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### Joint Letter on Gratuitous Access to Technology for Business Users

The above signed organisations appreciate the opportunity to contribute to your continuing discussions on the Digital Markets Act (DMA).

We represent companies acting in a wide range of industry sectors with varying degrees of digitisation. Some offer digital platform services as defined under the DMA, and some may eventually be defined as “gatekeepers”. All of us are users of digital platform services that will be regulated by the DMA.

We write to you because we are deeply concerned by legislators considering mandating the introduction of “free of charge” or gratuitous access conditions to a broad range of digital infrastructure, hardware, software, and the underlying technology of digital products and services, at this late stage of the legislative process.

We support the DMA’s objectives addressing at EU level concerns around unfair practices and weak contestability so as to allow end users and business users alike to reap the full benefits of the platform economy and the digital economy at large. It is therefore crucial for EU negotiators to try to ensure the DMA is effective in achieving its objectives while preventing significant unintended and disproportionate consequences for users of platform services and other market players. **We believe suggestions to include a sweeping obligation on designated gatekeepers to grant free of charge access to their valuable platforms and technologies raises fundamental concerns:**

- Mandating free of charge or gratuitous access to technology **fails to recognize the investments made in these technologies, and the value of innovation and intellectual property**. The broad and open-ended scope of this free access would be akin to an expropriation of valuable intellectual property without compensation. This would be an unprecedented departure from existing EU principles, particularly given that European businesses have repeatedly raised concerns when foreign jurisdictions engage in such expropriations.

- Gratuitous access can seriously **undermine incentives to innovate as well as to maintain technologies that are provided without adequate compensation**. Designated gatekeepers' incentives to continue to invest and innovate in technologies would decrease significantly. This will harm the wide range of businesses that use these services in Europe, as future development of these services slows down. Gratuitous and broad access can also seriously undermine the incentives of other companies that would seek to enter these business areas and scale in the future.
- Gratuitous access lacks an assessment of **proportionality**. Mandating virtually unlimited and free access to a broad range of platform technologies without an assessment of potential long term impacts goes far beyond what is necessary for the harmonisation of national rules on fairness and contestability. This would be unprecedented and was rejected in the Commission's impact assessment of the DMA. Even in the case of regulated public utilities, access obligations involve a detailed analysis of the market and the specific circumstances relevant to each regulated company, and an assessment of impacts on investment and innovation.
- **Legal certainty** for all businesses will be in question. The DMA would effectively dictate that charging a fee for a licence to a technological product or service is "unfair" without any impact of effects, the value of the exchange, or the appropriateness of the fee. This would dramatically reshape how business is done in Europe. Once the notions of contestability, fairness and proportionality are altered for designated gatekeepers in law, these notions are altered fundamentally and could be applied in the future to other businesses in unpredictable ways, both in Europe and abroad.

We are concerned that such a fundamental and complex issue is being discussed so late in the process, with very limited time for appropriate assessment and consideration.

The DMA should create legal certainty for all businesses and consumers, and the framework should be workable and enforceable for the years to come. These objectives, however, risk being undermined by mandating gratuitous access conditions. We believe this proposal should be reconsidered, and instead explore solutions following the principle that it is indeed fair for businesses to receive adequate compensation for the product of their investments.

A DMA that respects the value of intellectual property, preserves private incentives to invest and innovate in technology, is proportionate in meeting its objectives, and provides legal certainty for those doing business in Europe, will better serve European businesses and consumers.

We wish you all productive and fruitful discussions during the upcoming interinstitutional meetings.