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EGDF IS DISAPPOINTED ON APPLE'S iOS17.4 ANTICOMPETITIVE FEE STRUCTURE

About EGDF

1. **The European Games Developer Federation e.f. (EGDF)**¹ unites 23 national trade associations representing game developer studios based in 22 European countries: Austria (PGDA), Belgium (FLEGA), Croatia (CGDA), Czechia (GDACZ), Denmark (Producentforeningen), Finland (Suomen pelinkehittäjät), France (SNJV), Germany (GAME), Italy (IIDEA), Lithuania (LZKA) Netherlands (DGA), Norway (Virke Produsentforeningen), Poland (PGA and IGFP), Portugal (APVP), Romania (RGDA), Serbia (SGA), Slovakia (SGDA), Spain (DEV), Sweden (Spelplan-ASGD), Switzerland (SGDA), Turkey (TOGED) and the United Kingdom (TIGA). Through its members, EGDF represents more than 2 500 game developer studios, most SMEs, employing more than 45 000 people.
2. **The games industry** represents one of Europe's most compelling economic success stories, relying on a strong IP framework, and is a rapidly growing segment of the creative industries. In 2021, there were around 5 500 game developer studios and publishers in the EU, employing over 85 000 people and running a combined turnover of over €18,3bn². In 2022, Europe's video games market was worth €24,5bn, and the industry has registered a growth rate of 5% in key European markets³. The European digital single market is the third-largest video game market globally.
3. **The Digital Markets Act (DMA) will drastically change game markets. However, only if properly enforced the regulation will lead to pro-competitive changes in the market practices of the gatekeeper platforms**, like enabling the introduction of third-party marketplaces (a.k.a. application stores) and payment systems on mobile gatekeeper platforms. If the enforcement fails, DMA will open yet another opportunity for the gatekeeper platforms to introduce new anti-competitive market access barriers and secure their dominant position in the game industry value chain. Thus, the successful implementation of the DMA requires close monitoring and, when needed, swift and robust enforcement actions from competent enforcement authorities.

¹ For more information, please visit www.egdf.eu

² EGDF-ISFE 2021 European games industry insights report
https://www.egdf.eu/wp-content/uploads/2023/07/V9-VGE_EGDF-video-game-industry-report2021.pdf

³ ISFE-EGDF 2022 Key Facts

<https://www.videogameseurope.eu/news/europes-video-games-industry-publishes-2022-annual-key-facts-report-all-about-video-games/>

In general,

4. Many game developer studios celebrated when European regulators reached an agreement on DMA and introduced new pro-competitive rights for European game developer studios and obligations for gatekeeper platforms in the European digital single market area. Since then, many studios have worked hard to be ready to launch their own in-game stores or third-party marketplaces when the gatekeepers implement the new rules.
5. Now, Apple has finally disclosed how it plans to implement DMA. **iOS17.4 will bring new app analytics functions, allow third-party cloud and game subscription services to compete with Apple Arcade, and introduce other improvements** for those game developers deciding to stay on the Apple AppStore in the EU under the old business terms. These improvements demonstrate why introducing competing third-party marketplaces will benefit everyone. Now, Apple has to work harder to create value for game developers for the 30% cut they take for each payment.
6. **EGDF is highly disappointed in Apple's new anticompetitive fee structure for those developers who will not remain in the Apple AppStore in the EU.** The new install fee-based structure makes it difficult for any app developer to compete against Apple's own services like the Apple App Store. It creates a disincentive for game developers to start distributing their games through third-party marketplaces or process their in-game payments through third-party payment systems. Furthermore, the EUR 1 million credit line threshold to become a marketplace creates an artificial market access barrier for new third-party marketplaces.
7. **EGDF calls competent enforcement authorities to closely monitor how Apple and other gatekeeper platforms are implementing DMA and pay special attention to ensuring that Apple fulfils the following DMA obligations and commitments in the EU,** if needed, through swift and robust enforcement actions.

Changes justified by DMA on iOS17.4 must lead to pro-competitive market changes.

8. EGDF celebrates that DMA finally enables game developers and publishers to create their own marketplaces and distribute apps through third-party marketplaces. Unfortunately, the way Apple is implementing DMA raises several concerns and introduces multiple unjustified limitations.
9. EGDF underlines that:
 - a. **Apple must ensure that requests submitted through the interoperability request form actually lead to the introduction of the new interoperability features.**
 - b. **Apple must allow third-party payment systems to access the same iOS features as Apple's own payment system** so that game developers can provide a similar smooth user experience for players through all competing payment systems in their in-game stores.
 - c. **Game developers must be able to use both Apple and third-party payment systems simultaneously.** Apple must not be allowed to prevent direct competition between Apple and 3rd party payment systems. Now, as per Apple's new rules, it looks like developers must choose between using Apple or 3rd party payment system, and they cannot mix both

options in the same game. This forces developers to choose which basket to put all their eggs in.

- d. **Apple must ensure that the *notarization process for iOS apps* and the *authorisation process for marketplace developers* do not create market access barriers** by artificially slowing down the review process of, applying stricter approval standards for, or introducing excessive and unnecessarily alarming warnings and cumbersome download flows for third-party marketplaces or apps distributed through competing marketplaces. Furthermore, all limitations for games downloaded through third-party marketplaces should be strictly based on compliance with applicable EU and national legal requirements.
- e. **Apple's requirement of a *EUR 1 million letter of credit from an A-rated financial institution for anyone willing to become a commercial marketplace developer* creates a significant market access barrier** for, for example, European SME game publishers. This threshold is far too high to be justified by guaranteeing adequate financial means for player and developer support. Early-stage marketplaces do not have a significant number of players or game developers as their consumers; thus, they do not need substantial financial resources.
- f. **Apple must not use *iOS17.4 security and privacy functions like App Tracking Transparency* to create anti-competitive data access barriers** or limit the healthy competition of privacy and security features in the Apple iOS ecosystem.
- g. **Apple must ensure that *data portability rights* introduced by DMA cover iOS**, and game developers can request consent from their players to have effective, high-quality, continuous, and real-time access to their data on iOS.
- h. **European enforcement authorities must prioritise the processing of *Apple's complaint on the inclusion of Apple iPadOS under Apple's gatekeeper services***. The same AppStore developer account is used to distribute both the iOS and iPadOS versions of a game. There is no material difference between the distribution channels. As long as the complaint is unresolved, many game developers are hesitant to invest in implementing new solutions that can be only implemented on the iOS part of their install base.

iOS17.4 AppStore changes require careful monitoring

10. EGDF is extremely pleased that DMA has finally enabled game developers and publishers to access alternative payment systems in games distributed through the Apple AppStore.
11. EGDF stresses that
 - a. **Apple must ensure that using *third-party payment service providers (PSPs)* or *processing payments via link-out* does not lead to excessive and unnecessarily alarming warning notifications** designed to scare users from using third-party payments. The current fee structure proposed by Apple to use the services (see the chapter below) is disproportionate and unjustified.
 - b. **Apple must ensure that *business planning tools* always provide factual information** on the use of third-party marketplaces or payment tools and the Apple fees associated with them.

The new Alternative iOS17.4 install fee traps game developers in Apple's walled garden.

12. **EGDF welcomes the fact that game developers can continue using the current Apple Business Terms if they do not want to transition to *New Business Terms for Apps* in the EU.** Unfortunately, the New Business Terms are designed in a way that makes the transition into using alternative third-party payment systems and third-party marketplaces instead of Apple's own services risky for game developers.
13. The proposed reduced 10%/17% *AppStore commission* and 3% *Apple payment processing fee* demonstrate how much harm the current 30% Apple commissions have caused for businesses and consumers in the EU. However, **Apple's decision to introduce a 0,5€ install fee (covering not just new installs but also updates and reinstalls annually) is hard to justify.** When players have already paid for the iOS while purchasing the phone and game developers decide to opt out of using AppStore and AppStore payment system and take more responsibility for player support and legal compliance requirements in the EU, it is unreasonable for Apple to collect millions of euros from a single game through install fee just to finance their notarization process (that is already covered by annual Apple Developer Programme fee) and maintaining iOS operating system security features.
14. **An annual 0,5€ install fee might create**
 - a. **An unfair competitive advantage for Apple AppStore and other pre-installed Apple apps on Apple phones sold in the EU.** While Apple AppStore does not have to pay any annual install fee, or it would be included in the price of the phone itself, all competing marketplaces would be forced to pay tens of millions of euros for Apple to reach a similar market position as Apple AppStore.
 - b. **An unfair competitive advantage for Apple AppStore in competition for content.** Free-to-download games are currently among the most profitable game-as-a-service business models. This business model relies on a huge install base, going well over 1 million installs for every successful game, and creating a much smaller core audience making in-game purchases. The new fee would create an artificial market access barrier for the free-to-download game developers by forcing them to stay under the much less favourable current Apple business terms and continue operating through the Apple AppStore instead of opting for more favourable new business terms (if the install fee is not taken into account) and distributing their games through a third-party marketplace. This makes it much harder for third-party marketplaces to compete against Apple AppStore for content.
 - c. **An unfair competitive advantage for Apple AppStore through more favorable terms for long-tail games.** Many game developers have old, often non-profitable, games in their Apple Appstore game portfolio that can be used to market new games for the most loyal fanbase of the game developer studio still playing those old games. It is still unclear when an update will count as a reinstall under the new install fee. Furthermore, it looks like Apple is implementing new contract terms so that game developers must choose between old or new Apple business terms for their whole game portfolio instead of being able to do this on the level of each game individually. This might force game developers to choose between staying under old contract terms and keeping their old, often non-profitable, games available on Apple iOS or moving under the contract terms, allowing the use of alternative distribution channels and payment systems, and removing their old games

from the markets. This would make it harder for third-party marketplaces to maintain as big game portfolios as Apple AppStore.

- d. **Unfair market access barriers through unclear and vague contract terms.** Apple must not use unclear and vague concepts in its business terms, as they create significant uncertainty among game developers about the actual terms of using third-party marketplaces and payment systems. Furthermore, Apple should be fully clear on whether or not game developers or publishers must choose between old or new business terms individually for each game or for all the games in their game portfolio on iOS.
15. Consequently, Apple's new business fee structure requires further investigation to ensure that it is not anticompetitive behaviour (DMA Art.13) and does not violate fair, reasonable, and non-discriminatory general conditions (DMA Art. 6 (12)).
16. All in all, EGDF is deeply disappointed that, once again, due to regulatory uncertainty and poor enforcement of EU law, global industry giants will get a head start on introducing alternative third-party mobile marketplaces in the EU. European SME game publishers will likely only be able to take the financial risk to exploit the new market opportunities once there is more clarity on whether or not the new Apple fee structure is in line with the EU rules.

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