



19.4.2024

EGDF RESPONSE ON THE DMA COMPLIANCE PLANS

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. **Only if properly enforced, the DMA will lead to pro-competitive changes in the market practices of the 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/>

1. Access to third-party application stores and payment systems – DMA obligations 5(3), 5(4), 6(3), 6(4) and 6(12)

Table 1: A summary of Apple’s, Alphabet’s and Microsoft’s DMA compliance plans on allowing third-party application stores

	Apple	Alphabet	Microsoft
A fee structure	Annual developer fee, core technology install fee	One-time developer registration fee, revenue share for accessing OS features	One-time developer fee
The scope and conditions of the fee	Each developer account must choose the fee model they operate on: - Option 1: Distribution through Apple distribution channels with Apple payment system and revenue share - Option 2: Distribution through Apple distribution channels (revenue share + install fee) or third-party distribution channels (install fee)	Game developers can choose a different fee model separately for each of their games: - Option 1: Continue paying the Google revenue share fee - Option 2: Ongoing service revenue share fee if Google services are used + two-year initial acquisition revenue share fee	
Security measures	Automated scans and specific human notarization process, security pop-ups	Google Play Protect scans, security pop-ups	Microsoft Defender scans, security pop-ups only for non-trusted game developers

1.1 Microsoft PC OS sets the standard for enabling competing third-party application stores on PC OS

4. **Summary of Microsoft PC OS DMA compliance plan**
 - a. **Extra fees for third-party distribution:** None
 - b. **Security measures:** Microsoft Defender scans, security pop-ups only for non-trusted game developers
5. **Microsoft has always allowed third-party applications stores on its Windows PC operating systems and allows game developers to control their own commercial experiences.** Some third-party stores are currently even more popular than the official Windows store. It is important to note that Microsoft is able to provide extensive security services, etc., without charging any additional fees from game developers distributing their games through third-party stores. This clearly demonstrates that fee structures proposed both by Apple and Alphabet are over-extensive.

1.2 Alphabet

6. **Summary of Alphabet's Android DMA compliance plan**
 - a. **Extra fees for third-party distribution:** Ongoing service fee of 7% / 17% revenue share and a time-limited initial acquisition fee of 5% / 10% revenue share
 - b. **Security measures:** Google Play Protect scans, security pop-ups
7. **Alphabet has allowed users to download third-party apps and application stores onto their devices already before DMA entered into force.** However, these applications and stores were under constant risk of being removed from the platform. Now, DMA brings much-needed legal certainty for any game developer willing to explore the opportunities of sideloading or third-party application stores as distribution channels. However, this does not mean that Alphabet would have allowed or would now allow the effective use and installation of third-party application stores. There are a disproportionate and discriminatory number of scare screens for both third-party application stores and direct distribution through sideloading.
8. **Alphabet does not allow game developers to communicate and promote offers to their players free of charge** as required by the DMA. Instead, link-outs are subject to revenue share fees under the External Offers programme: *"38. First, developers will be able to present within their Google Play apps promotional messages and hyperlinks for external offers on their sites, where users can contract for those offers. Developers that wish to make use of this opportunity will need to sign up to Google Play's External Offers program."*
9. **Furthermore, as demonstrated in Chapter 4, Alphabet limits access to core OS features to keep developers within the scope of the ongoing service fee.** At least the protection of minors' systems, automated app updates, and accessibility features should always be considered essential parts of an operating system, even though they would technically be separated into an alternative service. Thus, the combined impact of Google's ongoing service fee and initial acquisition fee creates a structural market access barrier.

10. To overcome these challenges:

- a. Alphabet must not include link-outs under the scope of the initial acquisition fee or ongoing service fee.
- b. Alphabet must follow the example set by Microsoft and limit the security pop-ups only to non-trusted app developers.
- c. At least the protection of minors system, automated app updates, and accessibility features should always be considered to be an essential part of an operating system even though they would technically separated into an alternative service.

1.3 Apple

11. Summary of Apple's DMA compliance plan

- a. **Extra fees for third-party distribution:** An annual 0,5€ core technology install fee, 10%/17% Appstore Commission in Apple Appstore is used for distribution and a 3% payment processing fee if the Apple payment system is used
- b. **Security measures:** Automated scans and specific human notarization process, security pop-ups

12. **Apple has not allowed users to download third-party apps and app stores onto their devices before.** Consequently, DMA brings much-needed legal certainty for any game developer willing to explore the opportunities of sideloading or third-party application stores as distribution channels. However, Apple's core technology fee creates a significant market access barrier for game developers who are willing to enter third-party application stores or who are willing to build a third-party application store by themselves.

13. **The proposed core technology fee creates a significant financial risk for many European game developers.** According to Apple, developers who adopt the new business terms at any time will be able to switch back to Apple's existing business terms for their EU apps only once.

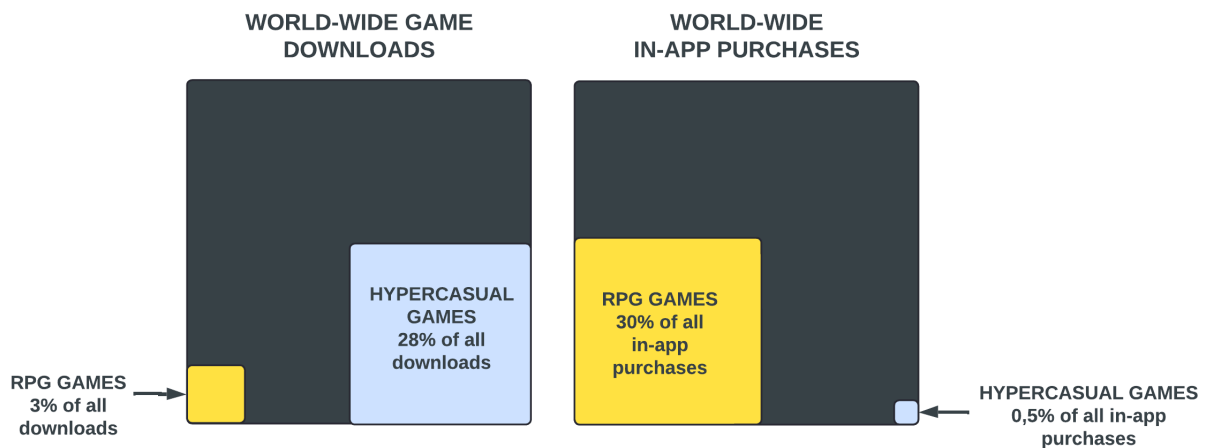
- a. Apple justifies the core technology fee with its heavy investment in research and development, as well as in privacy, trust, and safety. However, this does not justify as heavy a fee structure as Apple is planning.
 - i. Microsoft can provide extensive security services, etc., on their Windows OS without charging any additional fees from game developers distributing their games through third-party stores. This clearly demonstrates that fee structures proposed by Alphabet and especially Apple are over-extensive. Alphabet requires a service fee of 7% / 17% revenue share and a time-limited initial acquisition fee of 5% / 10% revenue share. Apple goes even beyond that, as game developers already pay an annual developer fee on Apple and, on top of it, an annual 0,5€ core technology fee per install after a 1M install threshold.
 - ii. Apple justifies the core technology fee by arguing that it enables further investment in research and development. Both Microsoft and Google can invest in further developing their operating systems without a similar fee structure. Similarly, other leading phone manufacturers can finance their research and

development without running an operating system and digital distribution platform.

- b. **Although 0,5€ per install over the 1M install threshold does not sound like a lot, its impact on game developers' market behaviour is significant.** Usually, in a well-working market, service providers offer discounts for larger volumes. Apple's new model moves in the opposite direction.
- c. **Most game developers would be under the constant risk of paying the core technology fee if they want to keep their game updated.** The broad definition of "*first annual install*" seems to lead to an annual fee of 0,50€ per player. Most developers providing quality apps with yearly updates will fall within the scope of such an install fee unless they stay under the install threshold.
- d. **Especially in the free-to-play market segment, it is common to have a huge install base for a game but a much smaller number of players actively playing the game and even fewer players making in-app purchases in a game.** Consequently, a game can easily be above the proposed install threshold to pay the fee and still generate small revenue. As a result, developers with free-to-play games or, in general, low average revenue per daily or yearly active users ("ARPPDAU" and "ARPPYAU") would be particularly adversely impacted by the fee structure.
- e. **Furthermore, estimated revenue generated by a player, a.k.a lifetime value ("LTV"), varies a lot between different genres.** For example, in 2020, the lifetime value of a player playing hyper-casual games was estimated to be between 0,2 USD and 0,4 USD, a player playing casual games between 1,0 USD and 3,0 USD and a player playing mid-core games between 2,0 USD and 5,0 USD⁴. Consequently, in some genres, the lifetime value of players is lower than the proposed annual core technology fee per install. Furthermore, most of the revenue per player is generated during the first year the new player plays a game, but the proposed core technology fee must be paid yearly. Consequently, the proposed new model will make it much more challenging to keep games up and running in Europe when they become less attractive to new players.
- f. **In practice, this means that it will be difficult for other game developers than those who estimate that their EU sales are going to stay under Apple's threshold (meaning that the core technology fee makes their business model non-scalable) or whose games are going to generate enough revenues and remain profitable enough to pay the fee, to accept the new terms.** For most game developers, these are significant risks to take in the quickly changing game markets.
- g. **As the fairness of the proposed core technology fee is highly dependent on the business model** (e.g. average revenue per daily active users) **and genre** (e.g. hyper casual or mid-core RPG games) **of each developer**, it also creates a major impact on the types of the games third party application stores can sustain in their mobile application stores.

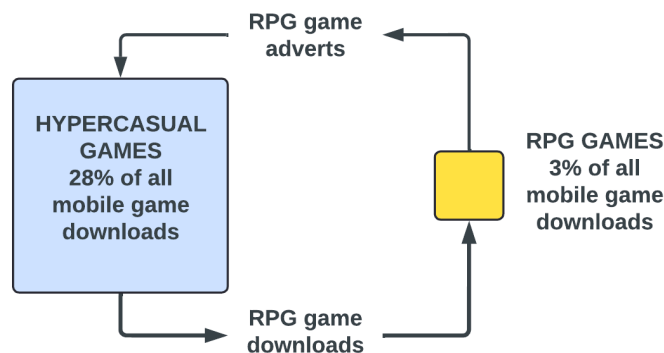
⁴ For more information please visit:

<https://departmentofplay.medium.com/a-guide-to-ltv-why-its-important-and-how-to-model-it-ebbbf50419ee>



Source: Data.ai – State of the mobile 2024

- h. **The core technology fee creates, therefore, a particularly important market access barrier for hypercasual games** that, according to Data.Ai, constitute 28% of global mobile game downloads and only 0,5 of the global revenue generated by in-app purchases. Meanwhile, RPG games constitute only 3% of the global downloads but 30% of the in-app purchase revenue.⁵



- i. **If Apple makes it impossible for third-party application stores to sustain hypercasual games in their ecosystem**, it will also make it much more difficult for them to retain a huge user base in their ecosystem and maintain a self-sustaining player base for more profitable games. Hypercasual games play a crucial role in the mobile game ecosystem as an advertisement channel for more profitable games like RPG games.
- j. The question about Apple's core technology fee is not just about the number of businesses currently under or above the threshold for paying the fee. It is also a question of how significant a share of Apple AppStore's current turnover will be able to move to third-party stores, if any. It is also a question of how the business risks associated with the new model will impact the future market behaviour of the game developer studios and competition in the game markets. It is also a question of freedom to conduct business (e.g.

⁵ For more information, please visit: <https://www.data.ai/en/go/state-of-mobile-2024/>

it will be more challenging for hyper-casual game developers to move under the new terms).

- k. **All in all, the core technology fee creates a financial barrier for game developers to explore their new rights under DMA.** From a game developer's perspective, the core technology fee is an extra charge they must pay to implement third-party payment systems in their games.

14. **Apple's measures to protect the integrity of its opening system are not "strictly necessary and proportionate"**

- a. **Compared to Microsoft and Alphabet, Apple is planning to introduce much stricter measures to control both third-party application stores and third-party apps.** The fact that both Alphabet and Google can protect the integrity of their systems with much less strict measures clearly demonstrates that Apple's plans are not necessary or proportionate.
 - i. **Disproportionate thresholds for becoming a marketplace developer:** Apple requires either a letter of EUR 1 million credit from an A-rated financial institution or more than one million installs on iOS in the EU in the prior calendar year. Neither Microsoft nor Google have thresholds of this kind for game developers willing to launch competing third-party application stores.
 - ii. **A disproportionate notarization process:** While both Microsoft and Alphabet have their automated antivirus and antimalware tools, Microsoft Defender and Google Play Protect, scanning all sideloaded applications, Apple has introduced a much longer and burdensome notarization process that includes, in addition to automated virus and malware check, also a human review.
- b. **As underlined in recital 50 of the DMA, DMA does not just ensure access to third-party application stores; it also ensures that end-users can effectively use them.** As an end-user has already seen the warning messages while installing a third-party application store, it is no longer strictly necessary and proportionate to show new warning messages while changing the default application store. Apple underlined in the workshop that they might consider warning messages of this kind in the long run. Additional warning messages would effectively steer end-users away from changing their default application store.
- c. Additionally, it is crucial that the Apple iOS operating system communicates to alternative third-party application stores if they are set as the default store. This is one of the main pro-competitive key performance indicators.

15. **At the beginning of March 2024, Apple decided first to terminate Epic's developer account and then to return it. This sent a clear signal to game developers: even after DMA entered into force, third-party applications are under constant risk of being removed from the platform⁶.** Despite the fact that DMA was supposed to allow third-party stores, many game developer studios are currently considering twice before starting to distribute their content through them. First of all, as explained above, Apple's fee model is designed in a way that moving under the new contract terms enabling third-party distribution of games is a huge financial risk.

⁶ For more information, please visit:

<https://www.gamesindustry.biz/apple-reverses-ban-on-epics-developer-account-following-european-commission-enquiry>

Secondly, after Apple’s decision to terminate Epic’s developer account, there continues to be significant uncertainty on how long-lived the third-party application stores will be and whether or not they can just be taken down by Apple at any given moment.

16. To overcome these challenges:

- a. Apple should move under a revenue-based fee within the Apple Appstore that does not bring as big risks for game developers.
- b. Game developer studios must be allowed to swiftly switch between the new EU-specific and old general global business terms freely.
- c. To maximise competition, freedom to conduct business, and widest possible access to new rights under the DMA, game developers must be allowed to choose between the new EU-specific and old general global business terms for each of their games separately.
- d. Game developers must be allowed to use both the Apple payment system and third-party payment system parallelly in their game and allow players to decide what payment systems they prefer to use.
- e. Apple must follow the example set by Microsoft and limit the security pop-ups only to non-trusted app developers.

2. Access to data – DMA obligations 5(2), 5(9), (10), 6(2), 6(9) and 6(10)

Table 2: A summary of Apple’s, Alphabet’s and Amazon’s DMA compliance plans on data access

	Meta	Alphabet	Amazon
Limitations for data access for advertisers and publishers	No limitations	No data access for third-party intermediary ad-tech providers	No limitations

2.1 Alphabet

- 17. **Alphabet is the only core platform service that limits the data portability rights under Articles 5(9) and 5(10).** Unlike Amazon and Meta, Alphabet bans ad data transfers to third-party intermediary ad tech providers. However, articles 5(9) and 5(10) do not allow Alphabet to set restrictions of this kind.
- 18. **To overcome these challenges,** Alphabet must not be allowed to limit data portability rights.

2.2 Apple

19. Apple's compliance plan is focused on aggregated data but talks very little about access to non-aggregated data.

- a. **Data access must happen "At their request"**. Apple should not be allowed to determine when or how often business users can request data from end-users. Any restrictions must come from the DMA or GDPR.
- b. **Data access must be "real-time"**. When a gatekeeper platform has immediate access to data, it should also provide it for business users. At the moment, those game developers who decide to stay under Apple's old terms and use Apple's payment system will not have weeks of delay in accessing payment data.
- c. **"Aggregated data" that is provided for or generated in the context of core-platform service must include data on taxes paid by Apple on behalf of the game developer on the purchases made through the Apple payment system:** Currently, Apple states in terms that it *"may invoice You for any applicable taxes, levies, duties, costs, charges, deductions, or any charges of equivalent effect, as imposed by any tax authority on or with respect any commission. Apple shall determine, collect, and remit such applicable taxes to the competent tax authorities, and You agree to pay such taxes as invoiced by Apple"*
- d. However, Apple does not provide in their income report information on what *"taxes, levies, duties, costs, charges, deductions, or any charges of equivalent effect"* have been invoiced to different tax authorities across the globe (e.g. withholding taxes). Consequently, game developers are often forced to reverse engineer this information by themselves if they want to use the rights under bilateral tax agreements to request tax refunds.
- e. **"Personal data" that is provided for or generated in the context of core-platform service and that the end-user opt-ins by giving their consent must include IDFA (Identifier for advertisers):** Currently, Apple only allows business users to ask a consent from end-users only once. This is clearly against DMA's obligation to provide access at their request. Business users should be allowed to request access within a reasonable timeframe according to GDPR consent requirements. It should be the business user, not Apple, who decides when consent can be asked, and the end-user, not Apple, who decides to give the consent.

3. Access to OS features – DMA obligation 6(7)

Table 3: A summary of Apple’s, Alphabet’s and Amazon’s DMA compliance plans on access to OS features

	Apple	Alphabet	Microsoft
Limitations to the access for OS features	No access to OS features like restrictions on In-App Purchase in Screen Time and Family Purchase Sharing, universal purchase, as well as Ask to Buy if the game is not operated through Apple services	No access to OS services such as parental controls, security scanning, fraud prevention, and continuous app updates without paying ongoing service fee	No limitations

3.1 Alphabet

20. In principle, Alphabet’s revenue share-based fee structure is fairer than Apple’s install-fee-based structure as it does not create similar market access barriers. However, also Alphabet’s fee structure raises significant concerns.

21. As notified in Alphabets' compliance plan, it is important to understand what platform features are part of the Google Android operating system, which are part of Google Play Services and which are a part of the Google Play Store itself: *"74. The Google Android OS CPS also includes in principle middleware, including Google Play Services, insofar as it contributes to controlling the basic functions of Google Android tablets and smartphones and to enabling software applications to run on them, thereby ensuring an efficient functioning of Google Android. Google has not identified any middleware components that constitute a part of the Google Android OS CPS."*

22. **Alphabet is claiming that many of the operating system features are not under the scope of Article 6(7).** Many of the operating system features that are part of the operating system itself on competing operating systems are run under Google Play Services (e.g. protection of minors, malware detection and update features) on Alphabet. Alphabet does not provide free-of-charge access to these services: *"After the initial two-year acquisition period, a developer may choose to discontinue Play's ongoing services for a particular app. Since users acquired the app through Play with the expectation of services such as parental controls, security scanning, fraud prevention, and continuous app updates, discontinuation of services requires user consent as well. Subsequently, ongoing services and associated fees will no longer apply to these users. Developers are still responsible for reporting transactions involving users who choose to continue receiving ongoing services from Play."*

23. Alphabet itself acknowledges that features controlling basic functions of the Google Play Services are part of Android OS. However, by limiting the scope of the basic functions, Alphabet can block free-of-charge access to many other basic features (e.g. protection of minors) that are part of the core operating system features on competing operating systems. Furthermore, by limiting access to key operating system features under 6(7), Alphabet can steer players not to give their consent

for the discontinuation of the use of Google Play Service by game developers and thus not being eligible to stop paying the Ongoing services fee.

24. **As during the initial launch of new third-party distribution channels on Alphabet's platform, almost all users will be coming from the Play Store, it is crucial that there is an option for the game developer to cancel the contract of those players who decide not to consent to move away from Google Play Services.** Otherwise, Alphabet would be trapping game developers into supporting Google Play Services when they already have already built similar competing services.
25. **To overcome these challenges:**
 - a. At least the protection of minors system, automated app updates, and accessibility features should always be considered to be an essential part of an operating system even though they would technically separated into an alternative service.

3.2 Apple

26. **In principle, 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. According to the DMA, this means that third-party payment systems must have access to the same operating system, hardware and software features as Apple's own payment system:
 - a. **"Operating system features"**
 - i. **Management of subscriptions on the operating system level:** If players can only access subscriptions done through the Apple payment system on their phone settings, it will make it much more challenging for end-users to have an overview of their subscriptions across all apps and thus disincentivise end-users for making subscriptions through apps that are not using Apple's payment system
 - ii. **Parental control tools (for in-app purchases).** This could be done through a simple API connecting generic iOS-level restrictions set by parents with games using third-party payment systems. If parents cannot use device-level parental control tools for a game using a third-party payment system, it disincentivises them to download them.
 - b. **"Hardware features"**
 - i. **Authorising payments is done by double-clicking the side button, Touch ID, or Face ID.** Making payments through third-party payment systems should be as easy as making payments through Apple's own payment system.
 - c. **"Necessary and proportionate" measures to protect the "integrity of the operating system":**
 - i. **While Apple allows alternative payment channels under the Alternative Terms Addendum for Apps in the EU ("Addendum"), the following prerequisite measures Apple sets for them undercut their impact.**

- ii. **Developers are further prohibited from identifying the users in the link out to alternative payment systems**, which practically forces the user to log back into the developer's services when using out-of-app payment services.
- iii. **Enabling payment service web views in-app is also prohibited**, which significantly challenges the utilisation of any existing payment service provider solutions, and developers would need to wait for such in-app capabilities to be built or build it themselves. The use of two-factor authentication for payments is not possible without web views.
- iv. **Alternative payment processing and links out are only compatible with devices on iOS 17.4 and later**. Under the Addendum, developers would thereby be unable to serve any players with older devices or those who have not updated to iOS 17.4.

27. To overcome these challenges:

- a. Apple should be allowed to include only the same warning messages for third-party payments it uses with its own payment system. Apple should be only allowed to inform end-users what payment system is used (Apple payment system or third-party payment system) to deliver the purchase when the first purchase is made.
- b. Apple should not be allowed to set restrictions hindering the user payment experience when third-party payment systems are used (e.g. ban of identification links and in-app payment web service views). Furthermore, there is no need for Apple to restrict third-party web payment services only to users who have updated their iOS to version 17.4.
- c. Game developers must be allowed to use both the Apple payment system and third-party payment system parallelly in their game and allow players to decide what payment systems they prefer to use.
- d. Link-out payment systems should be allowed under terms similar to Apple's payment system. This should also apply to link-outs to external player community platforms and other external services improving player experience. In the long run, this would help to build alternative stores and sideloaded games.

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