



21 August 2024

The Australian Competition & Consumer Commission (ACCC)  
GPO Box 3131  
Canberra ACT 2601  
Australia

For the Digital Platform Services Inquiry

On behalf of Chamber of Progress – a tech industry association supporting public policies to build a more inclusive society in which all people benefit from technological advance – I write in support of the 10th and final report of the ACCC’s Digital Platform Services Inquiry, and in particular with respect to Topic 1 (“International regulatory developments”).

As the Final Report Issues Paper sets out, the European Union (EU) has enacted the Digital Markets Act (DMA), which came into force in May 2023, and which has required platforms comply with obligations enumerated in Articles 5, 6, and 7 of the DMA, since March of this year. These Articles have required platforms in some instances to change their products and services in the EU market, and we are starting to see the impact on consumers.

While the DMA espouses lofty goals, the reality of implementation means there have been tradeoffs, while some platform users (mostly a particular set of business users) may be better off, consumers and other business users are generally worse off.

In the following annex we detail our findings on the actual effects of the DMA for your considerations.

Sincerely,

A handwritten signature in black ink that reads "Kayvan Hazemi-Jebelli".

Kayvan Hazemi-Jebelli  
Senior Director, Europe

## **ANNEX 1.**

### **USER IMPACT OF THE EU'S DIGITAL MARKETS ACT**

In an increasingly complex digital world, the seamless integration of services and security of user data are paramount to the online user experience. However, the European Union's Digital Markets Act (DMA) has introduced a series of regulations that, while intended to foster competition, are complicating and even degrading the user experience for European consumers. This submission explores the multifaceted impact of the DMA across three key areas: (1) the increased friction of the user experience due to the prohibition of product integrations, (2) the heightened privacy and security risks due to malware attacks, (3) the limitations on future service availability and innovation due to regulatory uncertainty. By examining these dimensions, we can better understand how well-intentioned regulations may inadvertently lead to a more cumbersome, less secure, and less innovative digital landscape for users in the EU and abroad.

#### **1. The DMA complicates and degrades online experiences for European consumers**

With the DMA in force, European users now face obstacles, complexities, and additional steps that make it harder for them to navigate and complete tasks in a digital environment, affecting daily activities. Such consumer friction requires users to wade through more hurdles, resulting in an overall more cumbersome online experience.

##### *Increased User Friction*

One of the main factors diminishing user experience is the increased friction caused by the DMA's prohibition of gatekeepers' integration of products, particularly for companies like Google. Such integration enhances consumer experience by streamlining access to services and offering integrated solutions. For example, Google Maps, Flights, and Hotels search results typically appear in an attractive and convenient format providing the user easily navigable options to find precisely what they're looking for. This convenience reduces the time it takes to compare results, creating a more cohesive and efficient experience.

To comply with Article 6(5) of the DMA, which prohibits "non-discriminatory conditions," Google's compliance report<sup>1</sup> reveals that the company has removed the smooth integration of products and services, such as searching for a local business or a restaurant and no longer being able to immediately book a reservation within Google Maps, or even click on a Google Maps link in the search results.<sup>2</sup> For consumers, this means a less seamless experience and more time spent navigating various results and additional web pages instead of getting the answers they need.

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<sup>1</sup> [https://storage.googleapis.com/transparencyreport/report-downloads/pdf-report-bb\\_2023-9-6\\_2024-3-6\\_en\\_v1.pdf](https://storage.googleapis.com/transparencyreport/report-downloads/pdf-report-bb_2023-9-6_2024-3-6_en_v1.pdf)

<sup>2</sup> <https://www.politico.eu/article/european-union-digital-markets-act-google-search-malicious-compliance/>

Removing direct integration benefits only a few travel intermediaries, while harming airlines, hotel operators, and smaller companies that can no longer reach customers directly.<sup>3</sup> For the hotel industry, this has led to a decline in direct bookings and increased reliance on intermediaries, ultimately damaging profitability. **In fact, three months after the DMA's implementation, affected EU markets have seen a 30% drop in traffic volume compared to regions without the DMA.**<sup>4</sup> Google Hotel Ads click volume has also fallen by 30%, leading to a 36% reduction in direct bookings.<sup>5</sup> In other words, large business users and competing aggregators are benefiting, while users are facing increased friction and hoteliers are losing revenues.

Users expect fast and relevant search outcomes. Due to the DMA, however, Google must avoid integrating its services' results alongside general search results, resulting in a less direct, more cluttered, and less user-friendly search experience – lowering the quality of searches. For example, a user who wants to quickly check a simple arithmetic computation, like  $2+2=4$ , would need to visit a calculator website and manually enter the equation, resulting in unnecessary extra steps and wasted time.

The prohibition of integration also affects other platforms – like LinkedIn, a subsidiary of Microsoft – preventing them from showing jobs in their feed, particularly the “jobs you might be interested in” (JYMBII) module. As detailed in Microsoft’s compliance report, due to Article 6(5) of the DMA,<sup>6</sup> LinkedIn must rank ads, job recommendations, and course suggestions without favouring its own services. It appears that instead of integrating its LinkedIn Newsfeed with third-party job recommendation providers, Microsoft has decided to remove the JYMBII module from European newsfeeds altogether. This negatively impacts consumers by reducing the relevance and personalization of the content they see, leading to a more fragmented user experience and making it harder to find the best opportunities. This could lead to users missing out on job postings that are highly suited to their skills and interests, ultimately reducing the efficiency and effectiveness of their job search and of the LinkedIn service itself.

Article 5(2) of the DMA requires designated companies to inundate users with pop-ups to confirm their preference for service integration versus separate functionality. It’s not clear that these additional consent pop-ups will have a materially different effect than that of cookie-consent pop-ups.<sup>7</sup>

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<sup>3</sup> <http://www.clrc.ca.gov/pub/2024/MM24-24s6.pdf>

<sup>4</sup> <https://www.mirai.com/blog/dma-implementation-sinks-30-of-clicks-and-bookings-on-google-hotel-ads/>

<sup>5</sup> <https://www.mirai.com/blog/dma-implementation-sinks-30-of-clicks-and-bookings-on-google-hotel-ads/>

<sup>6</sup> [https://cdn-dynmedia-1.microsoft.com/is/content/microsoftcorp/microsoft/mscle/documents/presentations/DMA\\_100160%20-%20Microsoft%20Compliance%20Report%20-%20Annex%2011%20-%20LinkedIn%20\(Non-Confidential%20Version\)\\_v1.pdf](https://cdn-dynmedia-1.microsoft.com/is/content/microsoftcorp/microsoft/mscle/documents/presentations/DMA_100160%20-%20Microsoft%20Compliance%20Report%20-%20Annex%2011%20-%20LinkedIn%20(Non-Confidential%20Version)_v1.pdf)

<sup>7</sup> <https://academic.oup.com/cybersecurity/article/6/1/tyaa022/6046452>

## *Less Desirable Options*

Another concern about the DMA, is pointed out in Meta's compliance report with respect to Article 5(2). In conjunction with General Data Protection Regulation (GDPR) and European Data Protection Board (EDPB) guidelines,<sup>8</sup> it appears that this provision may end up backfiring, as platforms forced to offer contextual ads may end up using "less data," but making the ads more intrusive in other ways. Instagram is already testing unskippable ads.<sup>9</sup> Instead of allowing platforms to continue running a business model based on free ad-supported media, the regulation appears to be forcing subscription tiers and more intrusive unskippable ads instead.

### **2. The DMA raises privacy and security concerns for European consumers, exposing users to greater risks of data breaches and malware attacks**

Recent regulatory changes introduced by the DMA illustrate how regulations intended to promote competition can inadvertently compromise privacy and security. Requiring Apple to support app sideloading and alternative app stores could expose users to malware, privacy breaches, and unregulated content by removing strong protections like content moderation and parental controls. New requirements for interoperability between messaging platforms will undermine key security measures like end-to-end encryption (E2EE), potentially exposing user data to greater risks of privacy breaches and misuse.

#### *Increased Malware and Crash Risks*

In July 2024, a global IT outage caused by a faulty update from cybersecurity firm CrowdStrike disrupted millions of individuals and businesses worldwide, including major corporations and financial institutions.<sup>10</sup> Part of the reason why this happened can be attributed to European intervention, such as a 2009 European agreement requiring Microsoft to grant third-party security services the same access to Windows as its own products.<sup>11</sup> Compliance in the EU meant creating a systemic vulnerability which was triggered by CrowdStrike's faulty update. This situation underscores how government antitrust intervention and regulations, while intended to promote competition and security, can create certain vulnerabilities and unintended consequences.

The DMA's interoperability provisions impose the same vulnerabilities on the Apple and Android ecosystems. Apple's compliance report<sup>12</sup> reveals that it must now support app

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<https://www.euractiv.com/section/data-privacy/news/european-commission-accuses-meta-of-violating-digital-competition-rules-with-pay-or-ok-model/>

<sup>9</sup> <https://www.theverge.com/2024/6/3/24170682/instagram-unskippable-ads-test>

<sup>10</sup> <https://www.ft.com/content/60dde560-194a-40d1-8c98-1d96d6d019a0>

<sup>11</sup> <https://news.microsoft.com/2009/12/16/microsoft-statement-on-european-commission-decision/>

<sup>12</sup> <https://developer.apple.com/security/complying-with-the-dma.pdf>

sideloading without App Store review.<sup>13</sup> App sideloading threatens iPhone security and privacy by allowing more pathways for malware and privacy breaches, as sideloaded apps bypass Apple's stringent security checks. Since Epic launched its rival app store on the Apple ecosystem, there are already reports of children inadvertently breaking their iPhones due to sideloaded apps.<sup>14</sup> Consequently, risks that were once dismissed by EU officials,<sup>15</sup> are now starting to materialise.

### *Proliferation of Problematic Apps*

Moreover, according to Apple's compliance report,<sup>16</sup> the introduction of alternative app stores and marketplaces has led to varying standards for content and business models, which may include offerings that Apple's App Store would have banned. These new marketplaces might lack the App Store's robust user protections, including content moderation, age ratings, and Privacy Nutrition Labels. As a result, consumers may face increased exposure to adult content, fraudulent and unlicensed gambling or cryptocurrency apps, and apps lacking content moderation. Additionally, these marketplaces may offer fewer and weaker privacy protections and less strict enforcement of user safety measures, potentially leaving users more susceptible to privacy breaches and unsafe content, and less aware of how their data is being used. We have already seen that the top 3rd-party app stores on Apple are sources of piracy, performance issues, security vulnerabilities, and fraud.<sup>17</sup>

Previously, Apple and Google have removed various apps from their app stores and engaged in content moderation to ensure user safety. For instance, following the January 6th insurrection attack on the United States Capitol, Apple removed the far-right app Parler for its role in the attack,<sup>18</sup> and in 2018, it also removed Infowars after founder Alex Jones called the Sandy Hook school massacre a "hoax."<sup>19</sup> However, by circumventing the official app stores, the new DMA rules strip Apple and Google of this power, creating a free-for-all situation where users might encounter hate speech, fraud, and inappropriate content through alternative app stores that lack parental controls like Apple's Ask to Buy,<sup>20</sup> which helps parents manage app downloads for their children. This shift under the DMA could significantly undermine user protection and safety, making it crucial to reconsider how these regulations balance competition with security.

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<sup>13</sup> <https://www.theverge.com/2024/1/25/24050200/apple-third-party-app-stores-allowed-iphone-ios-europe-digital-markets-act>

<sup>14</sup> [https://www.reddit.com/r/iphone/comments/1ev62jw/my\\_sons\\_iphone\\_died\\_after\\_trying\\_to\\_play\\_fortnite/](https://www.reddit.com/r/iphone/comments/1ev62jw/my_sons_iphone_died_after_trying_to_play_fortnite/)

<sup>15</sup> <https://brusselssignal.eu/2024/04/claims-that-new-eu-tech-rules-undermine-security-complete-nonsense-says-vestager/>

<sup>16</sup> <https://developer.apple.com/security/complying-with-the-dma.pdf>

<sup>17</sup> <https://www.theverge.com/24100979/altstore-europe-app-marketplace-price-games>

<sup>18</sup> <https://www.theverge.com/2021/1/9/22221730/apple-removes-suspends-bans-parler-app-store>

<sup>19</sup> <https://www.nytimes.com/2018/09/07/business/infowars-app-alex-jones-apple-ban.html>

<sup>20</sup> <https://support.apple.com/en-us/105055>

### **3. The DMA's lack of guidance has limited European consumers' access to new innovative services**

Because the regulations outlined by the DMA from the European Commission lack clarity, companies in Europe have been hesitant to launch or have withdrawn services and features they worry might breach the new rules. This uncertainty has hindered innovation and limited access for European consumers.

#### *Meta's AI model*

In July 2024, Meta announced that it will withhold its upcoming and any future multimodal AI models from consumers in the European Union due to uncertainties surrounding EU regulations.<sup>21</sup> The company cited concerns about the unpredictable nature of European regulatory requirements, particularly in relation to data privacy laws like General Data Protection Regulation (GDPR), the EU's existing data protection law, and its interplay with the DMA.

This uncertainty has led Meta to withhold new AI features that combine video, audio, images, and text, which were intended for products such as smartphones and Meta Ray-Ban smart glasses. Additionally, Meta will restrict multimodal AI applications that accommodate various learning styles, cognitive abilities, and sensory impairments.<sup>22</sup> As a result, European users will miss out on essential tools for a more productive and innovative future, and communities reliant on these technologies will be disproportionately harmed.

#### *Apple AI Features*

For similar reasons, Apple will delay the rollout of three new AI features—Phone Mirroring, SharePlay Screen Sharing enhancements, and Apple Intelligence—for its devices in the European Union.<sup>23</sup> This postponement is a result of DMA's Article 6(7), which mandates that tech companies ensure their products are interoperable with rival services. Apple has expressed concerns that complying with this requirement could force it to compromise the integrity of its products, potentially risking user privacy and data security.<sup>24</sup>

As a result, EU consumers will be unable to access these innovative features for the foreseeable future. Phone Mirroring and SharePlay Screen Sharing enhancements, which are designed to improve seamless connectivity and collaborative experiences, will

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<sup>21</sup> <https://www.axios.com/2024/07/17/meta-future-multimodal-ai-models-eu>

<sup>22</sup> <https://t.co/19R0uSwmVG>

<sup>23</sup> <https://www.reuters.com/technology/artificial-intelligence/apple-delay-launch-ai-powered-features-europe-blames-eu-tech-rules-2024-06-21/>

<sup>24</sup> <https://www.reuters.com/technology/artificial-intelligence/apple-delay-launch-ai-powered-features-europe-blames-eu-tech-rules-2024-06-21/>

be unavailable. Similarly, the absence of Apple Intelligence, which aims to offer advanced, AI-driven functionalities, will prevent users from benefiting from enhanced productivity tools and personalised experiences.

This not only restricts access to cutting-edge features but also deteriorates the overall user experience. Consumers in the EU will face a significant disparity compared to their counterparts in other regions, missing out on new technologies that could enhance convenience, connectivity, and productivity, ultimately leading to frustration for users who are eager to access new capabilities and potentially impacting their daily activities and overall familiarity with cutting-edge technologies.

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The experiences of European consumers under the Digital Markets Act (DMA) provide valuable lessons for other jurisdictions considering similar interventions and their wider approach to regulating digital markets. The unintended consequences of the DMA—such as increased user friction, heightened security risks, and stifled innovation—underscore the importance of carefully weighing the tradeoffs before intervening in the digital economy. While the intention to foster competition is commendable, regulations that disrupt integrated services, introduce vulnerabilities, and create uncertainty can ultimately harm the very consumers they aim to protect.

As Australia and other regions contemplate similar regulations, it is crucial to strike a balance that promotes competition without sacrificing user experience, security, and access to innovation. Thoughtful, well-informed policy decisions are essential to ensure that consumers reap the benefits of a competitive digital landscape without facing the unintended drawbacks observed in the EU.