

## DMA COMMENTS (short)

The digital economy is a driving force for economic growth and empowerment across the EU. Applying blanket regulatory obligations and prohibitions without taking into account the differences between products, services and business models creates significant risks, impacting the choices and opportunities for European businesses and consumers.

Apple offers consumers products that tightly integrate hardware and software to provide a uniquely secure and seamless user experience, safeguarding user safety and privacy. It does not depend on the collection and monetization of personal data; its business is to sell products and related services, not its customers' personal information. With the App Store, Apple's focus is on maintaining a safe and trusted marketplace for consumers, while creating business opportunity for developers driving innovation.

**Overall** the DMA should provide a mechanism for individual platforms to explain and objectively justify business models and practices. It should ensure that regulators take into account holistic and consistent policy considerations. Given the significant new market-intervention authority that the DMA creates, it needs stronger procedural safeguards and more formal pathways for regulatory dialogue.

**Objective Justification.** Given the significant variation among platforms and market dynamics, the DMA should require regulators to conduct a case-by-case analysis, as well as allow covered entities to provide an objective justification for maintaining a listed practice. The regulator should have to consider both the evidence of actual competitive harm (or lack thereof) and evidence of countervailing policy benefits.

**Holistic, evidence-based policy analysis.** The DMA must balance a complete set of policy considerations to guide the regulator's analysis of a given practice adopted by a platform, including:

- **Security, privacy and choice.** The DMA should reflect the importance that European policymakers and consumers place on user security and privacy. Apple offers European consumers a trusted marketplace that reviews apps prior to distribution to ensure that they provide vital security and privacy protections, and recoups its investment by charging a transparent commission on certain on-platform sales, rather than through tracking, accumulating and monetizing user data. Article 6.1(c) would undermine Apple's technical ability to review apps for privacy and security by requiring Apple to allow apps to be downloaded via side-loading or alternate app stores. Moreover, Article 5(c) would require Apple to allow business users to promote offers to users off-platform,<sup>1</sup> thus undermining its ability to be compensated for its platform investment via commission. Consumers currently have a choice of app distribution platforms — including those that lack rigorous review and curation processes — that allow access to apps via side-loading or a third party app store. If, however, Apple is required to allow circumvention of the platform and its protections, it would not be able to maintain the safe, central marketplace it currently offers to consumers. Requiring Apple to adopt these features would simply reduce consumer choice, privacy and security.
- **Contestability of app markets for small business/new entrants.** The DMA should more clearly reflect the importance of ensuring equal opportunity for all developers, and avoid harming competition among them. With the recently launched App Store Small Business Program, SME-led innovation will continue booming in the Apple ecosystem. Regulations that undermine the platform rules that build user trust will tend to benefit large and widely popular apps that already have their own brand recognition — at the expense of smaller, up-and-coming developers who rely on the platform's brand to attract customers.

**Institutional and procedural safeguards.** The DMA would significantly expand the powers of the European Commission to intervene in digital markets, and to increase the scope of that intervention over time. To ensure balanced regulatory outcomes, the DMA should clearly base this authority on principles of proportionality, accountability, rights of defence, due process, checks and balances, and judicial review.

**Enhanced Regulatory Dialogue.** The DMA recognizes the importance of regulatory dialogue in Recitals 33, 58 and 60, yet the regulatory framework itself only allows for "dialogue" in the context of enforcement, under the threat of important sanctions. The DMA should establish an architecture for regulatory dialogue outside of an adversarial context, to ensure that there is an opportunity to develop an complete and robust factual understanding of the digital markets in which covered and non-covered entities are operating.

---

<sup>1</sup> *"what is illegal offline should be illegal online, and what is legal offline should be legal online"* said EU Commissioners. The practice prohibited per se in article 5(c) would be legal in the offline world. The App Store is a digital retailer of software applications. In the offline world, it would be legal for a brick and mortar retail store to not allow its business supplier to encourage customers in the retail store to purchase its products elsewhere, outside of the store.