

ACT | The App Association: Targeted Position Paper on the Digital Markets Act (DMA)

September 2021

Executive Summary

- Developers of different sizes and business models have different interests. Privileging one set of interests without regard for the others threatens those aspects of the app economy from which especially small actors benefit.
- Fundamental rights should not be sacrificed for economic objectives. If the Digital Markets Act (DMA) risks weakening consumer protections, the text should include additional safeguards.
- Targeting specific practices is not future proof. Organising the DMA's obligations around flexible principles will help them remain relevant into the future.
- The DMA must remain a flexible instrument to help keep digital markets contestable and fair for all actors.

I. Introduction: How to tackle the risk of unintended consequences on businesses and consumers

As the Digital Markets Act (DMA) continues to pass through the legislative process, ACT | The App Association ('App Association') would like to highlight some of the unintended, likely negative and less discussed impacts this proposal may have on Europe's app economy, especially on its smallest market players.

Although our members support the ambitions of the DMA, particularly its stated objective to make digital markets more contestable and fairer, we are concerned that some of the obligations in Articles 5 and 6 do not successfully balance policy objectives with consumer protections and business interests. The resulting text risks undermining the trust that consumers have in the app economy and threatens the longevity of the app marketplace model.

The need to put all app developers on equal footing

We emphasise that very large and vocal app developers stand to gain much more from the DMA in its present form than small app makers. In reality, small app makers have a lot to lose. If the goal of the DMA is to make the Digital Single Market (DSM) more contestable and fairer for *all* market actors, it should not include obligations that only level the playing field for 'gatekeepers' and large developers, while further widening the gap between large and small actors. Rather, the DMA should be capable of addressing concerns from all segments of the app developer community and be flexible enough to ensure its lasting relevance in this dynamic and innovative ecosystem.

Balancing fundamental rights with political objectives

This document relates to two of the specific obligations in Article 6 - and subsequent policy discussions - that we believe may have the greatest negative impact on the app economy. Throughout this paper, we emphasise the need for user safety, privacy, security, and data protection, along with device functionality. Political goals must balance these fundamental objectives and include the appropriate safeguards to ensure that overly rigid legislation does not undermine them.

II. Device security and technical feasibility must be ensured before mandating sideloading and Alternative App Store- Article 6 (c) DMA

Sideloading: interoperability vs. protection)

Article 6 (c) DMA recommends allowing the ‘installation and effective use of third-party software applications or software application stores’ that may use or interoperate with the operating system of a gatekeeper. As most operating systems already allow third-party or ‘sideloaded’ apps and app stores, the aim of this article seems to be to make all app stores the same. However, there are valid reasons why a model that is more protective of the user experience may be preferable to a more open system. Significantly, numerous academic and industry sources have reported that more open systems are considerably less secure than more vertically integrated ones.¹ Including only the safeguard that gatekeepers may take ‘proportionate measures’ to ensure that an open system does not endanger the ‘integrity of the hardware or operating system’ in the DMA without consideration for user security, privacy or data, privileges blanket third-party access and sideloading over consumer protection.

Alternative apps store considering competition and innovation

Moreover, besides security concerns, it is unclear whether measures to create a fully open and interoperable app economy will lead to additional burdens on smaller actors or if total interoperability is even technically or practically feasible. The rapid development of the sector particularly illustrates this point. If the app economy continues to evolve as fast as it has, the DMA in its current form is not future proof. Choosing one of two business models over the other, neither of which may work with new disruptive elements, assumes that the app economy of the future will look the same as today, and may set limits on long-term innovation in the sector. For instance, app stores currently charge developers a fee to access their marketplaces, wherein they provide different services depending on a developer’s size and business model. With an increasingly homogenous app economy, will we start to see app store pools, higher entry fees and fewer specialised services? Furthermore, how will innovations within the IoT sector or new disruptive elements such as the ‘metaverse’ interact with this legislation, especially if the app store model may itself change? A more known consequence for competition between multiple app stores is that simply increasing the number of platforms will neither increase the market size nor will it help smaller developers. On the contrary, multiple app stores will only increase their overhead, deplete their resources further and decrease the consumer base they can reach instantly by being present in one store.

- **Recommendation:** We urge the European institutions to carefully consider the long-term impacts of Article 6 (c) and whether it is advisable to privilege one of two models that exist right now, setting a limit on both innovation and consumer protection. We advise instead for a more flexible obligation, based on a principle of secure access to various technologies rather than unrestricted access to applications and application stores.

III. Predictability in the app economy promotes a cycle of innovation - Article 6 (b) DMA

Article 6 (b) of the DMA recommends that users be allowed ‘to uninstall any pre-installed software applications’ on a gatekeeper’s core platform service if such an application is not essential to the functioning of the operating system or of the device. We agree that consumers should have the freedom to uninstall such applications. However, some involved in the legislative process believe that all pre-installed apps should be banned and that consumers should instead be faced with choice screens to set each default on their device. These views misunderstand a central feature of the app economy.

Complementary applications provide additional features that build upon or improve existing, popular apps. A few examples include:

- Photo apps: A complementary app built on the camera function may be able to add new filters to images saved in a user’s photo gallery or allow users to communicate with others via in-app functions to share photos. For example,

¹ See, for example, this [Academic Journal](#), an introduction to [Trojanized apps](#), a [NordVPN study](#), an [article](#) from Kaspersky and this [Tech Advisor review](#), among many others

drivers could inform others about dangerous road conditions on a route recommended by sharing photos through their map app.

- Health and wellbeing apps: Most health or wellbeing apps (meditation, workout, water management apps, etc.) use pre-installed software applications such as Apple's Health App or Google Fit. They are built on top of these apps' functionalities to create visualisations of the existing data (reading data) while contributing new analysis to it.
- File management apps: Consumers can use file management apps to access other services such as Dropbox or Google Drive data. Pre-installed file management applications already integrate with other apps and let users easily share their files between apps. One can imagine a scenario where a user gets a new phone and did not choose the Files app and can no longer find their files which would create confusion, fear of loss of data, and seriously worsen the user experience for all the apps that rely on these pre-installed applications.

Such apps form a 'virtuous circle' within the app economy, with the innovations of one developer inspiring new products by another.²

Default choice screens create considerable hurdles for small app developers

In addition to the fact that most consumers would likely find it more irksome than convenient to manually set all of their defaults before using a new phone,³ such a system would also disrupt the ability for small app developers or new market entrants to improve upon products that they know already exist. Moreover, small, still-unknown actors will not benefit from default choice screens as consumers will gravitate toward recognisable brands. While this presumed solution may, therefore, narrow the gap between gatekeepers and large app developers, it will only further disadvantage small app developers.

- **Recommendation:** We encourage the European institutions to ensure that Article 6 (b) remains limited to its original inception or to refocus it around a more flexible principle of user freedom that will not sacrifice either their convenience or the virtuous circle of the app economy.⁴

IV. Striking the right balance between the need for speed and creating a stable regulatory environment

While we understand the need for regulators to intervene quickly in rapidly evolving digital markets, we caution against recent proposals to shorten many of the original timelines proposed in the DMA. For example, calls to reduce the period for gatekeepers to comply with the Article 5 and 6 obligations from six to four months (Article 3 § 8) are concerning. These proposals fail to acknowledge that whatever impact the obligations have for gatekeepers, it will also take time for small business users to react and adapt to changes in the ecosystem. Due to their size and limited resources, SMEs cannot react as quickly, which policymakers need to consider.

We, therefore, urge the European institutions to ensure that all industry stakeholders can participate in regulatory dialogues with the Commission, particularly concerning the obligations included in Article 6. A proper regulatory dialogue and reasonable time periods during which an affected company can justify its business practices would ensure that the Commission gains a clear understanding of the impact an obligation may have on the entire ecosystem. Additionally, shortening the deadlines could increase the risk of non-compliance by gatekeepers and, therefore, increase the risk of litigation, in particular between larger actors in the app economy and gatekeepers. Such legal disputes could significantly

² For further reading, see, for example, this article from [Competition Policy International](#)

³ See, for example, this recent [academic study](#) on consumer understanding of online platforms, particularly pp. 48-49

⁴ As a secondary point, this Article also suggests that a gatekeeper may only restrict un-installation if the app is both essential for the device and if it 'cannot be technically offered on a standalone basis by third parties.' We would like to clarify that the ability to technically develop an app is not the same as developing a high-quality, secure and trustworthy app. Third-party technical capacity alone should not determine whether a gatekeeper should be able to restrict the uninstallation of certain apps, particularly if their improper execution may undermine the security or performance of the device.

damage the environment in which small business innovators evolve and cause uncertainty, to the detriment of innovation and consumers.

- Recommendation: We suggest the European institutions add explicit provisions to involve interested third parties in the consultation and regulatory dialogue processes. We also recommend upholding the timelines of the original DMA drafted by the European Commission to ensure a workable environment for all actors in the app economy.

V. Conclusion: The success of the DMA will depend on its ability to adapt to the market

As a voice for small app developers in Europe and around the world, the App Association appreciates the European institutions' dedication and commitment to improving the app economy. The DMA is an important step in making gatekeepers accountable for their business practices and in setting the first set of rules to formally govern relations in this rapidly evolving ecosystem.

However, we strongly caution against too rigid an approach that may unintentionally harm those actors who need the most support and rely on certain aspects of the current app ecosystem. Neither consumers nor small app developers should pay the price for political priorities that fail to account for their interests. Rather than limits on innovation through a narrow set of rigid rules, we ask for a flexible instrument that can stand the test of time while safeguarding the principles that matter most such as enhanced consumer protection, guaranteed security, and equal access to markets. No matter what form the DMA takes, our members will be impacted by it. We urge the European institutions not to lose sight of them and other small businesses like them.

We would welcome the opportunity to meet and discuss these and other issues further. We remain available should you have any questions or comments about the app economy and the small enterprises that power it.

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About ACT | The App Association

The App Association represents small software application developers and connected device companies around the world. Our members develop mobile apps and enterprise systems and drive innovation in the ecosystem the App Association represents— which we call the app economy. Today, the app economy is valued at approximately €830 billion globally and is responsible for millions of European jobs. Alongside the world's rapid embrace of mobile technology, our members create innovative hardware and software solutions that power the growth of the internet of things (IoT) across all sectors of the economy. ACT | The App Association is the leading industry resource on market strategy, regulated industries, privacy, and security.