

**Asia Internet Coalition (AIC) Industry Submission on the House Bill No. 6344:  
Interoperability Function of Instant Messaging Applications, Philippines**

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20 March 2023

To

**Rep. Tobias “Toby M. Tiangco**

Chairperson, Committee on Information and Communications Technology (ICT)  
House of Representatives  
Government of the Philippines

**Cc: Ranier M. Alvarado**, Committee Secretary

On behalf of the Asia Internet Coalition (AIC) and its members, we thank the Committee on Information and Communications Technology for the opportunity to submit our inputs on the **Draft House Bill No. 6344 regarding Interoperability Function of Instant Messaging Applications (“Draft Bill”)**. AIC is an industry association comprised of leading Internet and technology companies in the Asia Pacific region with an objective to promote the understanding and resolution of Internet and ICT policy issues.

We understand that the Committee scheduled a meeting for initial consideration of the **House Bill No. 6344 on Interoperability Function of Instant Messaging Applications**, introduced by Rep. Albert S. Garcia. This bill seeks to require the instant messaging service providers to enable interoperability function in their messaging applications. The proposed bill envisions the National Telecommunications Commission (NTC), Department of Information and Communications Technology (DICT) and the National Privacy Commission (NPC) as the lead agencies to provide the standards in the determination of service providers that are capable of including the function of interoperability in their messaging applications, draft the necessary guidelines for interoperability including data security measures, provide technical support to service providers, if necessary, and monitor compliance thereof.

**Given the context, please find appended to this letter detailed comments and recommendations, which we would like the Committee to consider when amending the Draft Bill.** More importantly, we welcome the opportunity to offer our inputs and insights on industry best practices, directly through industry meetings and discussions and help shape the dialogue for the advancement of the digital ecosystem in the Philippines. Should you have any questions or need clarification on any of the recommendations, please do not hesitate to contact me directly at [Secretariat@aicasia.org](mailto:Secretariat@aicasia.org) or +65 8739 1490. Thank you for your time and consideration.

Sincerely,



**Jeff Paine**  
Managing Director  
Asia Internet Coalition (AIC)

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## Detailed Comments and Recommendations

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### 1. Mandated messaging interoperability is unnecessary and presents significant privacy, security, safety, spam, innovation, and other harms

Should the aim of introducing messaging interoperability be to foster market contestability, it is already the case that digital services operate in a highly open environment, with low barriers to entry that has served to enrich users' online experiences significantly. That is particularly the case at the app layer of the internet technology stack where there is a wide variety of existing messaging services and widespread multi-homing by users.

Switching between messaging services is easy and inexpensive and users will switch among services depending on which offering is most attractive and convenient to them at the time. In addition, most people use multiple competing services, often using different services to reach distinct audiences, e.g. friends, family and professional colleagues.

Research by the German Federal Network Agency ([BNetzA](#)) in Germany showed nearly 75% of users multi-homed and 37% of young people used five or more messaging services.

A [report](#) by WIK-Consult GmbH (WIK) showed in a survey on messenger services that consumers prefer multi-homing because it allows them to communicate with distinct social groups using distinct services - possibly also using different features that these services offer, catering to the needs of the respective social groups.

Furthermore, it is not evident that there is user or industry demand for interoperability. In its interim [report](#) of the sector inquiry into messenger services from November 2021, the German competition authority found that most respondents believed that mandated interoperability between messaging services do more harm than good in terms of innovation, data protection and security. Additional [studies](#) again in Germany have also found a lack of support for interoperability. 60% of users definitely do not want to be contacted by users of other services. Furthermore, 51% do not think being able to send messages to users of other online communications services is necessary. 84% of users turn to traditional telecommunications services such as telephony or SMS instead if they cannot reach a user.

In the absence of robust evidence to support the need for interoperability between messaging services, policymakers need to balance any perceived benefits<sup>1</sup> with the trade-offs and risks:

- **Undermining of privacy and security of messaging services.** E2ee is a critical safeguard that delivers privacy and security for users of private messaging services. In order to fulfill e2ee commitments, a service must guarantee that no one other than the sender and intended recipients can access the content of a message not only while it is in transit between devices at the transport layer, but also across all endpoints in the messaging chain. Interoperating with third parties, however,

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1. <sup>1</sup>The Australian Competition and Consumer Commission (ACCC) has previously recognised, in the context of ad tech services, some of these significant detriments, such as privacy risks and associated consumer harm, are not outweighed by the benefit. ACCC's 'Digital Advertising Services Inquiry - Final Report' (28 September 2021), p 20. Available: <https://www.accc.gov.au/system/files/Digital%20advertising%20services%20inquiry%20-%20final%20report.pdf>.

presents substantial challenges to secure all endpoints in the message chain; in short a third party, in theory, could do whatever they like with users messages once they receive them in the interoperable network. It will not be possible to fully maintain e2ee both in transit and across all endpoints in the messaging chain as long as first-party services cannot control third-party interoperators. Although the bill appears to require in S.5 that e2ee be maintained, there could be underlying challenges for e2ee messaging services to be interoperable with non-e2ee services while preserving the same high security standard.

Furthermore, without robust evidence, wide-ranging interoperability measures could undermine the privacy of users in making choices about how their data is used. For example, a user's consent for their data to be used on one app does not mean they would necessarily consent for that data to be exported to other third-party apps. Much of the personal data provided in the service or created through its use can implicate the data protection interests of multiple data subjects. There are also questions of how user expectations, settings, and choices would propagate across services, such as audience controls and requests to delete data.

Notably, proliferation of consent has been extensively discussed in the EU workshops on interoperability and would need to be further considered in the Philippines before the draft bill advanced further, particularly when there are underlying concerns with respect to the privacy risk and potential for consent fatigue.

- **Putting users at greater risk of harm.** The ability to introduce new safeguards for platform integrity would become increasingly challenging, with users subsequently affected by the lack of market innovation and proactivity in addressing emerging demands and challenges. There are a wide variety of network-specific protections in place on messaging services today that users expect or may take for granted. For instance, tools and technologies to fight spam, scams, and other harmful and fraudulent activity would be compromised if interoperable apps are not obliged to meet the same standards. And practically speaking, adopting a common standard will most likely lead to lowest-common-denominator services across a base of apps with limited consumer usage and an overall reduced safety experience that consumers would otherwise expect on the platform. Mandated interoperability also raises the question of who in a differentiated ecosystem will decide what those safety measures should be.
- **Stifling innovation and competition between messaging services.** Interoperability risks homogenisation of services, forcing interoperating messaging platforms to become a similar version of each other and potentially place strain on existing business models. This is because to become fully interoperable, providers would presumably need to mirror services and features in order to achieve interconnectivity, potentially leading to product homogenization and a diminishment of product differentiation for users. Adopting interoperability risks too much standardization to achieve, cementing the state of technical innovation at a given point in time; external longer-term developments in technology, therefore, cannot easily be incorporated due to legacy compliance with a pre-agreed standard that may not be future-proof. This is readily visible in relation to email and SMS where there has been little to no material innovation given the need to coordinate on standards. Contrast this to the position in respect of messaging where there has been a huge amount of innovation in recent years, e.g. send receipts, reactions, encrypted group chats etc. This rapid evolution in messaging is driven by dynamic competition.

The Philippines should conduct further assessment of mandatory interoperability, by factoring into its impact on competition and innovation, the purpose of which should benefit consumers and businesses, without compromising the quality of innovation and limiting the ability to provide differentiated innovative service to consumers.

## **2. Need for further assessment and analyzing the potential impact**

As the Philippines bill intends to import the Digital Markets Act (DMA) requirements into the new bill it is crucial to understand the logic and the objective of the EU legislation. DMA is based upon the differentiation between the company sizes and purposes, while having its primary interest in regulating the “gatekeepers” or “very large online platforms”. While it may be useful to study overseas developments, regulators should not assume that adopting these developments means making the best choice for consumers and the economy. In this regard, any *ex-ante* regulation should avoid relying on international regulatory proposals without analyzing its context, purpose, objective.

As a background, DMA’s declared objective is to target companies who have a strong economic position, significant impact on the internal market and are active in multiple EU countries. These considerations criteria are manifested in the following objective criteria:

- firm has an annual turnover in the EU of €7.5 billion or more in each of the last three financial years or its average market capitalisation/market value is at least €75 billion in the last financial year. In addition, it must provide the same core platform service in at least three Member States; and
- the firm provides a core platform service that had an average of at least 45 million monthly active end-users and at least 10,000 yearly active business users established or located in the EU in the last financial year; and
- each of these thresholds was satisfied in each of the previous three financial years.

In general, regulation should not be a one-size-fits-all approach. For example, regulatory reform that applies to all firms regardless of their market position and power may inhibit new entrants and smaller market participants from competing effectively and devising and promoting new, competitive business models. It is important that the reforms are focussed on gatekeeping behaviours to enable a level playing field for all organisations.

## **3. Synchronization and alignment between regulators from different jurisdictions**

Any enhancement of interoperability between services provided by digital platforms should be consumer and industry-driven, and not mandated through regulation. The lack of synchronization and alignment between regulators from different jurisdictions could harm messaging companies operating globally. Maintaining and implementing different interoperability requirements and protocols for different geographies would be cumbersome and will require significant time and effort to calibrate.

## **4. Implementation timelines**

We understand that the Philippines bill purports to follow the DMA approach, and does not seem to effectively assess the implementation timelines by the companies. According to the DMA, the services will be required to make “end-to-end text messaging,” including various

kinds of media attachments, interoperable on request by a competing service within three months of a request. Group texts will need to be interoperable in two years, and voice and video calls in four years. This will likely prove to be a tight timeline.

The understanding which arises from the EU workshops is that there is lack of clarity in the guidance of a right path for the technical implementation of interoperability - both at regulator's and at the service providers' end. We would like to reiterate that the implementation timelines enacted by the EU do not seem to be realistic given the current state of preparedness. Therefore, to the extent that mandating interoperability of messaging is considered necessary and the considerable privacy, safety, security, spam, and other risks of mandated interoperability are appropriately mitigated, it would be crucial to allow sufficient time in advance to learn from the EU experience, before rushing the implementation in the Philippines.

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