

# Breakout session: App store-related provisions in the DMA

**WU**  
WIRTSCHAFTS  
UNIVERSITÄT  
WIEN VIENNA  
UNIVERSITY OF  
ECONOMICS  
AND BUSINESS

 Federal Competition Authority

 **CLH** | The Competition  
Law Hub

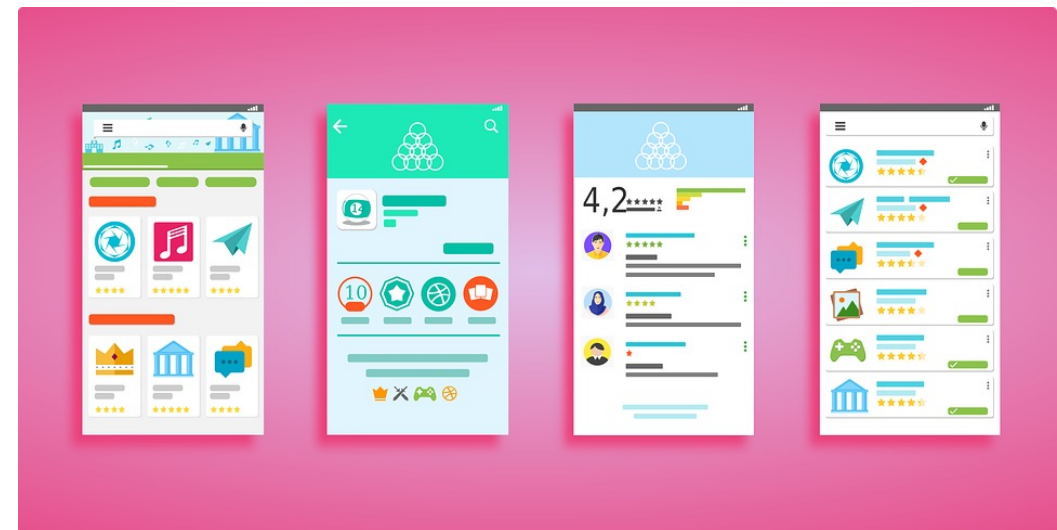
ECN-DMA CONFERENCE, AMSTERDAM, 24 JUNE 2024



# Apps and app stores in the DMA



- Software application store: 'a type of online intermediation services, which is focused on software applications' (Article 2(14) DMA)
- Software application: 'any digital product or service that runs on an operating system' (Article 2(15) DMA)
- 32 mentions of *software applications*, 28 of *software application stores* in the DMA (!)



# Designation of app store providers



Core platform  
service (CPS)  
*Art 2(2)(a) &  
Art 2(14)  
DMA*

**Gate-  
keeper**

Qualitative &  
quantitative  
thresholds  
*Art 3(1) & Art  
3(2) DMA*

Designation  
*Art 3(3) DMA*



Pictures: company websites

# App store-related provisions



## Article 5(3) DMA

- Parity clauses

## Article 5(4) DMA

- Anti-steering (business users)

## Article 5(5) DMA

- Anti-steering (end users)

## Article 5(7) DMA

- Connected services

# App store-related provisions



Article 6(4) DMA

- Side-loading, third-party app stores

Article 6(5) DMA

- Self-preferencing

Article 6(6) DMA

- Switching

Article 6(12) DMA

- FRAND

# The panel

 Federal Competition Authority



Moderated by



Schibsted



**Paulo  
Trezentos**

**Jeanette  
Teckman**

**Jérémie  
Jourdan**

**Vicky  
Robertson**

# Aptoide App distribution & DMA opportunities

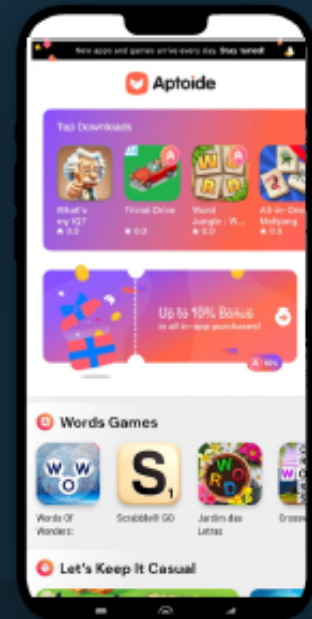


- ▶ Aptoide operates an app store and an app distribution platform in Europe on the Android platform since 2011
- ▶ Aptoide filed several complaints (with the EU and local courts) against Google's anti-competitive practices
- ▶ DMA and article 6.4 open two important opportunities to Aptoide:
  - Fair competition with Google Play
    - reduced friction at install time
    - no blocking of Aptoide
    - no self-preferencing and cross-selling
    - Play distribution and overnight updates
  - Access to the iOS platform

## Initiatives:

### Apple

- ▶ Launch of the first commercial alternative app store on iOS in the EU with in-app purchases
- ▶ Currently in a closed launch (due to CTF)
- ▶ Try it out:  
<https://ios.store.aptoide.com/>



### Google

- ▶ Exploring External Offers program - allows developers of Google Play-distributed apps to lead users in the European Economic Area (EEA) outside the app

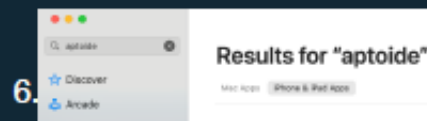
# Aptoide App Store & specific challenges

## Article 6.4

- ▶ *“The gatekeeper shall allow and technically enable the installation and effective use of third-party software applications or software application stores”*
- ▶ *“ The gatekeeper shall, where applicable, not prevent the downloaded third-party software applications or software application stores from prompting end users to decide whether they want to set that downloaded software application or software application store as their default.”*

### Apple’s DMA implementation roadblocks

1. CTF makes it hard or impossible for app stores to have a viable business model (e.g., casual apps).
2. CTF is a major roadblock for developers to change to New Terms, making it difficult for Aptoide to extend the catalog.
3. Friction at install time makes it hard for users to install Aptoide on iOS.



### Google’s DMA implementation roadblocks

1. No reduced friction at install time
2. Maintaining self-preferencing (e.g., search box)
3. No access to Google Play distribution
4. No enabling of Aptoide store in Google Ads

**Nothing has really improved for Aptoide**



# Apple Anti-Steering Injunction (US)

1. **Apple Inc.** and its officers, agents, servants, employees, and any person in active concert or participation with them (“Apple”), are **hereby permanently restrained and enjoined from prohibiting developers from (i) including in their apps and their metadata buttons, external links, or other calls to action that direct customers to purchasing mechanisms, in addition to In-App Purchasing and (ii) communicating with customers through points of contact obtained voluntarily from customers through account registration within the app.**

# In Apple's Own Words: CTF v. 17/10% Commission

## Understanding the Core Technology Fee for iOS apps in the European Union

The Core Technology Fee (CTF) is an element of the new business terms in the European Union (EU) that reflects the value Apple provides developers through ongoing investments in the tools, technologies, and services that enable them to build and share innovative apps with users.

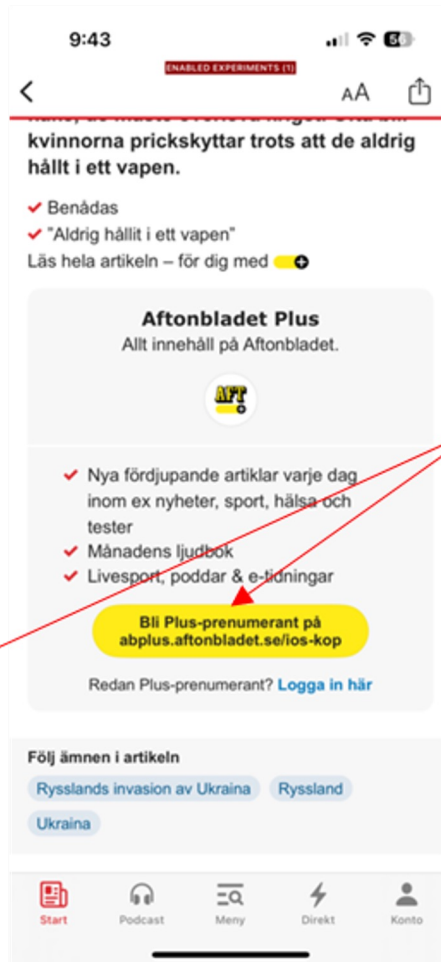
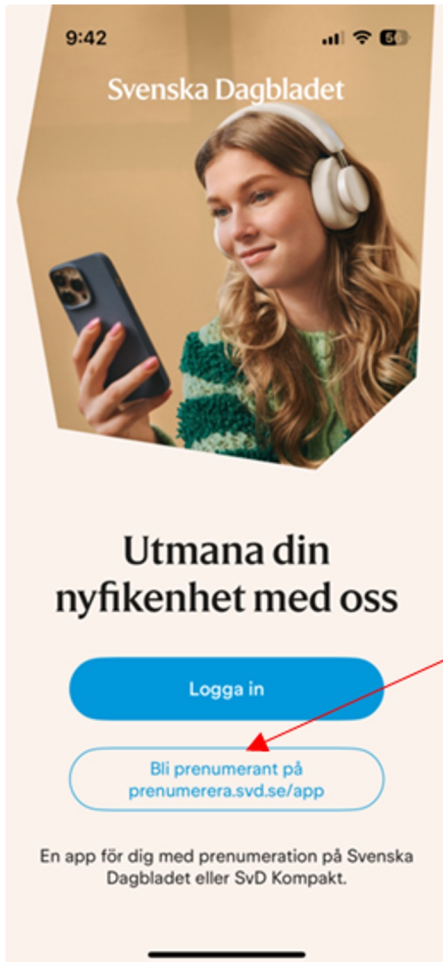
Source: <https://developer.apple.com/support/core-technology-fee/>

## Terms for alternative distribution and payments in the EU

Worldwide, the App Store's single commission on digital goods and services fairly reflects Apple's ongoing investments in a wide range of tools and technologies and services that enable developers to build high-quality apps, reach Apple users globally, and seamlessly sell their goods and services.

Source: <https://developer.apple.com/support/dma-and-apps-in-the-eu>

# Article 5(4) – Examples of restrictions on communication with end users



- The link that users click to initiate the modal alert and leave your app has **the following inappropriate labels**. Since the link should direct users to a page for **account creation or management**, any labels associated with the link should reflect that purpose.

"Get plus subscription"

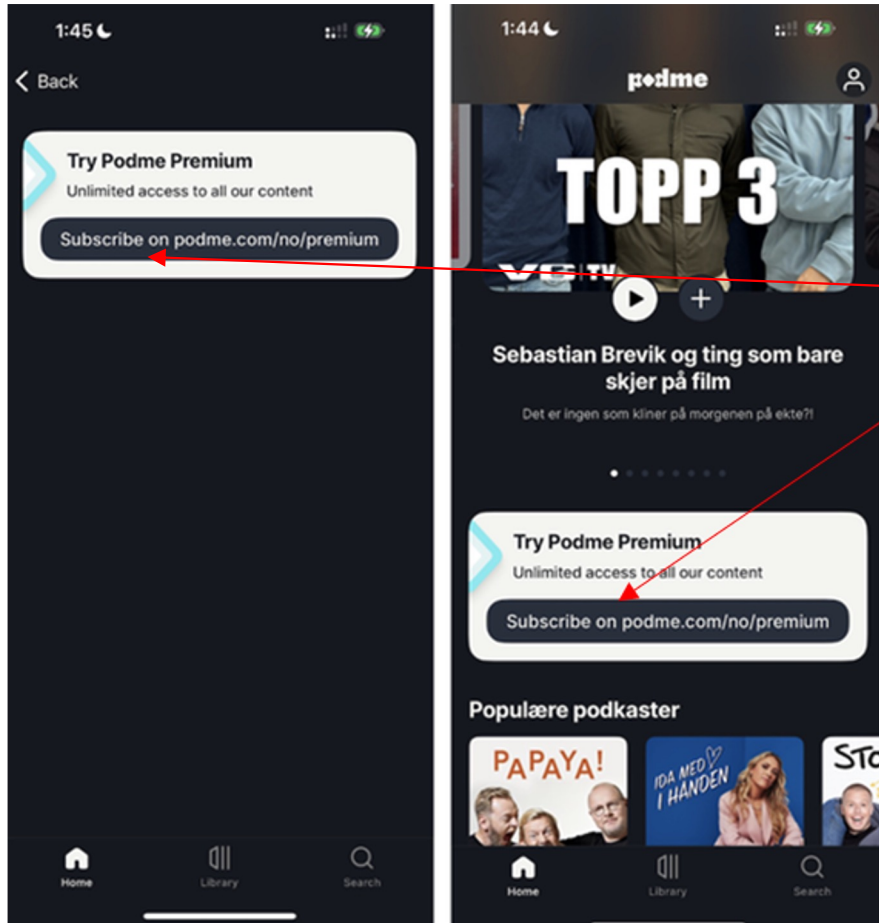
"Get the full picture on news, sports, relationships, crime, motoring, health, tests and fun"

"Become Plus Subscriber on"

"Become subscriber at"

These requirements **help protect user privacy and security, prevent scams and fraudulent activity, and maintain the overall quality of the experience when leaving the app** to create or manage accounts.

# Article 5(4) – Examples of restrictions on communication with end users



Your "reader" app uses the External Link Account entitlement to link out for account creation and management but does not meet all requirements for using this entitlement.

Specifically, we found that your app does not meet the following requirement(s):

- The link that users click to initiate the modal alert and leave your app has the following inappropriate label, "Subscribe on". Since the link should direct users to a page for account creation or management, any labels associated with the link should reflect that purpose.

These requirements help protect user privacy and security, prevent scams and fraudulent activity, and maintain the overall quality of the experience when leaving the app to create or manage accounts.

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