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Comments of

ACT | The App Association
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to

The European Commission, DG COMP

regarding its

Call for Contributions

on

Competition in Generative AI

Introduction and statement of interest

ACT | The App Association ('App Association') is grateful to respond to the European Commission, DG COMP, to its Call for Contributions on Competition in Generative Artificial Intelligence ('AI'). We appreciate the opportunity to contribute our insights and expertise, and to elevate the voices of our members comprising of small and medium-sized enterprises ('SMEs').

The App Association is a policy trade association for the **small business technology developer community**. Our members are entrepreneurs, innovators, and independent developers within the global app ecosystem that engage with verticals across every industry. We work with and for our members to promote a policy environment that rewards and inspires innovation while providing resources that help them raise capital, create jobs, and continue to build incredible technology. Today, the ecosystem the App Association represents—which we call the app economy—is valued at approximately €830 billion globally and is responsible for over 1.3 million jobs in the European Union (EU).[1]

We recognise the significant impact that AI has on businesses across various industries, and our SME membership is excited about the opportunities it presents. AI technologies offer immense potential for innovation and efficiency, and we advocate for a competitive landscape that enables SMEs to thrive using AI to develop innovative products and services. We view AI as a versatile tool that can be applied across various sectors and technologies, existing in many shapes and forms.

Generative AI is a subset of AI trained to create new content and ideas in response to user prompts.[2] Generative AI encompasses a vast array of versions, uses, applications, and integrations into various products, solutions, and sectors, providing transformational capabilities across consumer and enterprise markets, including consumer entertainment, healthcare, education, scientific research, and many other areas.

The App Association encourages European Commission alignment with its SME consensus policy recommendations on AI, which provide guidance on vital areas of AI governance across areas such as quality assurance and oversight, thoughtful design, access and

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[1] *See* https://actonline.org/wp-content/uploads/Deloitte-The-App-Economy-in-the-EU-2020.pdf.

[2] Lorenz, P., K. Perset and J. Berryhill (2023), "Initial policy considerations for generative artificial intelligence", *OECD Artificial Intelligence Papers*, No. 1, OECD Publishing, Paris, https://doi.org/10.1787/fae2d1e6-en.

affordability, bias detection and mitigation, and education, among others.[3] Moreover, we encourage the Commission to consider the results of our member survey on generative AI.[4]

Specific to competition and generative AI, we ask the Commission to carefully consider the following points, in the context of competition market analysis related to generative AI:

- Generative AI tools can be applied across various sectors, each adaptation being distinctly different from others, based on the main purpose of use.
- Products and services incorporating generative AI often operate on global scales.
- In some markets, generative AI solutions are being integrated into products and services which may also be in competition with similar products and services not utilising AI.
- Markets for products and services incorporating generative AI are dynamic and continually evolving, with new technologies, features, and platforms constantly emerging. Similarly, user preferences and behaviours related to AI tools also change over time.

1) **What are the main components (i.e., inputs) necessary to build, train, deploy and distribute generative AI systems? Please explain the importance of these components**

The importance of a dataset component will vary heavily depending on the intended uses of the generative AI. Generative AI systems are built using a wide range of structured and unstructured datasets (some public and some private), which may often include text, images, sensor outputs, user-generated content, and other sources. Such data may include synthetic data generated by another generative AI system.

2) **What are the main barriers to entry and expansion for the provision, distribution or integration of generative AI systems and/or components, including AI models? Please indicate to which components they relate.**

Because generative AI is a new, and rapidly evolving, area of technology, building, training, and deploying generative AI systems is challenging, but advances in offerings (e.g. third-party models and tools, customised solutions, machine learning stack optimisation, etc.) and the proliferation of standardised and interoperable datasets are rapidly reducing the cost and time associated with them. Generative AI markets offer unprecedented potential

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[3] See https://actonline.org/wp-content/uploads/2023-11-16-ACT-AI-Policy-Principles-FINAL.pdf
[4] *See* https://actonline.org/2024/02/27/survey-says-ai-and-ip-are-essential-to-innovation/

for innovation, growth, and job creation. Before making competition-related assessments or intervening in markets, the EC should carefully study generative AI and its impact across markets.

One of the most significant challenges for SMEs competing across consumer and enterprise markets, including those incorporating generative AI, is establishing and maintaining customer trust. SMEs' success in the app economy hinges not only on making their apps accessible and available but also on effectively reaching and engaging users who trust in the product. For example, consumers are increasingly concerned with privacy and cybersecurity considerations in digital markets, and consequently are becoming more cautious about the apps they download and use. Larger apps with extensive user bases and numerous positive reviews often enjoy a perceived advantage in terms of credibility and trustworthiness. In contrast, small apps face an uphill battle in gaining consumer trust, particularly when they have limited user reviews and brand recognition.

For SMEs developing generative AI solutions, or apps that include functions from generative AI, using reputable platforms for distribution offers significant advantages in overcoming entry barriers and reaching global markets. By distributing apps on established platforms, SMEs can tap into a vast user base and benefit from the platform's built-in infrastructure for marketing and payment processing, while also facilitating global reach across multiple consumer bases. This streamlined approach reduces the complexities and costs associated with independently marketing and promoting apps, enabling SMEs to focus their limited resources on product development and innovation. Furthermore, distributing on trusted platforms enhances consumer trust and confidence in the safety and reliability of apps incorporating generative AI. Therefore, SMEs gain significant advantages by using trusted platforms to distribute their generative AI apps, benefitting from the reputation of such platforms and the guarantees offered towards facilitating user protection.

3) What are the main drivers of competition (i.e., the elements that make a company a successful player) for the provision, distribution or integration of generative AI systems and/or components, including AI models?

Factors driving competition in generative AI include access to data, hardware, and infrastructure. As discussed above, existing frameworks (e.g. platforms) have enabled, and continue to enable, the access and connectivity needed to create new generative AI innovations across markets. Existing constructs for IP rights and control over connectivity are currently being tested with emerging technology use cases, with generative AI being no exception. Careful study of developments across EU court systems, and the publication

of this study for public consideration, is recommended to inform any future next steps that might lead to changes to these constructs.

At the core of competition in generative AI and associated technologies is innovation and creativity. Generative AI has been around for a long time in different shapes and forms, despite the recently growing excitement around such products and their increasing use. It's not just about the generative AI programmes themselves, but about their use and purpose and the benefits they bring. There are multiple creative ways in which generative AI can be implemented into products and services to create new innovative solutions. It is important that the competitive dynamics in place today that have enabled invention and growth for generative AI are augmented through government policies.

4) Which competition issues will likely emerge for the provision, distribution or integration of generative AI systems and/or components, including AI models? Please indicate to which components they relate.

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We expect the development of generative AI to be fast paced. We anticipate a landscape characterised by healthy competition, rapid growth, and dynamic changes. Because generative AI is a new, and rapidly evolving, area of technology, building, training, and deploying generative AI systems is challenging, but advances in offerings (e.g. third-party models and tools, customised solutions, machine learning stack optimization, etc.) and the proliferation of standardised and interoperable datasets are rapidly reducing the cost and time associated with them. Generative AI markets offer unprecedented potential for innovation, growth, and job creation. Before making competition-related assessments or intervening in markets, the EC should carefully study generative AI and its impact across markets, and make public for stakeholder input the results of its studies.

5) How will generative AI systems and/or components, including AI models likely be monetised, and which components will likely capture most of this monetization?

Data monetisation models in generative AI are likely to evolve in response to market dynamics and consumer preferences.

We anticipate that, as consumers become increasingly privacy-conscious, there will continue to be a shifting expectation towards limiting the exploitation of their personal data. Consequently, data monetisation models that prioritise privacy and respect user preferences are likely to be the most relevant and sustainable in the coming years. Models that offer transparency, consent-driven data collection, and robust privacy controls will likely gain traction among consumers. These could include subscription-based models where users pay for enhanced privacy features or ad-supported models that prioritise user anonymity and data security.

6) Do open-source generative AI systems and/or components, including AI models compete effectively with proprietary AI generative systems and/or components? Please elaborate on your answer.

As a result of the fast-paced and dynamic nature of digital markets, it can be difficult to predict certain developments. However, we believe that open-source generative AI systems and components can and do compete effectively with proprietary counterparts. Open-source solutions foster innovation by allowing for collaborative development and customisation while also promoting transparency and accessibility. Over the years, we have been advocates for open-source solutions across various industries, recognising their potential to widen access to technology and drive widespread innovation. Open-source solutions also aid in reducing barriers to entry for SMEs, such as our members.

7) What is the role of data and what are its relevant characteristics for the provision of generative AI systems and/or components, including AI models?

Data plays an important role in the provision of generative AI systems and components, but will vary heavily depending on the intended uses of the generative AI. Generative AI systems are built using a wide range of structured and unstructured datasets (some public and some private), which may often include text, images, sensor outputs, user-generated content, and other sources. Such data may include synthetic data generated by another generative AI system.

The role of data in generative AI training is an important question for our SME app developer members, as they care greatly about the protection of intellectual property (IP)

rights. Our members prioritise data security and IP rights protection to safeguard their innovations and ensure fair competition in the market. Therefore, we advocate for a strong focus on preventing data theft and IP rights violations, ensuring fair competition and innovation in the market, especially for SMEs with limited resources to protect their rights.

8) What is the role of interoperability in the provision of generative AI systems and/or components, including AI models? Is the lack of interoperability between components a risk to effective competition?

Increased interoperability facilitates improved integration and collaboration between different generative AI systems and components. However, in the current early stages of development, we recommend practicing caution. Requiring interoperability too early might constrain the development of more innovative solutions, as businesses may be forced to compromise to integrate with less evolved counterparts regarding different quality aspects. Such compromises in quality may raise privacy, data protection, and cybersecurity concerns. Generative AI policy frameworks should enable easier access and use through creating a culture of cooperation, trust, and openness among policymakers, AI technology developers and users, and the public.

The development and implementation of open standards and protocols could offer benefits in terms of interoperability, efficiency, and fostering innovation. We expect that SMEs will be active participants in standard-setting processes that will facilitate interoperability and competition across markets where generative AI products and services are in play. It will be equally important that SMEs are able to use these standards to innovate on top of, so we urge for consideration of ways to reduce barriers to the use of open standards, such as through ensuring that those licensing standard-essential patents ('SEPs') adhere to their promises to provide fair, reasonable and non-discriminatory ('FRAND') licenses that any standards user will need to leverage the standard (making the adoption of the proposed EU SEP Regulation to address current imbalances in SEP licensing vital).

However, standards should generally not be prescribed by the government, and should instead be driven by organic market forces. Due to the continued rapid pace of innovation, it may be premature for industry players to pursue standardisation at this point. A heavy-handed approach towards standardisation and harmonisation by government that is not based on careful study and competitive analysis could slow or derail innovation. In nascent markets like generative AI, it's vital to allow technologies to

either fail or succeed, thereby enabling consumers to identify their preferences and for innovators to adapt and improve their products accordingly.

9) Do the vertically integrated companies, which provide several components along the value chain of generative AI systems (including user facing applications and plug-ins), enjoy an advantage compared to other companies? Please elaborate on your answer.

While generative AI markets should be carefully studied as they evolve and mature before making similar conclusions, within the existing software distribution market that features low switching costs, vertical integration can often be pro-competitive, creating greater efficiencies, better quality, or lower costs for consumers. It is important that vertical integration questions are approached considering the integration of many features into single products or offerings to avoid an overly narrow focus that would ignore the way consumers experience them.

10) What is the rationale of the investments and/or acquisitions of large companies in small providers of generative AI systems and/or components, including AI models? How will they affect competition?

Success for a startup or small business can take a variety of forms and be accomplished through different means, including but not limited to (1) growth that is propelled by investments from larger companies and (2) being acquired by a larger company with the resources and knowledge to improve the product and/or streamline market entry or an initial public offering (IPO) all to the benefit of end-consumers. Acquisition is often the best of these options for the business owner(s) and consumers, as IPOs are expensive and fraught with risk and thus reduces likelihood of consumer benefit. App Association members often start their businesses with the understanding that once they have brought their idea to fruition, the business may be acquired, allowing them to move on to develop new businesses. The EU economy and consumers have benefitted immensely from freedom to combine the novel products our members create with the resources, technical knowledge, and commercial knowledge of businesses that later acquire their innovations. A merger that helps deliver better products or services for consumers is often the desired outcome and is desirable from a competition policy standpoint. Therefore, any changes to the EU merger policies will likely have significant effects on App Association members' ability to fully realise success.

In the context of generative AI, we encourage cautious study of the impact of larger company investments and acquisitions of smaller entities before approaching changes to

policies that would insert the EU into these transactions. Any modifications should maintain a deference to thorough economic analysis as a foundation of any merger review or enforcement and base any changes in settled law and experiences and effects that are well-demonstrated. Such an approach will prevent policy-level decisions based on edge cases or hypotheticals that do not reflect the reality of the generative AI business environment.

11) Do you expect the emergence of generative AI systems and/or components, including AI models to trigger the need to adapt EU legal antitrust concepts?

While we don't currently see issues in the fast-evolving markets related generative AI to require the emergence of new antitrust concepts, we urge the careful consideration and assessment of the existing concepts and their application. We caution against premature intervention and instead advocate for an approach that includes careful consideration of market definitions and evidence of market distortion. We believe that at this point, preventative predictive action would likely cause more unintended harm than benefits.

Moreover, we ask the Commission to consider privacy and data protection as non-price competition parameters. As consumers care increasingly about privacy, security, and data protection in digital environments, companies compete on providing such guarantees through new, innovative solutions. Recognising the significance of privacy and data protection aligns with evolving considerations of consumer choice.

We reiterate that generative AI markets are in their relative infancy. In considering whether anticompetitive entry barriers or obstacles to growth in generative AI exist (and to what extent they may warrant government action), we strongly encourage that a strong evidence base is developed first. The foundation for making digital economy policy changes, particularly for nascent markets such as those considered by the EC to be generative AI markets, should be based on well-established and systemic harms, not edge use cases or hypotheticals.

12) Do you expect the emergence of generative AI systems to trigger the need to adapt EU antitrust investigation tools and practices?

Our answer to question 11 applies to this question as well. It is not clear what aspects of the EU's antitrust investigation tools and practices would need to be updated to account for generative AI fact patterns.

The App Association remains at your disposal to provide further input and would welcome the opportunity to work with all relevant stakeholders. We thank the European Commission in advance for its consideration of our submission, and we look forward to engaging further in the future.

Sincerely,

Mike Sax
Founder and Chairperson

Borbála Szücs-Bártfai
Policy Associate (Europe)