

# Consultation on the template for compliance report under the DMA

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The Commission is consulting on the template for the compliance report that designated gatekeepers will have to submit annually under Article 11 of the Digital Markets Act ('DMA').

Gatekeepers will be required to provide the Commission with their first compliance report within six months of their designation as gatekeepers. They will then be required to update these reports annually.

With the published consultation, the Commission is seeking feedback on the draft template that specifies the minimum information that the Commission expects gatekeepers to provide in their compliance report.

The gatekeeper's compliance reports will play an important role in enabling the Commission to verify that the gatekeepers comply with the obligations and prohibitions set out in Article 5, 6 and 7 of the DMA and that the measures implemented by the gatekeepers are effective in achieving the objective of the DMA. Where necessary, the Commission can make use of its investigatory and enforcement powers to ensure effective compliance with the DMA.

### **Target Group**

All citizens, companies and organisations are welcome to contribute to this consultation. Contributions are sought particularly from undertakings, which are potential gatekeepers under the Digital Markets Act, as well as business users and end users of the potential gatekeepers and associations representing these users.

### **Objective of the consultation**

The objective of the consultation is to gather comments on the draft template for the compliance report to be submitted by gatekeepers under Article 11 of the DMA.

In particular, the Commission would welcome feedback on the following two items:

- Precise indicators that the Commission could use to assess whether the measures implemented by the gatekeepers to ensure compliance are effective in achieving the objectives of the DMA and of the relevant obligations as required by Article 8 of the DMA; and
- content and presentation of the non-confidential summary of the compliance report that the gatekeepers must provide pursuant to Article 11(2) of the DMA in order to ensure that the summary enables third parties to provide meaningful input to the Commission on the gatekeeper's compliance with its obligations under the DMA.

The stakeholders' feedback will enable the Commission to prepare a finalised version of the template. The Commission may regularly update this template to request further information, which it expects gatekeepers to provide.

### How to provide feedback

Please submit your contribution by 5 July 2023 (midnight). Your submissions should not include any confidential information. Your non-confidential submissions will be published on the Commission's website for the Digital Markets Act.

Your answers can be in any EU language.

Template for the compliance report

[DMA template - Compliance report consultation.pdf](#)

## Your details

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### \* Publication of your details

- I agree to the publication of my details along with my contribution
- My contribution should be published anonymously.

Privacy statement

[Consultation on DMA compliance report template privacy notice.pdf](#)

### \* Your first name

### \* Your family name

### \* Your organisation

### \* Your email address

## Your contribution

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Type in your contribution (3000 characters maximum)

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The App Association is a policy trade association for the small business technology developer community. Our members are small to medium-sized enterprises within the app ecosystem that engage with verticals in industries across the European Union and around the globe. While the App Association's members are unlikely to ever be considered gatekeepers, their success is closely linked to an SME-friendly implementation of the DMA. The purpose of the attached document is to help define a set of precise indicators to assess the effectiveness in achieving the objectives of the DMA such that SMEs can continue to thrive and innovate in the app ecosystem. We acknowledge that the data to arrive at these indicators may come from a mixture of data available to gatekeepers and the European institutions. For this reason, we believe that considering all relevant indicators is valuable while designing the template for the compliance report for designated gatekeepers. We thank the European Commission in advance for its consideration of our submission, and we look forward to engaging further in the future.

Please upload your contribution.

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**ACT\_The\_App\_Association\_comments\_on\_the\_DMA\_Compliance\_Report\_Template.pdf**

## **Contact**

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3 July 2023

Comments of

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to

The European Commission's Directorate-General for Competition

on its

Consultation on the template for the compliance report that designated gatekeepers will have to submit annually under Article 11 of the Digital Markets Act.

## Introduction and Statement of Interest

ACT | The App Association (hereafter 'App Association') hereby submits comments to the Directorate-General for Competition (DG-COMP) in response to its consultation on the template for the compliance report that designated gatekeepers will have to submit annually under Article 11 of the Digital Markets Act (DMA).

The App Association is a policy trade association for the small business technology developer community. Our members are small to medium-sized enterprises (SMEs) within the app ecosystem that engage with verticals in industries across the European Union (EU) and around the globe. 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.

While the App Association's members are unlikely to ever be considered gatekeepers, their success is closely linked to an SME-friendly implementation of the DMA. The purpose of this document is to help define a set of precise indicators to assess the effectiveness in achieving the objectives of the DMA such that SMEs can continue to thrive and innovate in the app ecosystem. We acknowledge that the data to arrive at these indicators may come from a mixture of data available to gatekeepers and the European institutions. For this reason, we believe that considering all relevant indicators is valuable while designing the template for the compliance report for designated gatekeepers.

## Measuring the Effect on App Developers and Innovation

### **The costs and fees to participate in the ecosystem should remain low.**

During the DMA Workshop on app stores related provisions, alternative pricing proposals were suggested that would make the annual cost to participate in the app stores several times higher for small developers with multiple apps. Such measures would be extremely harmful to innovation and emergence of newcomers in the app ecosystem. We believe that it is important to keep the barriers to entry low for offering apps in the app stores. We therefore advocate for measuring the cost for developers, including those who offer multiple apps, to participate in the app ecosystem.

### **The number of SMEs offering apps, as well app revenues from SMEs, should continue to grow.**

SMEs depend on a variety of benefits offered by the app stores, including global distribution, increased consumer trust through curation, protection from piracy, and others. While these individual benefits may be difficult to measure, a decline in the number of SMEs offering apps, or in the revenues generated by SMEs through apps, would be a clear sign that is something is wrong and would require an adjustment in the way the DMA is implemented over time.

### **Measuring the willingness of consumers to install apps from unknown vendors.**

A shift in app downloads and revenues towards larger app vendors would indicate that consumers have lost confidence that apps from unknown vendors won't be harmful. Several of the current curation processes go to great lengths to keep out bad actors. Platform payment systems also give consumers safety assurances by making it easy to get refunds or subscriptions. It is important that sideloading and alternate payment systems are implemented in such a way that warns and protects consumers from these bad actors. Otherwise, consumers will start only installing apps from well-known and trusted brands, which would be detrimental for SMEs and startups.

### **Measuring platform choice, not merely market share.**

Platforms operate in two-sided markets, where designated gatekeepers compete for both end users and developers. When measuring the effectiveness of the DMA, it is important to measure the indicators of the *choices* rather than merely market share. For example, app makers decide which platforms to develop for based on a multitude of factors, including the availability of innovative operating systems and hardware features, the potential target market, the availability of skilled talent, and the quality of development tools. It is the availability of choices for app developers that is crucial, rather than the ultimate conclusion they arrive at when deciding which platforms to develop for.

### **Measuring the prevalence of software piracy and IP theft.**

Unfortunately, sideloading will open significant opportunities to bad actors to distribute pirated or hacked versions of apps. Precise measuring of the levels IP theft would indicate whether more protections and warnings for consumers are required. In addition, a number of vendor-specific app stores already have been extremely lax in their curation, resulting in an infestation of pirated content and malware. It is crucial that all

app stores put strong measures in place to combat piracy and IP theft. Piracy and malware not only reduce consumer confidence, but they also cause a direct loss of revenues and sometimes even increased costs for app developers for the support and hosting of pirated apps.

## Measuring the Effect on Consumers

### **Measuring the prevalence of dark patters, malware, and privacy violations.**

A successful implementation would minimize any negative side effects of the DMA gatekeeper requirements for consumers. We urge the Commission to closely track the prevalence of apps that include dark patterns, malware, and privacy violations. Much of this input for these indicators may already be available through monitoring of GDPR violations and complaints, as well as cyber security reports.

### **Measuring consumer confidence.**

In addition to measuring direct harm to consumers, it would also be valuable to measure the confidence that consumers have to install unknown apps onto their devices. This may be reflected in actual downloads and app purchases, as well as through consumer surveys. General consumer confidence in apps is especially important for SMEs, who have enjoyed an increase in trust from the curation provided by the app stores.

### **Measuring consumer choice.**

It is important to measure the level of competition and the choices available to consumers. The introduction of new hardware and operating capabilities, along with the competitive responses to new innovations, are more indicative of competition than mere market share, which in itself may only indicate which choices offer the best product-market fit.

## Measuring the Effectiveness of the Implementation and Enforcement

### **Caution against a complaint-driven focus.**

If complaints are handled with a focus that is too narrow, their remedies may end up only solving a single company's problems while causing more harm to the rest of the ecosystem. It is therefore important to involve multiple stakeholders in the evaluation of complaints and potential remedies. The loudest voices often don't reflect the needs of others. Opposing interests within the ecosystem are common.

### **Measuring the effectiveness of the process, not merely the end result.**

While outcomes are important, it is perhaps even more valuable to measure how effective the processes in place function, including the steps such as correct data gathering, consultation of all stakeholders, and transparent decision making.

### **Measuring stakeholder involvement.**

To ensure that the Digital Markets Act benefits all stakeholders, it is important to measure indicators such as the participation in consultations, meetings, and workshops.

## Conclusion

Management guru Peter Drucker famously said that 'what gets measured, gets managed'. The reverse of this is also true: when something does not get measured, it will likely be overlooked. We hope that the Commission will develop a set of precise indicators to assess how the DMA implementation benefits consumers and SMEs over time. The App Association remains at your disposal to provide further input and would welcome the opportunity to work with the Commission to develop scalable solutions that achieve the objectives of the DMA and preserve the opportunities for SMEs to innovate. We thank the European Commission in advance for its consideration of our submission, and we look forward to engaging further in the future.

Sincerely,

