

REALITY CHECK:

Google's DMA Non-Compliance

In the final days leading up to the Digital Markets Act (DMA) implementation on March 7th, 2024, Google released a vague, high-level summary of their compliance plan, where they falsely claimed that they are compliant with the DMA. Let's 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 Google's Proposal Does: Imposes Illegal Fees that Deter Developers from Linking to External Sites

- At a hefty price, developers can share hyperlinks to their external sites via Google's External Offers program. For the first two years, Google charges a 12% fee (5% initial acquisition fee + 7% ongoing services fee) for auto-renewing subscriptions and a 27% fee (10% initial acquisition fee + 17% ongoing services fee) for other digital goods and services. After two years, Google only charges developers an ongoing services fee of either 7% or 17% unless the app developer opts out of certain of the services purportedly provided by Google.

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 Google's Proposal Does: Provides No Information on Interoperability

- Google makes it difficult for third party app stores and alternative payment systems to function on Android by subjecting them to more friction via the operating system than the Google Play Store or Google Play Billing. This discriminatory behavior acts as a deterrent for consumers using those services.

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 Google’s Proposal Does: Imposes Fees on Developers for Offering an Alternative Payment Solution

- For developers to use an alternative payment solution, Google requires them to sign up for one of two programs, User Choice Billing (UCB) and Developer Only Billing (DOB), both of which come with additional requirements and fees and neither of which will bring real competition to the market for developers or choice for consumers. For User Choice Billing (UCB), the app developer will have to pay the full Google 30/15% commission minus a mere 4% and for Developer Only Billing (DOB), the app developer will have to pay the full Google 30/15% commission minus a mere 3%.
- Google’s fees and unnecessary requirements are clearly intended to create friction and disincentives for developers to take advantage of Article 5(7).

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 Google’s Proposal Does: Falsely Claims They Already Complied with the DMA

- Google’s summary of its DMA Compliance Report **does not include any language on how it intends to comply with Article 6(4)** because the gatekeeper already considered itself compliant with this article before March 7, 2024.
- However, this is inaccurate because **Google has never done anything to technically enable third-party app stores**. In fact, it has raised an array of obstacles preventing these app stores from being successful.

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 Google’s Proposal Does: Enforces Problematic Service Fees on Developers

- Google’s compliance plan perpetuates a system where apps using the same app store services are subject to vastly different terms and conditions, which directly contradicts the DMA’s objectives.
- While Google claims that its 30/15% commission is due to “imbalance in bargaining power” between itself and app developers, it is actually evidence of their gatekeeper power.