



C/2024/3554

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Summary of Commission Decision

of 4 March 2024

**relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union
and Article 54 of the EEA Agreement**

(Case AT.40437 – APPLE – APP STORE PRACTICES (MUSIC STREAMING))

(notified under document number C(2024)1307 final)

(Only the English is authentic)

(Text with EEA relevance)

(C/2024/3554)

On 4 March 2024, the Commission adopted a decision relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union and Article 54 of the EEA Agreement. In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003 ⁽¹⁾, the Commission herewith publishes the names of the parties and the main content of the decision, including any penalties imposed, having regard to the legitimate interest of undertakings in the protection of their business secrets.

1. INTRODUCTION

- (1) The Decision relates to an abuse of a dominant position on the market for the provision to developers of platforms for the distribution of music software applications ('apps') to iPhone and iPad users ('iOS users'). It is addressed to Apple Inc. and to Apple Distribution International Limited (together, 'Apple').
- (2) The Decision concerns one single and continuous infringement of Article 102 of the Treaty on the Functioning of the European Union and Article 54 of the EEA Agreement consisting of certain terms and conditions (the so-called 'Anti-Steering Provisions') governing the use of Apple's App Store ('App Store') by developers of apps for music streaming services on Apple's smart mobile devices running on the operating systems iOS and iPadOS (namely, Apple's mobile devices iPhone and iPad) in the European Economic Area ('EEA').

2. CASE DESCRIPTION

2.1. Procedure

- (3) On 16 June 2020, the Commission initiated proceedings within the meaning of Article 2(1) of Regulation (EC) No 773/2004 ⁽²⁾ against Apple.
- (4) On 30 April 2021, the Commission adopted a Statement of Objections against Apple setting out the Commission's preliminary competition concerns in relation to certain terms and conditions governing the use of the App Store by developers of music streaming apps on Apple's smart mobile devices.
- (5) On 28 February 2023, the Commission replaced the Statement of Objections of 30 April 2021 by a revised Statement of Objections, which limited the scope of the objections raised in this case against Apple to the Anti-Steering Provisions.
- (6) The oral hearing took place on 30 June 2023.
- (7) On 6 December 2023, the Commission sent Apple a letter of facts drawing Apple's attention to additional evidence which had been added to the case file after the adoption of the Statement of Objections of 28 February 2023.

⁽¹⁾ OJ L 1, 4.1.2003, p. 1. Regulation as amended by Regulation (EC) No 411/2004 (OJ L 68, 6.3.2004, p. 1).

⁽²⁾ Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ L 123, 27.4.2004, p. 18).

- (8) On 25 January 2024, Apple announced changes, among others, to iOS and the App Store rules in the European Union. Those changes were not in force on the day of adoption of the Decision and were therefore not assessed.
- (9) The Advisory Committee on Restrictive Practices and Dominant Positions issued a favourable opinion on 1 March 2024.

2.2. Summary of the infringement

- (10) The Decision finds that Apple's rules laid down in the various versions of the App Store Review Guidelines applicable during the infringement period ('the Guidelines') and in the terms of the Developer Program License Agreement (the 'License Agreement') preventing music streaming service providers from informing iOS users about alternative (and often cheaper) subscription possibilities existing outside iOS apps and from allowing iOS users to exercise an effective choice between alternative subscription possibilities (i.e., the Anti-Steering Provisions) constitute a single and continuous infringement of Article 102 of the Treaty on the Functioning of the European Union and Article 54 of the EEA Agreement.
- (11) The Decision orders Apple to bring the single and continuous infringement to an end without undue delay. For this purpose, it orders Apple to remove the Anti-Steering Provisions from the relevant terms and conditions governing the use of Apple's App Store by music streaming service providers laid down in the Guidelines and the License Agreement.

2.3. Addressees and duration

- (12) The Decision finds that Apple Inc. and Apple Distribution International Limited infringed Article 102 of the Treaty on the Functioning of the European Union and Article 54 of the EEA Agreement.
- (13) The infringement started at the latest on 30 June 2015 when Apple had definitively achieved a dominant position in the market for the provision to developers of platforms for the distribution of music streaming apps to iOS users in the EEA.
- (14) The infringement was ongoing on the date of adoption of the Decision, as on that date Apple had not removed the Anti-Steering Provisions in the EEA.
- (15) For the purposes of the Decision the EEA includes the United Kingdom for the period until and including 31 December 2020 pursuant to Article 92 of the Agreement on the withdrawal of the UK of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.

2.4. Fine

- (16) The Decision applies the general methodology of the 2006 Guidelines on Fines⁽³⁾ as well as point 37 of the Guidelines on Fines which allows for the imposition of an additional lump sum.

2.4.1. Amount of the fine under the general methodology

a. Basic amount of the fine

- (17) In setting the fine under the general methodology of the 2006 Guidelines on Fines, the Commission took into account the revenues generated by Apple in the EEA from the App Store commission fees paid by the main music streaming service providers to Apple in Apple's Financial Year 2023, which lasted from 25 September 2022 to 30 September 2023 and which is Apple's last full business year of its participation in the infringement with regard to the EEA.

⁽³⁾ Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ C 210, 1.9.2006, p. 2).

- (18) In addition, the Commission took into account the revenues generated by Apple in the United Kingdom from the App Store commission fees paid by the main music streaming service providers to Apple in Apple's Financial Year 2020, which lasted from 29 September 2019 to 26 September 2020.
- (19) The Commission took into account the geographic scope of the relevant market concerned by the infringement; the fact that Apple holds a monopoly in the market for the provision to developers of platforms for the distribution of music streaming apps to iOS users with a market share of 100 %; the number of premium (i.e., paying) iOS subscribers of the main music streaming service providers that have been charged high monthly subscription prices and the other harm that Apple's Anti-Steering Provisions have caused for consumers in terms of subscriptions terminated due to high prices, degraded customer experience, difficulties in switching and frustration for not being able to find the music streaming service provider of first choice. Taking into account these factors and in light of the specific circumstances of this case, the proportion of the value of sales to be used to establish the basic amount of the fine in this case was set at 11 %.
- (20) The Commission took into account the duration of the single and continuous infringement as mentioned above.
- b. Adjustments to the basic amount
- (21) The Commission concluded that there are aggravating circumstances in this case, consisting in the submission by Apple of incorrect information in the framework of the administrative procedure that resulted in an increase in the basic amount of the fine of 20 %.
- (22) There are no mitigating circumstances in this case.

2.4.2. Deterrence

- (23) The Commission considered that both the particularities of the case as well as the need to achieve deterrence justified a departure from the general methodology for determining the amount of the fine, in accordance with point 37 of the 2006 Guidelines on Fines.
- (24) In accordance with the principles set out in the Decision, the Commission decided to increase the fine to be imposed on Apple under the general methodology by an additional lump sum.

3. CONCLUSION

- (25) In light of the above, the final amount of the fine imposed on Apple pursuant to Article 23(2) of Regulation (EC) No 1/2003 for the single and continuous infringement amounts to the following

Standard fine	EUR 40 984 000
Lump sum	EUR 1 800 000 000
Total fine	EUR 1 840 984 000

- (26) The calculated fines do not exceed 10 % of Apple's worldwide turnover.