies, particularly in digital and technology sectors.¹² The Draghi Report calls for simplification of the EU regulatory rulebook, reduction of overlapping reporting requirements, and a shift toward innovation-friendly regulation. The Draghi Report warned that a sweeping *ex ante* framework, layered on top of other EU and Member State regulatory regimes, produces precisely the 'morass of EU legislation that has constrained innovation, especially in the tech sector' that Draghi identifies as a driver of innovation flight from Europe.

⁹ https://digital-markets-act.ec.europa.eu/commission-proposes-measures-google-sharing-search-engine-data-third-parties-under-digital-markets-2026-04-16_en

¹⁰ <https://mikelmangold.com/usa-vs-europe/>; Mario Draghi, *The Future of European Competitiveness*, European Commission, September 2024, https://commission.europa.eu/topics/eu-competitiveness/draghi-report_en (citing structural underperformance of the EU startup ecosystem and limited startup creation and scale-up relative to the United States).

¹¹ <https://dealroom.co/guides/global>

¹² Mario Draghi, *The Future of European Competitiveness*, European Commission (September 2024), https://commission.europa.eu/topics/eu-competitiveness/draghi-report_en.

In October 2025, ACT released a report titled, ‘The Hidden Cost of AI Regulations for EU and UK Startups and SMEs’,¹³ which provides a useful snapshot of the state of small business innovators in the EU compared to those in other jurisdictions. Based on surveys of more than 1,000 small technology companies across the EU, United Kingdom, and United States asking about their adoption of AI as users and developers, the report describes a widening transatlantic gap in innovation and opportunity. The EU policy environment, of which DMA is a major component, creates delays in the availability of new technology, which shrinks savings and increases costs; only half of EU startups actively use AI compared to two-thirds in the U.S., six in 10 EU startups face delayed access to frontier models, and as a result EU startups lose on average between €94,000 and €160,000 per year compared to their U.S. counterparts.

Has the DMA helped small businesses? The evidence says no

The DMA is now imposing restrictions on digital platform markets, mandating the development of, and accommodation for, third-party app stores. After two years, has this endeavour proven to be a benefit to small businesses? Based on objective data and the SME digital economy experience writ large, the answer is no.

For years before the passage of DMA, offering an app was simple for SMEs. They could build a new app, submit it to Apple App Store and/or Google Play store, and instantly reach a global market with trusted users. SMEs operated in a market in which major distribution platforms competed against one another for developer participation in areas including on revenue share, developer tool quality, integrated payments, fraud and piracy enforcement, intellectual property protection, marketing support, and discoverability. That inter-platform competition gave SMEs meaningful negotiating leverage because a developer dissatisfied with one platform’s terms had a realistic alternative, and platforms had an ongoing incentive to improve the systems on which small developers depend. The DMA’s prescriptive, uniform obligations and mandatory fee structures collapse much of that competitive dynamic into a single regulator-defined template, replacing platform-versus-platform competition for SME business with a regulator-versus-platform compliance dialogue from which SMEs are largely absent.

Under the DMA’s new rules, many challenges to the previous status quo have arisen:

- **Market Uncertainty:** Because DMA implementation is ongoing and constantly evolving, SMEs find it harder to plan marketing and outreach when market conditions are unstable.

¹³ <https://actonline.org/the-hidden-cost-of-ai-regulations-a-survey-of-eu-uk-and-u-s-companies/>

- **Weak Market Controls:** Some new app stores attempting to capitalise on opportunities created by DMA may lack the important security systems the existing major app stores have developed to stop copyright infringement, malware, or deceptive design. SMEs that find their apps pirated, for example, may have little or no recourse at the app store level. In extreme cases, this can be an existential threat for startups.
- **Lower User Trust:** A significant share of SME revenue depends on consumer willingness to download apps from unknown developers, which in turn depends on the screening, content, and quality controls users associate with the storefront on which an app appears. By mandating that platforms must allow sideloading, third-party app stores, and generally reduce curation in various ways, DMA leads to the predictable result that more apps with harmful features will be permitted onto app store shelves than before. An increase in the share of app store apps containing malware and dark patterns will lead users to hesitate to download apps from companies they do not know. This disproportionately harms SMEs and startups without established brands, making it more difficult for them to reach potential customers. As a prime example, AltStore PAL, one of the earliest alternative iOS marketplaces in the EU established in response to the DMA, in February 2025 launched ‘Hot Tub’, a pornography app made possible specifically because the DMA-mandated alternative distribution channels are not required to apply the content standards that ordinary app store distribution applies.¹⁴ Such developments have directly eroded trust in alternative distribution as a credible channel for legitimate SME apps and reinforce user wariness of *any* digital platform.
- **Weaker Intellectual Property Enforcement:** Digital platforms historically give SMEs a single, reliable venue for policing piracy, cloned apps, and counterfeit listings, and compete on the strength of those protections. As distribution splinters across new marketplaces with divergent and often weaker enforcement practices, small developers without dedicated legal teams must monitor and pursue infringement across many channels at once, frequently with little or no recourse at the platform level. For startups whose core asset is their own intellectual property, the resulting erosion of enforcement can be an existential threat.
- **Complex Distribution:** More app stores, especially new ones, add extra work in submitting and managing multiple channels. Different app stores also have different terms of service and different practices regarding user data privacy, advertising, and intellectual property protection. All these differences make compliance much more

¹⁴ Sarah Perez, “Hot Tub, the first native iPhone porn app, arrives in EU,” TechCrunch (Feb. 3, 2025), <https://techcrunch.com/2025/02/03/hot-tub-the-first-native-iphone-porn-app-arrives-in-eu/>; see also Chance Miller, “Apple responds after being forced to approve porn app on EU iPhones due to DMA,” 9to5Mac (Feb. 5, 2025), <https://9to5mac.com/2025/02/05/apple-forced-to-approve-porn-app-on-eu-iphones-due-to-dma/>.

complex, and potentially out of reach for a small startup without a dedicated legal or compliance team.

- **Launch Timing Issues:** Each store has its own approval process. SMEs must release apps at the same time across channels to avoid confusing users and losing revenue. This can quickly become a logistical nightmare.
- **Multiple Global Jurisdictions:** As more jurisdictions pursue regulatory frameworks similar to DMA, the cost of compliance for SMEs goes up. Instead of one global market, SMEs increasingly face different rules in each region, which requires more specialised compliance expertise.
- **Fragmented Marketing:** Global marketing now needs different marketing messages, documentation, and development for each market.
- **Increased Development Cost:** Different rules and different e-commerce systems often mean that multiple versions of the app need to be released with different coding paths. This not only takes significant developer resources, but it also increases testing complexity and the chances of errors.
- **Customer Support Challenges:** Recommendations vary by region and store. For example, a user might be in one country but use an account from another. These subtle but important differences affect how users need to be helped.
- **Increased Compliance Burden:** Even for regulations that only target gatekeepers, SMEs now bear more of the regulatory compliance risk. For example, many have had their apps removed in the EU for not updating required contact details on time.
- **Slow Arrival of New Features and Technologies:** The delay of AI availability such as Apple Intelligence, Google Gemini, and Meta’s Llama in the EU market results from concerns around obligations under DMA to share data with third-parties. This dynamic could become a feature of technology development in years to come, as platforms hold back new features from jurisdictions under DMA-like legal regimes, preventing SMEs from taking advantage of new capabilities. In June 2024, Apple announced that it would not release Apple Intelligence, iPhone Mirroring, or SharePlay screen-sharing enhancements to EU users at the iOS 18 launch, citing concerns that DMA interoperability obligations risking user privacy and data security.¹⁵ In July 2024, Meta announced that it would not release its multimodal Llama AI model in the EU due to the unpredictable nature of the European regulatory environment, expressly contrasting the EU with the United Kingdom.¹⁶

¹⁵ Apple statement reported in Sam Shead, “Apple Intelligence won’t launch in EU in 2024 due to antitrust regulation, company says,” CNBC (June 21, 2024), <https://www.cnbc.com/2024/06/21/apple-ai-europe-dma-macos.html>.

¹⁶ Ina Fried, “Scoop: Meta won’t offer future multimodal AI models in EU,” Axios (July 17, 2024), <https://www.axios.com/2024/07/17/meta-future-multimodal-ai-models-eu>.

More recently, in June 2026, Apple announced that it would indefinitely delay the EU launch of its Siri AI features in iOS 27 and iPadOS 27, stating that there was no timeline for their availability after the European Commission rejected each of Apple’s proposed compliance solutions, including a phased, 18-month rollout safeguarded by a new ‘Trusted System Agent’ intermediary designed to let third-party assistants securely access the same device capabilities as Siri AI.¹⁷ These delays represent the leading edge of a recurring pattern in which EU SMEs and consumers receive frontier AI capabilities later than, or not at all relative to, their U.S., U.K., and Asian counterparts.

Unfortunately, the European Commission does not appear to be willing to fully grapple with the realities of life under DMA for small business and startup innovators. On April 28, 2026, the Commission released its first review of the DMA¹⁸ and declared the law ‘fit for purpose’, highlighting options now provided to European users regarding data portability between services and changing default programs on devices. The report did not, however, adequately address the uncertainty that DMA enforcement has generated across the wider ecosystem or mention at all the conflict between DMA enforcement and the privacy and security of EU citizens and businesses. More concerningly, the report was myopically focused on competition at the top of the market, rather than a more holistic view of the broader ecosystem in which small and medium-sized companies operate. The Commission’s ‘fit for purpose’ conclusion is irreconcilable with the evidence its own peers and EU institutions have generated over the past year, including the Draghi Report’s findings on regulatory drag, the documented withdrawal or delay of frontier AI products from EU markets, and a widening transatlantic divergence in SME AI adoption. By not engaging with this evidence, the Commission has substituted process metrics in place of outcome metrics, an approach that would be difficult to justify in any other domain of regulatory review.

Despite limited evidence of success, however, many countries around the world are in various stages of developing their own DMA-like legislation, including Brazil, India, Japan, South Korea, the United Kingdom, and even some legislative proposals in the United States. As DMA spreads beyond Europe, the problems for small app developers outlined above will be compounded.

¹⁷ Apple Newsroom, “Due to DMA, Siri AI delayed in EU for iOS 27 and iPadOS 27,” (June 2026), <https://www.apple.com/newsroom/2026/06/due-to-dma-siri-ai-delayed-in-eu-for-ios-27-and-ipados-27/>; see also John Gruber, “Apple: ‘Due to DMA, Siri AI Delayed in EU for iOS 27 and iPadOS 27,’” Daring Fireball (June 11, 2026), <https://daringfireball.net/linked/2026/06/11/apple-dma-siri-ai>.

¹⁸ https://digital-markets-act.ec.europa.eu/review-highlights-digital-markets-act-remains-fit-purpose-and-has-positive-impact-2026-04-28_en

Conclusion

ACT members believe in and are well familiar with the power of competition to lead to better and more innovative products, services, and technology. Two years after its effective date, it is difficult to see how DMA has achieved this aim. Instead, the most concrete results have been delayed access to new features and technologies, uncertainty regarding implementation and enforcement, and increased work, cost, and risk for SMEs both in the EU and globally. Specifically, ACT urges the European Commission to:

- Pause further extension of DMA obligations to new services, markets, and technologies, particularly artificial intelligence and cloud computing, that were not part of the law's original evidentiary record;
- Narrow enforcement to conduct for which a concrete competitive or consumer harm can be identified, rather than presumed; and
- Reopen the 'fit for purpose' review to incorporate evidence on SME outcomes, security and trust effects, and the documented withdrawal or delay of frontier products in EU markets.

ACT further urges policymakers elsewhere in the world considering DMA-style frameworks to observe and learn from a credible, evidence-based assessment of the DMA before importing its architecture. Indeed, far more workable solutions have been developed in other countries such as the United Kingdom and Japan in the wake of the DMA's adoption and implementation. ACT continues to work with policymakers around the world to advance governance frameworks that empower entrepreneurship and innovation throughout the digital economy.