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Feedback of

ACT | The App Association
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Rue Belliard 40,
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to the

European Commission

regarding the

Consultation on the Digital Fairness Act

I. Introduction

ACT | The App Association (hereafter 'App Association') welcomes the opportunity to submit comments to the European Commission's consultation on the Digital Fairness 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 €95.7 billion and is responsible for more than 1.4 million jobs in the European Union (EU).[1]

II. General Position on the Digital Fairness Act

The App Association welcomes the Commission's efforts to ensure a fair, transparent, and predictable online environment that protects consumers in all types of digital interactions while preventing fragmentation across Member States. We fully recognise the progress achieved through 50 years of EU consumer protection law, which has made EU consumers among the most protected in the world, both online and offline, as recently acknowledged by the Commission. [2]

We also acknowledge the significant legislative advances of the past decade. The adoption of the Digital Services Act (DSA), the Digital Markets Act (DMA), the General Data Protection Regulation (GDPR), the Unfair Commercial Practices Directive (UCPD), the Consumer Rights Directive (CRD), and the Audiovisual Media Services Directive (AVMSD) has resulted in a robust and comprehensive legal framework. These instruments, taken together, already provide the means to address the harmful practices identified in the Digital Fairness Act (DFA) initiative, including manipulative design, addictive features, unfair personalisation practices, and subscription traps.

However, the current challenge lies not in the absence of rules but in their overlapping obligations, fragmented enforcement, and lack of coordinated implementation. This complexity has also been recognised by the Commission, [3] as it increases compliance costs and legal uncertainty for traders, especially small and medium-sized enterprises (SMEs) and startups, which lack the administrative capacity to manage multiple, often duplicative, regulatory obligations.

In this regard, we welcome the European Commission's commitment to streamlining and simplifying the EU's digital regulatory framework through the upcoming Digital Omnibus and through Digital Fairness Act. [4]

[1] *See* https://actonline.org/wp-content/uploads/220912_ACT-App-EU-Report.pdf
[2] Digital Fitness Check (2024), European Commission.
[3] Consultation on the Digital package – digital omnibus (2025), European Commission.
[4] Consultation on the Digital Fairness Act (2025, European Commission.

These initiatives come at the right time, as the EU's digital acquis has grown significantly over the past decade, creating an increasingly complex landscape for both regulators and businesses. However, we question whether a new legislative instrument such as the DFA is truly necessary. The EU already has a comprehensive framework for consumer and digital market rules and adding another layer risks further complexity and legal uncertainty. If pursued, the DFA should serve as an instrument to align, clarify, and make existing rules work better together, rather than introducing new or overlapping obligations.

For these reasons, the priority should be to streamline and ensure the correct application of existing rules before adopting new legislation. The Digital Omnibus initiative and the Digital Fitness Check provide valuable opportunities to consolidate and harmonise the EU's digital rulebook. Simplification and coherence across existing laws will reduce fragmentation, strengthen enforcement consistency, and ensure that consumer protection remains proportionate, effective, and innovation friendly.

III. Unfair Personalisation Practices and Targeted Advertising

The App Association recognises that certain personalisation practices may be harmful, particularly where they exploit vulnerabilities or target minors. We support the Commission's objective to ensure that consumers can make autonomous and informed choices online, free from manipulation or unfair influence.

However, we strongly believe that the existing EU regulatory framework already provides extensive and effective protection against unfair personalisation and targeted advertising practices. The priority should therefore be improving implementation and enforcement**,** not adding new layers of regulation. In this context:

- The General Data Protection Regulation already establishes comprehensive rules on the lawful processing of personal data, including for advertising and profiling. Articles 5 and 6 set out strict principles of lawfulness, fairness, and transparency; Articles 12 and 13 require clear information to be provided to users; and Article 21 grants individuals the right to object to direct marketing at any time. Furthermore, the GDPR places special restrictions on the processing of sensitive personal data and profiling activities that could significantly affect individuals, ensuring that the most intrusive or discriminatory forms of personalisation are already prohibited. The ePrivacy Directive complements these protections by regulating cookies and unsolicited communications, reinforcing user control and consent.

- Article 26 of the Digital Services Act bans the use of sensitive personal data for targeted advertising, and Article 28 prohibits advertising targeting minors. These provisions are intended to provide transparency and address potentially unfair or manipulative advertising practices. The Commission has also issued guidelines under Article 28 to assist in the protection of minors online.

Taken together, the GDPR and the DSA already form a framework governing personalisation and targeted advertising**.** There is no evidence of a legal gap that would justify new restrictions under the Digital Fairness Act. On the contrary, duplicating existing obligations could generate legal uncertainty, compliance burdens, and fragmentation, especially for SMEs and startups.

From the perspective of small businesses**,** personalised advertising is a vital economic and competitive tool. It allows smaller developers and service providers to reach niche audiences and fairly compete in the market. ecosystem. Moreover, SMEs rely on efficient and responsible use of personalisation to remain visible and competitive. A ban or overly restrictive approach to targeted advertising would undermine their job, limiting SMEs' ability to grow, attract users, monetise their services, and, in the end, grow.

Therefore, instead of introducing new prohibitions, the EU should focus on ensuring proportionate, harmonised, and coordinated enforcement of the GDPR and DSA. This can be achieved by:

- Fostering close cooperation between the Commission, national Digital Services Coordinators (DSCs), and data protection authorities to ensure consistent application of rules across Member States;

- Providing practical compliance support for SMEs, helping them to understand and meet their obligations without unnecessary administrative burden; and
- Promoting education and awareness among consumers to strengthen their understanding of advertising transparency tools and data protection rights.

As initiators of the **Europe on Pause** initiative, together with other European startup associations, we want to emphasise the importance of ensuring that the needs and realities of Europe's innovation ecosystem are taken into account in the legislative process. Policymaking that fails to consider the practical implications for startups and SMEs risks slowing innovation, competitiveness, and growth in Europe's digital economy. We therefore hope that the concerns raised by the ecosystem will be reflected in the ongoing discussions and future policy developments.

By focusing on guidance, coordination, and enforcement, the EU can achieve effective protection against unfair personalisation practices while maintaining a fair, innovation-driven, and competitive Single Market. New rules or prohibitions would not enhance consumer protection, but they would only increase complexity, compliance costs, and fragmentation**.** A balanced, proportionate approach that builds on the GDPR and DSA will better protect consumers, support SMEs, and strengthen Europe's digital competitiveness.

IV. Interface design and Dark Patterns

The App Association supports the Commission's goal of ensuring that consumers can interact online in a transparent, fair, and informed manner, free from deceptive or manipulative design.

However, as already mentioned, we believe that the current EU legal framework already provides a robust and flexible basis for addressing harmful interface design practices, such as dark patterns, and manipulative and addictive design features, without the need for laying down new obligations.

We believe that the priority should instead be on streamlining, clarifying, and correctly enforcing existing obligations across relevant instruments. In this regard:

- The Digital Services Act already defines dark patterns under Recital 67, as *'practices that materially distort or impair, either on purpose or in effect, the ability of recipients of the service to make autonomous and informed choices or decisions'.* This definition covers the full range of manipulative and misleading interface designs that may affect users' decision-making. Article 25 of the Regulation provides a set of concrete obligations for online platforms to design their interfaces in a way that does not distort or impair users' ability to make free and informed decisions. Moreover, it also empowers the Commission to issue guidelines clarifying how these obligations apply in specific contexts, such as the prominence of choices, repetitive consent requests, or termination of services. Rather than adding new legislation, the EU should focus on the effective implementation of Article 25 DSA. Detailed Commission guidelines, read in conjunction with Recital 67, can ensure harmonised interpretation and enforcement across Member States. Such guidance would provide legal certainty for businesses, especially SMEs, while giving regulators the tools to identify and address manipulative design practices consistently. Moreover, enhanced coordination among national Digital Services Coordinators, including shared enforcement priorities and exchange of best practices, will be critical to achieving consistent oversight and avoiding fragmented enforcement.
- In addition to the DSA, the Unfair Commercial Practices Directive already prohibits deceptive and aggressive business practices, including manipulative and misleading design tactics, under Articles 5 and 6 and Annex I.
- Moreover, the General Data Protection Regulation provides safeguards that directly prevent deceptive interface design related to data collection and consent mechanisms. Article 7 requires that consent be clearly given, while Article 25 enshrines the principle of privacy by design.

Together, these provisions ensure that users' data-related choices are transparent and genuinely voluntary, and that interfaces are not structured to coerce consent or mislead individuals about the use of their personal data.

From the perspective of SMEs, introducing new or overlapping obligations on interface design would not enhance consumer protection but would increase legal uncertainty and compliance costs, potentially stifling innovation. Moreover, designing user interfaces for digital services is a complex and creative process that necessarily varies across businesses, products, services, and consumer experiences. Overly prescriptive rules on design or functionality, such as rigid specifications for cancellation buttons or interface layouts, would risk undermining innovation and user experience, forcing businesses to adopt one-size-fits-all solutions that do not reflect the diversity of services available in the digital market. Developers are best placed to determine how to integrate different functionalities in their design, for instance, including clear and user-friendly cancellation options into their products while complying with existing consumer protection rules.

In this regard, over-prescriptive regulations risk disproportionately affecting SMEs; for these reasons, we caution the European Commission on introducing new rules on interface design under the Digital Fairness Act. Instead, we recommend:

- Promote the consistent enforcement and coordination of existing rules under the DSA, UCPD, and GDPR;
- Encourage the European Commission to issue guidance under Article 25 DSA to ensure clarity;
- Support cooperation and best-practice sharing between the Commission, DSCs, and national consumer and data authorities; and
- Focus on streamlining the existing legal framework to avoid duplication and ensure coherence across instruments.

By concentrating efforts on harmonised implementation, guidance, and coordination, the EU can effectively address dark patterns and manipulative design practices while maintaining a proportionate, innovation-friendly environment for SMEs and startups. Better simplification and coordination remain the best path to a fair, competitive, and trustworthy digital marketplace.

V. Digital Contracts and Subscriptions

The App Association recognises the importance of ensuring a fair, transparent, and user-friendly contractual relationship also in the online environment.

Unfair business conduct related to subscriptions are already being regulated by EU Consumer law, specifically the Unfair Commercial Practices Directive (UCPD) which explicitly classifies barriers to contract termination as an aggressive commercial practice, making 'subscription traps' unlawful. [5] Moreover, under the Consumer Rights Directive (CRD), traders are required to provide consumers with a prominent and easily accessible cancellation function for all online contracts and to acknowledge receipt of withdrawal requests. [6]

To complete these Directives, the above-mentioned Article 25 of the DSA fosters the protection against subscription traps by prohibiting the design of an interface that makes the contract termination more difficult than the subscription.

For SMEs and startups, trust and transparency are essential competitive factors. Their success depends on maintaining a direct and positive relationship with their users and clients. If a service makes cancellation difficult or uses misleading practices, small providers risk losing customers and damaging their reputation, a cost that represents a big loss for their business. For this reason, most small businesses have a strong market incentive to design transparent and fair contractual processes, including straightforward cancellation mechanisms. Maintaining flexibility in design choices, within the boundaries of existing legislation such as the UCPD, CRD, and DSA, is therefore critical to ensure that compliance enhances rather than stifles innovation and consumer trust. Further, free trials are already regulated under the CRD, which requires businesses to provide transparent pre-contractual information, including the duration of the trial, the price after conversion, and the conditions for termination. [7]

It is important to recognise that startups and SMEs may need protection measures to prevent fraud and abuse. Consumers could exploit unconditional refund rights or overly generous withdrawal rules to access valuable digital services without ultimately paying for them. This would create a distorted market where smaller, innovative providers are forced out, weakening Europe's competitiveness in critical digital sectors. Especially for highly innovative products that incorporate advanced technologies, such as generative artificial intelligence and sophisticated audio-visual processing, the costs of providing services are substantial and often unrecoverable. Imposing a physical-goods-like return policy on such services would place a disproportionate burden on SMEs and lead to significant financial uncertainty.

More restrictive or prescriptive rules on free trials could unintentionally harm consumers and small businesses alike. For SMEs and startups, free trials are a legitimate and valuable way to reach new customers, demonstrate product value, and build trust. Introducing additional confirmation steps or prohibiting upfront payment information would risk creating confusion and reducing the availability of free trial offers, limiting consumer choice and small businesses' chances to reach new potential customers.

[5] Article 9(d), Unfair Commercial Practices Directive.
[6] Article 11a, Consumer Rights Directive.
[7] Article 8, Consumer Rights Directive.

From the perspective of a small business, the introduction of additional or overlapping rules on digital contracts would increase compliance costs, administrative complexity, and legal uncertainty, without offering new benefits for consumer protection. Instead of prohibiting or restricting these practices further, the Commission should focus on the effective enforcement of the EU Consumer law (i.e. CRD, UCPD, and DSA) by ensuring that national competent authorities work together with the Commission in tackling and identifying misleading business practices and fostering a common and consistent application of the law across the Single Market.

VI. Conclusion

The App Association welcomes the European Commission's continued commitment to building a safe, fair, and trusted online and offline environment for consumers while supporting a competitive and innovative digital economy. We share the Commission's objective to strengthen consumer protection and fairness in digital markets; however, this goal is best achieved through simplification, coherence, and effective implementation of existing rules rather than by introducing new, potentially overlapping obligations. The Digital Fairness Act should therefore focus on streamlining and aligning the current regulatory landscape, to ensure that instruments such as the Digital Services Act, General Data Protection Regulation, Unfair Commercial Practices Directive, Consumer Rights Directive, and Audiovisual Media Services Directive work seamlessly together. The focus should be on improving coordination, consistency, and enforcement across Member States, particularly through better collaboration among the Commission, DSCs, and national consumer and data protection authorities.

Before advancing any new legislative initiatives, the Commission should prioritise a comprehensive assessment of the existing acquis to identify overlaps, inconsistencies, and opportunities for simplification. The upcoming Digital Fitness Check and Digital Omnibus initiative are essential to this objective. By identifying where instruments interact or duplicate obligations, these reviews can ensure that Europe's digital rulebook remains fit for purpose and aligned with the needs of businesses and consumers alike.

From an SME perspective, the most pressing challenges in the digital sphere come from fragmented enforcement and regulatory complexity, not from a lack of legal protection for consumers. Smaller developers and startups, which represent the backbone of Europe's innovation ecosystem, face disproportionate compliance burdens when rules are unclear or duplicative. A more predictable and proportionate regulatory environment, supported by guidance, cooperation, and consistent enforcement, will foster consumer trust while enabling SMEs to compete and innovate.

We therefore call on the Commission to make the Digital Fairness Act an instrument of simplification and coherence. By focusing on better enforcement, guidance, and coordinated implementation of existing laws, the EU can achieve high levels of consumer protection and transparency while strengthening the competitiveness of its economy.

Sincerely,

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