**Additionnal information to the EU Survey on Retail Payment Strategy consultation**

We would like to draw the attention of the EU Commission on the fact that consumers are currently limited in their freedom of choice regarding the applications and functionalities they wish to use on their smartphones and other mobile devices (see questions 9 and 27.1).

Indeed, bigtechs, such as Apple, act as “gate-keepers” and control the operating systems, access to the essential features and components of the mobile devices and determine whether, and under which conditions, consumers or third-parties can have access to them.

However, access to the operating system and to some components of mobile devices is essential for the emergence of diverse and innovative contactless payment solutions for the benefit of consumers.

For example, Apple does not allow third-party applications competing with Apple Pay to access the NFC antenna on all of its products whereas such access is necessary to enable contactless payment since all electronic payment terminals in many European countries are based on NFC technology. In this regard, a large-scale replacement of all of these terminals with other contactless technologies is strictly inconceivable for costs reasons.

Thus, apart from Apple Pay, Apple iOS devices are inaccessible to contactless mobile payment solutions which rely on NFC technology.

Apple reserves the market for contactless payment solutions to the exclusive benefit of its subsidiary Apple Pay, restricting consumers’ freedom of choice and competition between payment solutions, and hindering the development of contactless payments whereas the recent COVID-19 pandemic confirms the need to facilitate this payment method.

The lack of access to Apple products’ NFC antenna has been identified by:

1. the German Parliament which has decided to require providers of technical infrastructures, such as Apple, to grant access to technical infrastructures (including the NFC antenna contained in mobile devices) to payment service providers (cf. [https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\_BGBl&start=//\*%5b@attr\_id=%27bgbl119s2602.pdf%27%5d#\_\_bgbl\_\_%2F%2F\*%5B%40attr\_id%3D%27bgbl119s2602.pdf%27%5D\_\_1579187641143](https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&start=//*%5b@attr_id=%27bgbl119s2602.pdf%27%5d#__bgbl__%2F%2F*%5B%40attr_id%3D%27bgbl119s2602.pdf%27%5D__1579187641143) , article 4 ; on the reasons of this German initiative, see <https://www.lexology.com/library/detail.aspx?g=01e51365-3e74-4fc4-ab84-0ef009d5ccfd> ) ; and
2. the French Senate which has adopted a draft law for the same purpose, submitted to the Assemblée nationale (see <https://www.senat.fr/rap/l19-301/l19-3011.pdf> , pages 20-26).

Beyond Apple’s situation, practices through which consumers are often kept captives become common practices.

As an example, Samsung already reserves in practice to the benefit of its own payment solution (Samsung Pay) the use on its mobile phones of ergonomic tools, or functionalities facilitating practical and fast access to an application (“swipe”), which creates a distortion of competition. Similarly, Apple reserves the use of the “double-click” function on the side button of iPhones and Apple Watch to its own payment solution (Apple Pay).

In addition, Apple iOS devices and their applications are configured to automatically start Apple Pay when they are near a contactless payment terminal to allow payment with Apple Pay, preventing consumers from defining a competing application as the default or favourite application.

To have fair competition, more choice and better prices for consumers, new rules should be therefore established to ensure access to any technology, hardware, component (such as the NFC antenna), know-how or software enabling or facilitating the use of a third-party application in relation to a payment transaction or a payment service.

New rules should also prevent distortions of competition to the detriment of consumers. In this respect, access to all tools facilitating the use of any application relating to payment service, payment transaction or e-money (e.g. ergonomic or fast access tools) should be granted to ensure a level playing field between GAFAM’s payment services business and other payment service providers.

Further details on this matter as well as a proposal for a European regulation on contactless mobile payment are available in the “Contactless Mobile Payment Liberating smartphones and their user” published by the Think Tank “The Digital New Deal Foundation” (cf <https://www.thedigitalnewdeal.org/wp-content/uploads/Contactless-mobile-payment_publication_DigitalNewDealFoundation.pdf> ).