Joint submission to the European Commission's PUBLIC CONSULTATION IN CASE DMA.100204 – SP - APPLE - ARTICLE 6(7) – PROCESS

This public consultation centres on Article 6(7) of the Digital Markets Act (DMA). The Article provides that:

"[t]he gatekeeper shall allow providers of services and providers of hardware, free of charge, effective interoperability with, and access for the purposes of interoperability to, the same hardware and software features accessed or controlled via the operating system or virtual assistant listed in the designation decision pursuant to Article 3(9) as are available to services or hardware provided by the gatekeeper. Furthermore, 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".

The undersigned civil society organisations and stakeholders commend the European Commission's DMA enforcement team for their prompt delivery of preliminary findings and for providing comprehensive measures regarding Apple's request-based approach to comply with Article 6(7) DMA. This approach, as laid out in Apple's compliance report and as observed in practice so far, **is clearly deficient and structurally incapable of delivering effective interoperability, as required by the DMA.** The Commission is evidently aware of these shortcomings, and the specification proceeding at hand is designed to address and rectify them. We acknowledge that there have been bilateral dialogues between the Commission and stakeholders that have informed the preliminary findings that we are commenting on. Nevertheless, we consider it pertinent to respond to this consultation by providing further context, legal arguments, and supporting data for the Commission's consideration. We trust that our additional contribution will also prove valuable in further informing the ongoing specification procedures.

Before addressing our comments on some of the measures proposed by the Commission, we wish to offer a general observation. **A fundamental shift towards "interoperability by design" would be the most impactful improvement, instead of a reactive, request-driven approach**. Apple should proactively design its DMA-designated operating systems to be inherently accessible to third-party developers. However, based on proportionality considerations, the immediate focus for the Commission in the package of measures under public consultation is on making existing Apple features and functionalities accessible to third-party developers through the request-based process. The Commission in fact acknowledges that Apple **might find it disproportionately complex to ensure "interoperability by design"** for existing Apple features and functionalities (Paragraph 10). Notwithstanding, it must be clear that a shift to interoperability by design would not be disproportionate, but it is rather **required** by the letter of the DMA, and the request-driven approach embraced by Apple (and conditionally endorsed by the Commission) can at best be compliant with the latter if it relies "on a fast, transparent and predictable process leading to rapid results," and only regarding existing features and functionalities for which interoperability was not foreseen by design, not future ones (see Paragraph 21 of the September 2024 Commission Decision opening this

proceeding).

Furthermore, and since Apple was required to comply with Article 6(7) as of 7 March 2024 and that the regulatory conversations with the Commission have been intensive since at least 2022, the need to resort to specification proceedings would appear to highlight a lack of willingness on Apple's part to comply with this obligation under the DMA. The current proceedings must not, of course, become yet another tactic to gain additional time, undermining the aim of achieving market contestability, a key objective of the DMA.

Access to APIs

We applaud the Commission in proposing comprehensive rules promoting transparency and higher quality standards for Apple's documentation of application programming interface (API) access. Apple has both a set of public APIs for external developers that they also sometimes use themselves, and some additional private APIs they reserve for their own use. Having consulted with software projects that directly requested interoperability with Apple, it was clear that this two-tier approach decreases the quality of documentation available for third-party developers. APIs restricted only to Apple are not publicly documented, but they can sometimes be accessed unofficially by third parties through reverse engineering. In some cases, they are not accessible at all due to entitlement checks or other limitations.

The DMA explicitly aims to level the playing field by requiring gatekeepers to grant equal access to third parties seeking access. Therefore, the quality of API documentation is **paramount**. We fully support the Commission's plan to broaden access to such documentation. However, with respect to Paragraphs 20(A)(c), 20(B)(d), and 24 it would be necessary to underline the requirement to keep API documentation **public and free-of-charge**. Interoperability solutions should prioritize using Open Standards and making all documentation publicly available. **Thus, with particular reference to Paragraph 20(B)(d), we recommend that the Commission confirms that Apple should not be permitted to impose non-disclosure agreements (NDAs) solely at its own discretion. Instead, any request for an NDA must be duly justified on a case-by-case basis, and only after the developer seeking access has been heard and their feedback duly considered and documented.**

Interoperability requests

We support the transparency measures outlined in Section 3.1 and agree that Apple should provide freely accessible and up-to-date information regarding verification for interoperability requests. An improvement to streamline verification proceedings would be to require Apple to upload a **standardised request form** that Apple should use for processing verification requests and that can be freely accessed by developers rather than only requiring Apple to list the "information the developer should insert in the request form."

A standardised and publicly available form would improve the transparency of the verification process and avoid delay tactics that have been reported by developers attempting to access gatekeeper APIs, such as not including information fields on request forms and then denying access requests due to insufficient information. Therefore, **we suggest that Apple be required to create and upload a standardised interoperability request form and to make it freely available on their support website**.

API security

As stated above, we fully support the Commission's objective of improving the quality of Apple documentation for access seekers, and understand the constraints imposed by Article 6(7)

regarding the security and integrity of the device and operating system. However, security concerns should not be overstated to the detriment of effective interoperability. Notably, Paragraph 20(B)(e) currently allows Apple the discretion to conceal symbols or accompanying descriptions to the extent that their disclosure may raise justifiable concerns for the integrity of iOS or iPadOS. We maintain that Apple should not be permitted to rely on security by obscurity, even though it is presently practiced in iOS. On the contrary, the developer should be allowed to claim that the implementation of an interoperability solution is in place based on Open Standards and publicly available documentation, the burden would fall on Apple to prove otherwise. **We therefore recommend the Commission to delete Paragraph 20(B)(e) altogether**.

Developer feedback for the interoperability solution

We fully support the Commission's requirement that Apple incorporates developers' feedback in an effective manner into the interoperability solution. Apple's current "Feedback Assistant" is widely perceived as ineffective and has a notably poor reputation among those seeking access due to Apple's inadequate responses. The alternative solution "Tech Support Incident" (TSI) is similarly exclusionary, as it allows developers to submit only two requests per year and charges $99 for an additional two TSI requests. As a result, in many cases developers have resorted to raising their concerns publicly on social media, hardly an optimal and fair solution. Considering the above shortcomings, we propose:

That the Commission states in Paragraph 35(a) the following: "*the developer should be able to assess that all aspects of its interoperability request are addressed, and that the solution is at least equally effective compared to the feature or functionality used by or available to Apple*". **However,** it is important to note that Apple may interpret this provision literally, providing access to APIs that may only work under very restrictive conditions maintained by the company. By contrast, it is clear from other sections that the Commission intends for Apple to make flexible APIs. Therefore, **we propose that the Commission includes language that, in addition to requiring for the solution to be at least equally effective when compared to the one used or available to Apple, but that also effective interoperability may require flexibility towards to the actor seeking access**.

Proposal for a "Bug Tracking" system

Although the Commission has rightly envisaged comprehensive rules for tracking interoperability requests, what remains missing is a clear process for reporting bugs that prevent the solutions from being used effectively. Interoperability – to be deemed truly effective – should be maintained in a sustainable way rather that treated as a one-off target. Bugs and errors in APIs commonly arise and necessitate timely and effective fixes by Apple. **We therefore suggest the Commission mandates improvements to Apple's existing bug-reporting system or creates a dedicated infrastructure for bug reporting, which should be publicly available on their website.**

Rejection of interoperability requests

We welcome the Commission's initiative to increase transparency on grounds and reasons for rejection of interoperability requests under Article 6(7). We find it necessary to highlight, however, the intrinsic interconnection between Articles 6(4) and 6(7) DMA in the context of granting interoperability, and how Apple, through "notarization," can leverage multiple channels under the current request-driven approach as a means to block interoperability.
In the current preliminary findings, the Commission has not addressed Apple's "notarization"

practices, understood as a full review by Apple which determines the fate of apps on Apple's App Store. Notarization is a complex, layered process, that includes assessments related to interoperability (i.e. when Apple deals with side-loading). Therefore, Apple exerts gatekeeper control over interoperability via two channels: on one hand, its notarization practices under Article 6(4) and on the other, the request-drive approach of Article 6(7). To uphold the DMA's goal of ensuring effective interoperability, Articles 6(4) and 6(7) should therefore be considered together.

An illustrative example involves recent denials by Apple of interoperability requests, including "just-in-time compilation technology (JIT)," as documented at i.e. https://ish.app/blog/ish-jit-and-eu. Another example relates to side-loading of alternative app stores. While third-party app stores are governed under Article 6(4), they still require access to some essential frameworks under Article 6(7) to compete fairly with Apple's app store. Without access to essential software features, interoperability cannot be considered truly effective. However, Apple could reject an interoperability request by arguing that, since it does not use the available technical framework, it has no obligation to make it available to third party developers. That this argument lacks legitimacy emerges from the very wording of Article 6(7), which explicitly refers twice to functions that are "available" and not necessarily being used by the gatekeeper.

Considering all the above, **we recommend that the Commission reads and applies Articles 6(4) and 6(7) in a coordinated manner, to achieve the DMA goals. To this aim, we recommend that the Commission includes language in Paragraphs 40 and 42 confirming that rejections by Apple on the grounds that a request supposedly falls outside of the scope of Article 6(7) should not prejudice claims under Article 6(4) as well**. If this is not addressed properly, we fear that Apple may continue to leverage the proposed measures to strategically block access to certain existing features to maintain its corporate/competitive advantage in the future.

Conciliation process

We strongly support the Commission's efforts to enhance conflict resolution procedures in relation to the granting of interoperability. While the Commission's intention to involve conciliators holds considerable promise for achieving better and fairer outcomes in disputes between Apple and those seeking access, we wish to highlight certain challenges that may arise for smaller Free and Open-Source Software (FOSS) projects and developers.
Smaller FOSS projects, communities and individual developers working on alternative solutions to gatekeepers' products and services often lack the resources and budgets necessary for the complex dispute resolution procedures being proposed. Although the current framework proposed by the Commission appears developer-friendly by placing the costs of procedures on Apple, we fear that this arrangement would benefit only larger corporations with established legal departments and sufficient capacity for such dispute resolution.

Entrusting Apple with choosing of conciliators further reinforces the existing power imbalance between the gatekeeper and third-party developers. This could discourage developers from pursuing conciliation, fearing an unfair outcome. While the draft decision mandates a "transparent and impartial process" for selecting conciliators, the specifics are left undefined (but they must be communicated to the Commission). Developers can only choose a conciliator from outside Apple's pre-selected pool if they believe "none of the conciliators in the pool have the relevant expertise." This sets a high bar, requiring developers to essentially prove the entire pool is inadequate before seeking an outside expert. Developers might

hesitate to invoke it, fearing they lack the leverage to challenge Apple's preferred experts.

Therefore, **we recommend the Commission assumes a more proactive role in dispute resolution procedures by – at the request of those seeking access – appointing a neutral expert, thereby reducing the need for multiple appointments and associated costs**.

We further emphasize the importance of the Commission being mindful of the quality of decisions issued by the conciliators, as this represents a crucial element of the request-based process, particularly in mitigating any potential risk of bias in favour of Apple

The "pathway towards interoperability by design"

We commend the Commission for incorporating general principles aligned with the idea of interoperability by design in Section 5, which governs the implementation of Article 6(7). However, we believe this Section is misplaced in the current document structure. Its guiding principles should inform the whole applicability of the document, rather than serve merely as an informative section. As noted at the outset of its submission, Apple's request-drive approach is at odds with the DMA since it represents a reactive stance that undermines interoperability by design. **We therefore recommend the Commission to relocate Section 5 to the beginning of the document and clarify that its principles are meant to guide the entirety of the document**.

We believe that Apple's interoperability solutions must be technologically neutral, in line with the principles set out in Recitals 14, 70, and Article 13(6) of the DMA. Such neutrality is currently reflected in the proposed measures, which stress that interoperability solutions should be accessible across different devices and use cases. We argue that Apple should not impose limitations that restrict access based on formal grounds or device-specific requirements. An illustrative example of Apple's non neutral approach to interoperability is its restriction over "Just-In-Time (JIT) compilation," a technology that significantly enhances performance by compiling code at runtime, saving memory and energy resources. JIT is available in iOS and iPadOS for different applications, but since Apple uses it for its browser, the company provides access **only** for third-party browsers, blocking the technology for other use-cases like emulators and virtual machines. Instead, interoperability solutions should ensure equal opportunities for all developers and preserve end-user autonomy and choice, as outlined in the DMA. **We therefore recommend that the Commission include a dedicated paragraph on 'technological neutrality' in the principles section, aligned with the language of Recitals 14, 70, and Article 13(6) of the DMA**.

Tracking of requests and transparency

We strongly support the Commission's plan to implement a tracker system that provides those seeking access (developers) with relevant information regarding the status of their interoperability request. In particular, we welcome the publicity mechanisms for those requests. This promotes transparency and permits a more thorough evaluation of Apple's discretionary power over interoperability.

Another key element of a truly effective request-based approach is the ability of potential requesting parties to gain sufficient insight into the reasons provided by Apple to justify its decisions to accept or deny previous interoperability requests. However, no obligation currently exists in this regard, apart from Apple's duty to publish reports containing

quantitative KPIs as well as non-confidential versions of the conciliator's recommended solutions issued during the conciliation process.

We suggest that the Commission include a provision requiring decisions – whether those rejected or granted - be made public in accordance with the publicity levels proposed by the Commission. Specifically, we recommend amending Paragraph (72)(a) taking into consideration Paragraph 37. For fully and partly available requests, the grounds of Apple's decisions should be made public.

Additionally, as emphasized in the Developer Feedback section, we urge the Commission to require Apple to improve its bug-tracking process concerning interoperability. The solution proposed by Apple should be future proof, recognising that bugs in APIs commonly arise, and demand timely and effective fixes by Apple. Therefore, **we recommend that the Commission mandate public reporting on how Apple handles bugs reported by developers, including details of the solutions ultimately provided**.

Resources allocated by Apple to deal with interoperability requests

Paragraph 68 states that Apple must allocate sufficient resources to ensure it can diligently assess, handle, process, implement, and release all interoperability requests that fall under Article 6(7). The current language is vague and does not define what "sufficient resources" means. A stronger statement would list specific types of resources, such as personnel, funding, and infrastructure.

Adequate support to developers

Paragraph 8 of the draft decision emphasizes the need for Apple to provide "adequate support" to developers to minimize the complexities and costs associated with the interoperability request process. Besides clear and comprehensive documentation and establishing dedicated contact points and responsive communication channels, Apple should set up a forum where developers could openly discuss interoperability challenges, share solutions, and collaborate with each other and Apple engineers. This open forum could complement the existing request-based system by facilitating knowledge exchange and faster resolution of common issues.

Additionally, Paragraph 73 states that other developers should be able to refer to or indicate their interest in another developer's request in their own request. This provision aims to facilitate a collective approach to requesting interoperability, allowing developers to leverage each other's efforts. Instead of merely suggesting that developers *should* be able to refer to other requests, **the provision could require Apple to establish a collaborative platform or forum where developers can share their requests, track their progress, and coordinate their efforts**.

Signatories

- ARTICLE 19
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- Data Rights
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