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Feedback of

ACT | The App Association
(Transparency Reg. # 72029513877-54)
Rue Belliard 40,
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to the

European Commission

regarding its

Consultation on the
Single Market Strategy for 2025

Introduction and statement of interest

ACT | The App Association (hereafter ‘App Association’) welcomes the opportunity to submit comments to the European Commission consultation on its Single Market Strategy for 2025.

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 advocate for policies that foster innovation, reduce regulatory barriers, and support small and medium-sized enterprises (SMEs) as drivers of economic growth. Our response highlights key areas where targeted action can ensure a thriving and inclusive single market.

1. Promoting SME innovation in the Single Market

Small and medium-sized enterprises (SMEs) are the most innovative actors in today’s markets, both established and emerging. They are closely connected to their communities, allowing them to quickly gather feedback, identify unmet needs, and adapt rapidly to changing markets. Their agility and flexibility make them the drivers of change and progress, which is why promoting innovation is at the core of our advocacy efforts. For us and our members, innovation is key to unlocking new opportunities and driving economic growth. Therefore, we advocate for the EU to focus more on supporting SMEs to foster their ingenuity and job creation. Additionally, we hope to see more support for the growth and scale-up of SMEs, so they can thrive in a competitive landscape while delivering new ideas and solutions.

We recognise the need for certain regulatory guidelines and protections, and we have historically advocated for clear and strong frameworks to support privacy, cybersecurity, improved data stewardship, and enhanced competition and consumer protection across markets. However, regulatory burdens tend to disproportionately affect SMEs, as compliance often requires significant resources that smaller businesses lack. One of our

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

main overarching messages to the European Commission is that any regulation must be flexible, technology-neutral, and outcome-based, especially in fast-moving digital markets. Such an approach will ensure that regulations are adaptable and able to withstand the test of time, rather than becoming rigid and outdated as markets evolve. Additionally, we consistently advocate for regulatory frameworks that consider the unique needs of SMEs (including passed-on obligations and costs), offering lessened burdens, exceptions, or additional support to help them navigate new regulatory environments, where appropriate. Notably, a surge in EU regulations in recent years addressing nascent markets including digital platforms and artificial intelligence (AI) has created additional challenges for SMEs, which are often exacerbated by overlaps and even conflicts with other regulations. Moving forward, we call for the EU to focus more on effective implementation, with clearer guidelines and harmonisation to reduce uncertainties in regulatory overlaps. Further, we generally support the creation of regulatory sandboxes allowing small businesses to experiment and innovate without being overburdened by compliance requirements. We hope to see more SME-specific support in navigating the complex landscape of regulatory obligations, ensuring small businesses have the tools they need to comply and succeed.

We ask for:

- Simplified rules and harmonisation: Fragmented or overlapping regulatory requirements across Member States create barriers to growth. Streamlining these rules and ensuring their consistent application across the EU would significantly reduce administrative burdens and unlock new opportunities for SMEs.
- Addressing recent digital regulatory overlaps: A wave of digital laws has been introduced in the EU in recent years, creating potential confusion and overlaps for SMEs. We ask the European Commission to prioritise clear and predictable implementation, enforcement, and compliance support to ensure SMEs can navigate these changes effectively.

2. Strengthening investment and capital markets

Europe's fragmented capital markets limit SMEs' ability to access financing, scale operations, and compete globally. SMEs often lack the resources to navigate complex financing options or the visibility to attract investment from across Europe. This fragmentation creates an uneven playing field, where access to capital is determined more by geography than business merit. We ask the European Commission to focus on creating a cohesive single

capital market to empower SMEs to achieve their full potential by unlocking resources, improving investor confidence, and enabling cross-border financial flows. We recommend:

- Building a true European single capital market: The European Commission should prioritise breaking down national silos and fostering cross-border financial flows to create more opportunities for SMEs to access diverse funding sources.
- Incenting venture capital and equity financing: Europe's SMEs need better access to venture capital and equity funding, especially in high-growth sectors such as technology and digital services.
- Creating SME financing programs: Programs that connect SMEs with investors and simplify access to financial resources support innovation and growth.

3. Optimising the EU's intellectual property (IP) framework

Strong intellectual property protections are essential for SMEs, enabling them to safeguard their innovations, attract investment, and maintain a competitive edge. However, the complexity and cost of navigating IP frameworks often pose significant challenges for smaller businesses. We recommend:

- Streamline IP registration processes: Simplified and cost-effective IP registration systems are crucial to enabling SMEs to protect their creations without undue financial or administrative strain.
- Enhance IP enforcement mechanisms: SMEs are particularly vulnerable to IP violations, including piracy and patent trolling, which can undermine their ability to compete. We ask the European Commission to strengthen IP enforcement tools and provide clear legal recourse to help protect smaller innovators.
- Reinforce intellectual property (IP) protections for small developers that rely on curated online marketplaces (COMs): SMEs widely rely on COMs to efficiently and appropriately protect IP at the platform level, but these capabilities would be hindered or prohibited due to requirements in the Digital Markets Act. It is vital that COMs are able to enforce IP rights, as these protections not only support small app developers in safeguarding their innovations but also protect consumers from malicious copycat apps.

- Ensure SMEs can access standard-essential patents (SEPs) under fair and non-discriminatory terms: The EU SEP Regulation is crucial, as it addresses many challenges faced by SMEs, enhances transparency, and uncovers hidden market issues affecting them. Its adoption into law is essential.

The proposed EU standard-essential patent (SEP) Regulation is a crucial step towards establishing a transparent and fair SEP licensing framework within the EU. The Regulation aims to address concerns raised by the European Commission in 2017 regarding the SEP licensing landscape and its impact on innovation and competition. The App Association believes that clear guidance and measures to mitigate anticompetitive SEP licensing practices are essential to foster innovation and support SMEs.

To support innovation and competition, EU policy must reflect key SEP licensing consensus principles, including that SEP licences are made available to all willing stakeholders; that injunctions are awarded only in exceptional circumstances, such as when monetary remedies are not available; that the tying of non-essential patents in with SEP licensing requirements is prohibited; and that fair, reasonable, and non-discriminatory (FRAND) royalties are based on the value of the patented technology itself. Where standards-development organisation (SDO) patent policies are insufficient to guide a clear and predictable understanding of FRAND, the European Commission (EC) should provide guidance to its stakeholders. We recognise the significance of SMEs in the EU economy and their challenges in SEP negotiations due to limited resources and support the proposed mechanisms under the EU SEP Regulation to remove their significant barriers to competition. We also support a non-binding FRAND conciliation process, aggregate royalty rate determination, and essentiality assessment process performed under the auspices of the EU Intellectual Property Office (EUIPO) and independent expert conciliators and evaluators. EUIPO competence centre procedures proposed in the EU SEP Regulation will allow SEP licensing parties to amicably conclude fair SEP licences and avoid expensive litigation.

The App Association strongly believes that the implementation of a robust EU SEP Regulation is necessary for a balanced SEP framework and provides necessary modifications that align with the European Commission's goals for transparency and effectiveness. We emphasise the inclusion of necessary definitions in the Regulation, such as for essentiality checks and SMEs. Even where the European Commission provides important definitions elsewhere, there should be explicit reference to those definitions in the Regulation. We also stress the importance of EUIPO conducting consistent essentiality checks for SEPs registered with the competence centre, without allowing their determination of essentiality for one patent to have bearing on the essentiality of another patent in a respective patent family that may have been issued in a different jurisdiction. When one patent in a patent family is declared essential by the competence centre, the SEP holder should bear the burden to prove the essentiality for

all other patents that they own in that patent family.

In addition, we believe that the EU SEP Regulation offers loopholes for SEP holders to continue exerting undue pressure on implementing standards users, by allowing for preliminary injunctions based on the vague and undefined element of ‘financial nature’ and providing exceptions for certain use cases of a standard from undergoing a mandatory aggregate royalty rate determination and FRAND conciliation process. Analysing these exceptions based on use cases, instead of the standard alone, does not address that significant difficulties or inefficiencies affecting the functioning of the internal market are caused by SEP licensing abuses, which impacts many market sectors. Standards that have a negative effect on EU competition and should always be subject to competence centre procedures include wireless communications, cellular, Wi-Fi, and audio/video codec standards.

The EU SEP Regulation, with the recommended modifications, will indisputably establish a transparent, predictable, and efficient SEP licensing framework that fosters innovation, supports SMEs, and creates a competitive environment that benefits both SEP holders and implementers, ultimately serving the interests of the EU economy and consumers. Minor adjustments in SEP policy are slow to provide a balance in the SEP ecosystem. The European Commission should take into consideration the implementation of the proposed changes to the EU SEP Regulation to build an equitable SEP licensing ecosystem that will promote innovation and will be open to new players.

The current SEP licensing landscape is distorted and in urgent need of reform to ensure alignment with the principles of CWA 95000 Core Principles and Approaches for Licensing of Standard Essential Patents:

- The FRAND commitment means all can license: A holder of a FRAND-committed SEP must license that SEP to all companies, organisations, and individuals who use or wish to use the standard on FRAND terms.
- Prohibitive orders on FRAND-committed SEPs should only be allowed in rare circumstances: Prohibitive orders (including federal district court injunctions and U.S. International Trade Commission exclusion orders) should not be sought by SEP holders or allowed for FRAND-committed SEPs except in rare circumstances where monetary remedies are not available.
- FRAND royalties: A reasonable rate for a valid, infringed, and enforceable FRAND committed SEP should be based on the value of the actual patented invention itself to the smallest saleable patent practicing unit, which is separate from purported value due to that patent's inclusion in the standard, hypothetical downstream uses, or other

factors unrelated to invention's value.

- FRAND-committed SEPs should respect patent territoriality: Patents are creatures of national law, and courts should respect the jurisdiction of foreign patent laws to avoid overreach with respect to SEP remedies. Absent agreement by both parties, no court should impose global licensing terms on pain of a national injunction.
- The FRAND commitment prohibits harmful tying practices: While some licensees may wish to get broader licenses, a SEP holder that has made a FRAND commitment cannot require licensees to take or grant licenses to other patents not essential to the standard, invalid, unenforceable, and/or not infringed.

5. Harmonising rules for emerging technologies – such as AI

Emerging technologies, such as artificial intelligence (AI), are reshaping industries and creating new opportunities. However, inconsistent regulations and overlapping legislative initiatives leave SMEs struggling to navigate a complex landscape. To address these challenges, we propose:

- Ensuring proper implementation of the AI Act: The successful implementation of the AI Act requires objective application, clarity, streamlined processes, and coordination with existing regulations. The European Commission should incorporate industry feedback and address overlaps with other legal frameworks to avoid creating unnecessary burdens for SMEs.
- Addressing the AI Liability Act proposal: Ultimately, a technology risk-based and neutral approach to quality assurance is advisable, where appropriate incentives are provided so that those in the value chain with the ability to minimise risks based on intended uses, their actual knowledge, and their ability to mitigate risks do so. In light of recent regulations such as the AI Act and the Product Liability Act, introducing the AI Liability Act now could potentially create unnecessary duplication and regulatory overlaps. We recommend that the European Institutions' focus should be on ensuring the effective implementation of existing frameworks before considering additional legislation.
- Adopting effective regulatory sandboxes for SMEs: Regulatory sandboxes should be designed to genuinely support SMEs in testing innovative AI solutions. We ask the European Commission to ensure that these sandboxes are accessible, practical, and aligned with the needs of smaller businesses.

- Clarifying copyright protections for AI training data: The App Association supports the AI Act's acknowledgment of copyright issues related to data used for AI training. SMEs require strong protections for their creativity and innovation while ensuring a balance that does not hinder technological advancement. We ask the European Commission to provide clear guidelines to help SMEs navigate compliance effectively.

7. Preserving market access and competitiveness for SMEs

Curated online marketplaces (COMs) facilitate SME 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.

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. 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.

In the context of the DMA and the Digital Services Act (DSA), we believe it is important to remind the European Commission 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.

We 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.

7. Enhancing digital infrastructure and connectivity

The App Association has long advocated for an open, competitive digital ecosystem where innovation can thrive, particularly for SMEs. A key component of this ecosystem is a robust and accessible telecommunications infrastructure that allows app developers to deliver services seamlessly to consumers throughout Europe. However, recent discussions² around the Fair Share proposal pose significant risks to this dynamic.

Proponents of the Fair Share initiative suggest that large content and application providers (CAPs) should be required to pay additional fees to support telecom operators' network infrastructure. While we acknowledge the need for continued investment in Europe's digital infrastructure, we oppose any approach that undermines the EU's existing Net Neutrality regulatory framework and mandates cost sharing with edge providers. Such fees would raise costs for all parts of the ecosystem, and those costs would weigh disproportionately on small app companies. This would not only distort competition but also restrict access for many app developers who rely on open and fair networks to innovate and grow.³

The expansion of high-speed internet across Europe remains a critical priority. As we look toward the future of connectivity, particularly with the rollout of 5G and future wireless standards, we believe that internet access must be equitable and available to all — especially in underserved and rural areas. Many app developers operate in diverse regions across Europe, and ensuring widespread connectivity will allow them to deliver their services to consumers everywhere. Bridging this digital divide is crucial not just for the success of individual businesses, but for the digital economy as a whole.

The app economy is built on the ingenuity and creativity of developers from all corners of the European Union. These developers, often SMEs, depend on a reliable, affordable, and open digital infrastructure to provide services that enhance the everyday lives of millions of EU residents. Whether it's healthcare, education, or commerce, apps are powering new solutions in every industry. For this ecosystem to thrive, however, policymakers must prioritise fair access to the internet and resist efforts that would disproportionately benefit

² ACT | The App Association response to European Commission consultation 'How to Master Europe's Infrastructure needs?'

19 May 2023. The future of electronic communications sector and its infrastructure needs. <https://digital-strategy.ec.europa.eu/en/consultations/future-electronic-communications-sector-and-its-infrastructure>

³ ACT | The App Association response to European Commission consultation 'How to Master Europe's Infrastructure needs?'

larger players at the expense of smaller innovators.

As we look ahead, the future of Europe's digital economy relies on a strong, accessible, and open telecommunications infrastructure. It is essential that telecom operators continue to invest in their networks, but this should not come at the cost of SMEs and app developers who rely on fair and equitable access to these networks. The Fair Share proposal, if reintroduced, risks creating unnecessary barriers for innovation, hindering the growth of the EU app economy, and ultimately, limiting consumer choice.

Conclusion

The App Association supports the European Commission's efforts to modernise and strengthen the European single market. By addressing the unique challenges faced by SMEs and implementing the recommendations outlined above, the Single Market Strategy for 2025 can unlock innovation, boost competitiveness, and create a more inclusive and dynamic economy. We look forward to continued engagement with the European Commission to achieve these shared goals.

Sincerely,



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