



C/2024/2710

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Summary of Commission Decision

of 12 February 2024

relating to a decision pursuant to Article 17(3) of Regulation (EU) 2022/1925

(Case DMA.100022 – Apple - number-independent interpersonal communications services)

(notified under document number C(2024) 785)

(Only the English text is authentic)

(C/2024/2710)

On 12 February 2024, the Commission adopted a decision pursuant to Article 17(3) of Regulation (EU) No 2022/1925 of the European Parliament and of the Council ⁽¹⁾. In accordance with the provisions of Article 44 of Regulation (EU) No 2022/1925, the Commission herewith publishes the names of the parties and the main content of the decision, having regard to the legitimate interest of undertakings in the protection of their business secrets.

1. INTRODUCTION

- (1) The attached decision ('the Decision') sets out the reasons based on which the Commission, following its market investigation pursuant to Article 17(3) of Regulation (EU) No 2022/1925 (Digital Markets Act, 'DMA'), does not designate Apple Inc. and Apple Distribution International Ltd. (hereinafter referred to as 'Apple' or the 'Undertaking') as a gatekeeper pursuant to Article 3 DMA in relation to its number independent interpersonal communication core platform service ('CPS') iMessage, despite meeting the quantitative thresholds set out in Article 3(2) DMA.

2. PROCEDURE

- (2) Following Apple's notification on 3 July 2023, the Commission adopted on 5 September 2023 a decision designating Apple as a gatekeeper pursuant to Article 3 DMA in relation to its online intermediation service App Store, its operating system iOS and its web browser Safari ⁽²⁾. In that decision, the Commission also concluded that iMessage constitutes a NIICS, for which Apple meets the quantitative thresholds set out in Article 3(2) DMA, but that Apple presented sufficiently substantiated arguments manifestly calling into question the presumptions laid down in Article 3(2) DMA in relation to this CPS, warranting the opening of a market investigation pursuant to Articles 17(3) and 3(5) DMA into this CPS.
- (3) As a consequence, the Commission additionally adopted a decision on 5 September 2023, opening a market investigation pursuant to Articles 16(1) and 17(3) DMA to assess whether, following the arguments presented by Apple pursuant to Article 3(5) DMA, Apple's NIICS iMessage should be listed as an important gateway for business users to reach end users in the decision designating Apple as a gatekeeper ⁽³⁾.
- (4) On 29 November 2023 the Commission communicated its preliminary findings to Apple according to Article 17(3) DMA. Apple replied on 5 December 2023.
- (5) In accordance with Articles 17 and 50(2) DMA, the Digital Markets Advisory Committee was consulted and issued its positive opinion on 1 February 2024.

⁽¹⁾ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (OJ L 265, 12.10.2022, p. 1).

⁽²⁾ Decision C(2023) 6100 final.

⁽³⁾ Decision C(2023) 6077 final of 5 September 2023.

3. LEGAL FRAMEWORK

- (6) The DMA establishes a set of narrowly defined objective criteria for designating an undertaking as a gatekeeper. Designation is to be made in relation to one or more CPSs provided by the undertaking that are an important gateway for business users to reach end users within the meaning of Article 3(1), point (b) DMA. In order to determine whether a service provided by an undertaking is a CPS that meets the requirement set out in Article 3(1), point (b) DMA, it is necessary, as a preliminary step, to qualify and delineate the respective service. A relevant criterion for qualifying and delineating CPSs is the purpose for which the service is used by either end users or business users or both.
- (7) According to Article 3(1) DMA, the Commission is to designate an undertaking as a gatekeeper if it fulfils three cumulative requirements, namely: (a) it has a significant impact on the internal market; (b) it provides a CPS which is an important gateway for business users to reach end users; and (c) it enjoys an entrenched and durable position, in its operations, or it is foreseeable that it will enjoy such a position in the near future. Article 3(2) DMA lays down a presumption that those requirements are satisfied where certain quantitative thresholds are met, in particular regarding the company's turnover or market capitalisation as well as the numbers of end users and business users of a particular CPS in each of the last three financial years.
- (8) Pursuant to Articles 3(5), 17(3) and 17(1) DMA, the Commission may conduct a market investigation for the purpose of examining whether an undertaking providing CPSs which satisfy the thresholds set out in Article 3(2) DMA and which has presented sufficiently substantiated arguments in accordance with Article 3(5) DMA manifestly calling into question the presumptions set out in Article 3(2) DMA nevertheless fulfils the criteria in Article 3(1) DMA or not. In accordance with the results of the market investigation, the Commission accepts or rejects an undertaking's rebuttal and consequently designate or not designate the undertaking as a gatekeeper within the meaning of the DMA.

4. THE COMMISSION ASSESSMENT

- (9) Following the notification by Apple and the market investigations conducted by the Commission pursuant to Articles 17(3) and 3(5) DMA, the Commission intends not to designate Apple as a gatekeeper with regard to its NIICS iMessage, as this service is not an important gateway for business users to reach end users as referred to in Article 3(1)(b) DMA. The Commission bases its conclusion on the following reasons considered together.
- (10) First, the overall usage of iMessage – which can only be used on Apple's devices – appears to be relatively low in the Union, in terms of a much lower number of users and in particular a significantly lower intensity of use as compared to other NIICs, namely the two most popular messaging services, WhatsApp and Messenger, both of which are provided by Meta and were designated under the DMA. In this regard, the Commission observes first that the number of monthly active end users ('MAUs') for iMessage between 2020 and 2023 is significantly below the number of MAUs of Meta's WhatsApp and Messenger respectively.
- (11) Second, with respect to daily active users, the difference with the number of users between the above-mentioned Meta services and iMessage is even more significant, which suggests that on average, users of iMessage use this service less frequently than users of WhatsApp or Messenger. Similarly, the Commission finds, that the intensity of iMessage usage is relatively low compared to other messaging services and that active users of other messaging services tend to engage longer and more frequently with these services than the active users of iMessage. Publicly available data, including data published by various national regulators, confirm that other messaging services are used considerably more often and intensively than iMessage. For instance, data published by national regulatory authorities from Germany, Spain, and Austria show that, in none of these Member States, iMessage was reported amongst the most frequently used messaging services.

- (12) Third, focusing on the absolute and relative business usage of iMessage, the results of the market investigation indicate that iMessage is of limited importance as a B2C communication channel. Moreover, as regards specifically Messages for Business which is Apple's service enabling iMessage end users to communicate directly with business users and vice versa in a seamless experience through the pre-installed Messages app, the data currently available to the Commission indicates that it has an extremely limited user base in the EU.
- (13) Overall, the evidence collected by the Commission suggests that business users do not consider iMessage as an important, or a fortiori crucial, channel to reach their customers. None of the corporate users of iPhone to whom the Commission reached out during the market investigation considered iMessage to be a crucial or important service to reach their customers and a clear majority of them indicated that iMessage is not of any importance to reach their customers. Moreover, all corporate users that use iMessage to communicate with customers indicated that they also use other messaging services and often emphasised that this tool is secondary compared to other communication tools. Finally, some respondents pointed out that, iMessage being provided together with the SMS/MMS service, the use of iMessage is often unintentional, and happens where both parties to the communication happen to have Apple devices and have activated iMessage.
- (14) The Commission's findings, collectively, underscore the relatively low significance of iMessage as a gateway for business-user communication.
- (15) Consequently, the market investigation opened by decision C(2023) 6077 of 5 September 2023 is closed.

5. CONCLUSION

- (16) For the reasons set out above, the Decision closes the market investigation opened by decision C(2023) 6077 of 5 September 2023 into Apple's NIICS iMessage by concluding that this CPS should not be listed as an important gateway for business users to reach end users in the decision C(2023) 6100 of 5 September 2023 designating Apple as a gatekeeper pursuant to Article 3 DMA.
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