OPEN LETTER TO THE EUROPEAN COMMISSION

AFRICAN DEVELOPERS ARE PART OF THE EU DIGITAL MARKET: THEY MUST BE HEARD ON APPLE'S NEW BUSINESS TERMS

Dear President von der Leyen,
Dear Executive Vice-President Ribera,
Dear Executive Vice-President Virkkunen,

We, AdLegal, representing members of the Africa Digital Competition Forum (ADCF), comprised of app developers, software and SaaS companies, tech start-ups and online marketplaces operating in Africa and increasingly serving consumers in the European Union, write to express our profound concern regarding the Commission's apparent endorsement of the new business terms announced by Apple for the EU App Store on 18 August 2026.

We are concerned that these terms leave unresolved significant questions regarding Apple's compliance with the Digital Markets Act (DMA). We are equally concerned that these terms appear to have been advanced **without meaningful consultation** of an important group of affected business users: *African developers and digital businesses whose applications are distributed through the EU App Store and whose products are used by consumers in the European Union.*

The fact that a developer is incorporated, headquartered or operates principally in Africa does not make that developer an outsider to the EU digital market. An application developed in Nigeria, South Africa, Kenya, Uganda or Rwanda can be distributed through Apple's EU App Store and compete directly for consumers in the EU. Indeed, Apple's own announcement of 18 August 2026 states that its new EU business terms apply to **"every developer that distributes apps in the EU."** The new terms therefore concern not only European developers, but also businesses around the world whose applications are distributed in the EU including those based in Africa.

The substance of Apple's new terms warrants careful scrutiny against the obligations imposed by the DMA. Article 5(4) of the Digital Markets Act leaves little room for ambiguity: gatekeepers must enable business users to communicate and promote offers to consumers acquired through their platforms and to enter into contracts with those consumers without being charged for the act of steering itself.

The European Commission itself affirmed this position when, in April 2025, it found Apple in breach of the DMA and imposed a fine.

It is therefore difficult to reconcile that position with Apple's newly proposed terms, which introduce a 15% charge on steering. The Commission's earlier decision contemplated that some form of remuneration could potentially be justified where it relates to the value of facilitating the initial acquisition of a customer. But such remuneration must remain connected to that initial acquisition and must be proportionate to the value of the service actually provided. A blanket 15% charge raises serious questions as to whether that standard has genuinely been met.

Where the law says zero, an enforcement arrangement that permits a 15% charge risks transforming enforcement into regulatory compromise. If a gatekeeper can negotiate an outcome that materially departs from a clear statutory obligation, the question inevitably arises: is the Commission enforcing the law, or negotiating its application?

As the African proverb reminds us, **"When an elephant fights, it is the grass that suffers."** In this case, the smaller developers and digital businesses, the very market participants the DMA was intended to protect risk being left to bear the cost of a regulatory compromise between a powerful gatekeeper and the enforcement authority.

Apple's new terms introduce, among other things, a 26% commission for App Store transactions using Apple's In-App Purchase system, a 20% commission where alternative payment processing is used, a 15% commission where an app links out to complete purchases, and a 5% Core Technology Commission for digital transactions in apps distributed outside the App Store. Apple states that these terms will apply to every developer that distributes apps in the EU and will take effect on 1 October 2026.

It is precisely here that the African dimension becomes critical.

African developers with users in the EU are not merely observers of the EU's digital regulatory framework. The fact that the developer is African does not place its business outside the EU digital market. We therefore believe that the Commission's assessment of Apple's new terms cannot be fully informed without hearing from developers who will actually operate under those terms.

The Commission's position on Apple's new business terms also raises serious concerns regarding transparency and legal certainty. Affected businesses are consequently left uncertain as to whether the conduct found to be non-compliant in relation to Article 5(4) has been fully resolved, whether the Commission's concerns concerning alternative app distribution remain under examination, and on what basis the new commercial conditions are considered consistent with the DMA.

We therefore respectfully urge the Commission to:

- Consult affected African developers and digital businesses whose applications are distributed in the EU and provide them with a meaningful opportunity to submit evidence on the practical effects of Apple's new terms;
- Clarify where the relevant Apple proceedings presently stand, including which of the concerns previously identified under the DMA remain subject to assessment;
- Set out its position through a clear and reasoned determination, so that businesses affected by Apple's terms can understand the basis on which those terms have been assessed against the DMA; and
- Take account of the realities faced by smaller and emerging developers, including those based in Africa, when determining whether the new framework provides genuine and effective opportunities to enter, compete and grow in the EU digital market.

Africa's digital businesses are no longer standing at the doorstep of the global digital economy; they are already competing within it. In the words of an African proverb, **"until the lion tells his side of the story, the hunter will always be the hero."**
African developers serving EU consumers have a story that the Commission must hear.

Yours faithfully,

AdLegal International
On behalf of the Africa Digital Competition Forum (ADCF)

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