15 January 2025

EUROPEAN COMMISSION
BRUSSELS, BELGIUM

This is a response made as an individual expert on the EC's proposed measures in Case **DMA.100204**. Information on my background and relevant expertise is available at my website: https://www.ianbrown.tech/about/

For transparency, I have been commissioned by Meta Platforms Inc. to write an independent expert report on the security, privacy and integrity implications of the EC's proposals in this case and Case DMA.100203, which will be published in early February. This consultation response has been informed by that work, as well as discussions with other experts, but is entirely my own.

While the EC's proposed measures would significantly improve Apple's existing process for third parties to request specific features be made interoperable in iOS and iPadOS, my highest-level concern is that the DMA's Article 6(7) clearly does not envisage a long, bureaucratic, gatekeeper-designed and run process for competitors to "request" interoperability, with many opportunities for the gatekeeper to opaquely reject or narrow those requests.

The default position should be that at a minimum, the gatekeeper makes *all* of the functionality available to its own non-OS software in its operating systems (or any designated virtual assistant) available to third parties, with detailed public documentation for developers. "Interoperability by design" is a fine objective: the phrase in DMA Recital 65 is clearly inspired by the GDPR's Article 25, which adds "and by default"!

These interoperability requirements for gatekeepers have been under active debate since they were included in the EC's DMA proposal published in late 2020 and are generally not complex from a technical perspective (as discussed in para. 53). The proposed measures are extremely generous in giving Apple yet more time to comply with the law, nearly a year after it came into full applicability.

I have made some comments on specific paragraphs in the proposed measures in the table below. I applaud many of the specific measures, and would emphasise that wherever possible they should be strengthened to make it easier for smaller players to share information and work together to improve the fairness and contestability of these digital markets, in the face of the near-overwhelming market strength of Apple in the mobile OS ecosystem.

While it will sometimes be in the interests of other large firms to push against resistance from a gatekeeper, they will also have other interests (such as good relations with the gatekeeper in question, or trying to avoid precedents which might be applied to their own firm in future) which make this less effective as a mechanism to balance overall interests across a digital market.

Para.	Sub-para.	Comment
20	A(c)	Why should this information be limited to developers “who have signed the Developer Program License Agreement and are members of the Developer Program”? Why can it not be made public, where it is more easily accessible to any interested party?
20	B(a)	Many of these proposed measures could be replaced simply with part of this subparagraph: “Apple should produce a comprehensive technical reference for the iOS and iPadOS frameworks and libraries called by Apple’s services and hardware…comparable in detail to the current developer documentation of public frameworks”.
20	B(c)	Where does the DMA give a gatekeeper the right mentioned in this subparagraph, to “require the developer to provide more detailed information regarding their interest in obtaining interoperability with a specific feature or functionality to which the framework relates”? If retained, this should be more specific to stop its use as a delaying tactic or mechanism to obtain confidential information from a developer (even if the gatekeeper is taking measures to protect it, as later required in para. 76).
20	B(e)	“Security by obscurity” is generally frowned upon as a protective security measure, especially in software present on more than an estimated 1.382 billion smartphones around the world (source: Statista, 2023).
35	c	What about a situation where the gatekeeper feels the Cybersecurity Act, GDPR or other EU law precludes compliance (DMA recital 64, also referred to in the Case.100203 proposed measures)? There seems to be an unresolved tension in the two EC consultations, between a narrow focus on “integrity” (as specified directly in DMA Art. 6(7)) and broader consideration of cybersecurity, data/consumer protection, and other legal duties.

		Where these wider considerations are included in this process, the EC could intervene in disputes with the assistance of relevant EU and national authorities — such as the EDPS/EDPB on data protection issues.
40		Why should the affected gatekeeper make the decision about the scope of their legal obligations? Would the European Commission not be a more appropriate decision-maker here?
41		Footnote 10 is a useful clarification here. It would also be helpful to repeat the statement from the proposed measures in Case DMA.100203, para. 131(e), that an integrity measure "cannot be considered strictly necessary and proportionate if it seeks to achieve a higher level of integrity than the one that Apple requires or accepts in relation to its own services or hardware."
47	b	Related to the previous point: why should the gatekeeper get to choose who the supposedly independent default "conciliators" of disputes will be? At a minimum, should this "pool" not be approved by the European Commission, for its independence, expertise and diversity (as the monitoring trustee proposed by Apple under its commitments relating to Apple Pay is, in Case AT.40452)?
48		Smaller firms and individual developers would be able to collaborate much more effectively on interoperability requests if they had the option much earlier in this process to fully share details of requests and the gatekeeper's responses.
52		Allowing a gatekeeper to continue using its own "private" OS functionality rather than a public interoperable version will create a strong incentive for it to undermine the functionality, performance and other qualities of the latter.

I would be pleased to answer any questions or provide any further information which would be helpful to the Commission's final decision on their proposed measures in this case.

SINCERELY,

DR IAN BROWN