



C/2024/4374

4.7.2024

Summary of Commission Decision
of 29 April 2024
relating to a decision pursuant to Article 17 of Regulation (EU) 2022/1925
(Case DMA.100047 - Apple – iPadOS)
(notified under document number C(2024) 2500 final)
(Only the English text is authentic)

(C/2024/4374)

On 29 April 2024, the Commission adopted a decision pursuant to Article 17 of Regulation (EU) No 2022/1925. In accordance with the provisions of Article 44 of Regulation (EU) No 2022/1925 ('DMA') ⁽¹⁾, 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) On 5 September 2023, following the notification of Apple Inc. ('Apple') of 3 July 2023 pursuant to Article 3(3) DMA, the Commission adopted a decision designating Apple as a gatekeeper pursuant to Article 3(4) DMA in relation to the following Core Platform Services ('CPSs'): (i) its online intermediation service App Store; (ii) its operating system iOS; and (iii) its web browser Safari. However, at the time of Apple's notification, Apple's operating system CPS iPadOS did not meet the quantitative thresholds laid down in Article 3(2)(b) and (c) DMA.
- (2) On 5 September 2023, the Commission opened a market investigation pursuant to Articles 16(1) and 17(1) DMA (decision C(2023)6076), to assess whether Apple should be designated as a gatekeeper, pursuant to Article 3(8) DMA, in relation to its operating system CPS iPadOS. On 13 December 2023, the Commission communicated to Apple its preliminary findings that Apple should be designated as a gatekeeper in relation iPadOS pursuant to Article 3(8) DMA. Following access to the file, Apple replied to the Commission's preliminary findings on 17 January 2024.

2. LEGAL FRAMEWORK

- (3) The DMA establishes a set of narrowly defined objective criteria for qualifying a large online platform as a gatekeeper in relation to one or more CPSs it provides.
- (4) As a preliminary step, the Commission is to delineate the different services provided by an undertaking and determine which of these services qualify as CPSs. 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.
- (5) Then, pursuant to Article 3(1) DMA, the Commission is to designate an undertaking as a gatekeeper in relation to its CPS 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.

⁽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).

- (6) Article 3(2) DMA lays down a presumption that those requirements are satisfied where certain quantitative thresholds are met, in particular regarding the turnover or market capitalisation of the undertaking, as well as the numbers of end users and business users of a particular CPS in each of the last three financial years. However, where the undertaking does not satisfy each of the quantitative thresholds, it may not be presumed to be a gatekeeper in relation to its CPS.
- (7) Notwithstanding the presumption thresholds, if the undertaking meets each of the requirements of Article 3(1) DMA in relation to a given CPS, the Commission is to designate it, following a qualitative assessment pursuant to Article 3(8) DMA. For that purpose, the Commission may take into account some or all of the following elements:
- a) the size of the undertaking, including its turnover and market capitalisation;
 - b) the number of business users using the undertaking's CPS to reach end users and the number of end users;
 - c) the network effects and data driven advantages of this undertaking;
 - d) any scale and scope effects from which the undertaking benefits;
 - e) the business user or end user lock-in in relation to the undertaking's CPS, including switching costs and behavioural bias reducing the ability of business users and end users to switch or multi-home;
 - f) the conglomerate corporate structure or vertical integration of that undertaking; or
 - g) the other structural business or service characteristics of that undertaking.
- (8) Pursuant to Article 17(1) DMA, the Commission may conduct a market investigation for the purpose of examining whether an undertaking providing a CPS should be designated as a gatekeeper pursuant to Article 3(8) DMA, or in order to identify the CPSs to be listed in the designation decision pursuant to Article 3(9) DMA.

3. THE COMMISSION'S ASSESSMENT

- (9) Following the Commission's qualitative assessment pursuant to Article 3(8) DMA, based on the evidence collected by the Commission during its market investigation and the information at its disposal, the Commission designates Apple as a gatekeeper in relation to its operating system CPS iPadOS.
- (10) The Commission bases its conclusion on the following considerations.
- (11) First, the Commission considers that iPadOS qualifies as an operating system pursuant to Article 2, point (10) DMA and constitutes a distinct CPS from the other operating system CPSs provided by Apple.
- (12) Second, the Commission considers that Apple has a significant impact on the internal market within the meaning of Article 3(1)(a) DMA. In particular, the Commission found that Apple meets all the quantitative thresholds laid down in Article 3(2)(a) as it reported a Union-wide turnover well above EUR 7.5 billion in each of the three financial years preceding the market investigation (2020, 2021, and 2022) and an average market capitalisation exceeding EUR 75 billion in 2022.
- (13) Third, the Commission considers that iPadOS constitutes an important gateway for business users to reach end users pursuant to Article 3(1)(b) DMA. In particular, iPadOS has a high number of business and end users, iPadOS is commercially important for business users as it is a gateway to a customer base with a high willingness to pay, iPadOS presents lock-in effects with respect to both end and business users, and Apple benefits from network effects and economies of scale with respect to iPadOS.
- (14) Fourth, the Commission considers that Apple enjoys an entrenched and durable position with respect to iPadOS within the meaning of Article 3(1)(c) DMA. In particular, iPadOS has been one of the two leading operating systems for tablets in the Union for more than 10 years and it is expected that the already significant number of end users and business users of iPadOS will continue to grow over the next years.

4. CONCLUSION

- (15) For the reasons set out above, the Decision closes the market investigation opened by decision C(2023)6076 of 5 September 2023 into Apple's operating system CPS iPadOS and amends Commission Decision C(2023)6100 of 5 September 2023 designating Apple as a gatekeeper pursuant to Article 3 DMA by adding the following point in Article 2 of that decision: '(d) Apple's operating system iPadOS'.
- (16) Consequently, the following CPSs of Apple are considered an important gateway for business users to reach end users within the meaning of Article 3(1), point (b) DMA:
- (a) Apple's online intermediation service App Store;
 - (b) Apple's operating system iOS;
 - (c) Apple's web browser Safari; and
 - (d) Apple's operating system iPadOS.
-