

## REALITY CHECK:

# Apple's Sham DMA Compliance Plan

In the leadup to the Digital Markets Act (DMA) implementation on March 7th, 2024, Apple released a sham compliance plan that sends a clear message that they have no intention to comply with the DMA. It's time to set the record straight on what true compliance actually looks like.

## What the DMA Says: Developers Should Be Able to Communicate Directly with Consumers About Lower Prices

- **Article 5(4):** "The gatekeeper shall allow business users, **free of charge**, to communicate and promote offers, including under different conditions, to end users **acquired via its core platform service or through other channels**, and to conclude contracts with those end users, regardless of whether, for that purpose, they use the core platform services of the gatekeeper."

### What Apple's Proposal Actually Does: Keeps the Gag Order in Place

- Developers still can't tell consumers about better and cheaper deals; they can only find out about them outside of apps.
- Apple says: "You may not include information about purchasing on Your website or a link to Your website for purchasing on the App Store product page of Your Application." (Section 3.3.C of the Alternative Terms Addendum for Apps in the EU).

## What the DMA Says: Developers Should Be Able to Access Gatekeeper Operating Systems "Free of Charge"

- **Article 6(7):** "The gatekeeper shall allow business users and alternative providers of services provided together with, or in support of, core platform services, **free of charge**, effective interoperability with, and access for the purposes of interoperability to, the same operating system, hardware or software features, regardless of whether those features are part of the operating system, as are available to, or used by, that gatekeeper when providing such services."

### What Apple's Proposal Actually Does: Introduces a New Fee on Alternative Marketplaces

- Apple is imposing a new Core Technology Fee (CTF) of €0,5 for every app downloaded outside the Apple App Store. Forcing developers to pay a fee when Apple isn't providing anything besides iOS access is illegal and will discourage developers from distributing their app anywhere outside the Apple App Store.
- This provision was intended to ensure a level playing field when Apple chooses to compete on its own platform. Instead, Apple will maintain unfair cost and technical advantages for its own apps and services when and where it offers them (including browsers, app stores, music streaming, etc.)

## What the DMA Says: Consumers and Developers Should Have a Choice in Making Purchases Inside Apps

- **Article 5(7):** “The gatekeeper **shall not require end users to use, or business users to use, to offer**, or to interoperate with, an identification service, a web browser engine or a payment service, or technical services that support the provision of payment services, **such as payment systems for in-app purchases, of that gatekeeper in the context of services provided** by the business users using that gatekeeper’s core platform services.”

### What Apple’s Proposal Actually Does: Deters Developers from Offering an Alternative Payment Solution

- Apple imposes layers of fees for any developer that wants to consider offering an alternative payment option - making it financially unviable to offer an alternative payment option. In addition to the €0,5 fee for every app download, developers have to pay a tax of up to 17% to Apple for all purchases using third party payment options and a payment processing fee of 3-6%.
- Apple uses scary warnings and excessive friction that make it harder to use a third party payment option instead of Apple’s own payment system.

## What the DMA Says: Consumers Should Have a Choice in Where They Get Apps

- **Article 6(4):** “The gatekeeper shall **allow and technically enable** the **installation and effective use** of **third-party software applications or software application stores using**, or interoperating with, its operating system and allow those software applications or software application stores to be accessed by means other than the relevant core platform services of that gatekeeper.

### What Apple’s Proposal Actually Does: Imposes Excessive Fees and Restrictions on Distributions Outside the App Store

- Apple continues to block consumers from downloading apps directly from developers’ websites, like they can on their computer. Apple also sets unfair restrictions on which app stores are allowed on iOS devices. With no direct downloads, and few app stores, consumers will not have a real choice of where to get their apps.
- App developers that currently distribute their apps through the App Store without paying any commission (i.e., 88% of apps) would have to sign up to the new terms and pay the CTF to use alternative marketplaces. This is a significant incentive not to do so, and will deprive alternative marketplace from highly popular apps, such as Facebook, WhatsApp, Uber or Amazon.
- Apple’s imposition of an either/or choice for developers to continue to use Apple’s App Store *or* other methods of distribution is an unjustified and anticompetitive attempt to deprive those alternative means of distribution of sufficient scale.

## **What the DMA Says: Gatekeepers Should Behave in a Manner that is Fair, Reasonable and Non-Discriminatory**

- **Article 6(12):** “The gatekeeper shall apply fair, reasonable, and non-discriminatory general conditions of access for business users to its software application stores, online search engines and online social networking services listed in the designation decision pursuant to Article 3(9).”

## **What Apple’s Proposal Actually Does: Offers New, Optional Terms That Violate the DMA**

- **Apple maintains a system whereby apps using the same app store services are subject to radically different terms and conditions.** Apple imposes up to 10-17% commissions, which only apply to apps selling digital goods and services at Apple’s discretion. However, since Apple no longer forces app developers to use its in-app payment solution all apps are **using the exact same app store services**, and should therefore be subject to the same commissions (or lack of).