10 Great Queen Street, London, WC2B 5DG

24th January, 2019.

To whom it may concern

Re: Fairness in platform-to-business relations

I am writing to you and various of your colleagues to draw your attention to concerns about aspects of Article 4 of the draft Regulation referred to above. These concerns arise in relation to questions of notice and the limitations imposed on platform providers where they wish to suspend or terminate the right of a developer to promote, sell or distribute a product or service through their channel.

It has long been our view, for example in relation to Apps, that the mere fact they are made available by an app store such as Google Play or iTunes, suggests to the consumer that the App in question meets certain standards or at the very least that it conforms with the contractual terms specified by Google or Apple.

It seems to us that where an intermediary has a reasonable apprehension that a particular App breaches its terms and conditions, the platform provider should be able and expected, perhaps even required, to act promptly to suspend the availability of the App pending investigation and resolution if the matter is disputed. This would be consistent with analogous or similar provisions where "notice and take down" is in common usage.

Amendments suggested by both the Council and the Parliament introduce the possibility of substantial delays, between 15 and 30 days, before a suspension can be activated whereas our view is that, providing there is a reasonable basis for it, the intermediary should act immediately. It would be strange indeed if, because of an EU Regulation, a company was obliged to continue providing access to a product or service even when the company had grounds for believing the product or service was out of compliance with its owns terms and conditions of service in ways which were likely to be harmful to a wider public interest.

We welcome the exemption provided where the suspected breach relates to the "suitability of the product or service to minors". However, this wording is likely to suggest a rather narrow construction to a court i.e. that the legislators had in mind inappropriate displays of, for example, pornographic or violent materials in Apps specifically targeted at children.

The truth, though, is children are major users of a great many different kinds of Apps and a breach, for example in relation to spam, data breaches, malware or other forms of cybersecurity risks could have a disproportionate and harmful impact on children.

For this reason, while we broadly endorse the amendment proposed by the Parliament, we suggest that paragraph 1 (b) should be amended so that it reads

(b) a provider of online intermediation services acts to protect consumers and other users on the basis of a reasonable doubt including in connection with illicit or inappropriate content, the safety of a product or service, counterfeiting, fraud, spam, abuse, malware, data breaches, cybersecurity risks, or suitability of the product or service to minors.

Yours sincerely,

John Carr OBE
Secretary.