



EUROPEAN COMMISSION
DG Competition

***CASE AT.40437 – Apple – App Store
Practices (music streaming)***

(Only the English text is authentic)

**ANTITRUST PROCEDURE
Council Regulation (EC) 1/2003**

Article 7 Regulation (EC) 1/2003

Date: 04/03/2024

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Brussels, 4.3.2024
C(2024) 1307 final

COMMISSION DECISION

of 4.3.2024

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

(Case AT.40437 – Apple – App Store Practices (music streaming))

(Text with EEA relevance)

(Only the English text is authentic)

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COMMISSION DECISION

of 4.3.2024

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

(Case AT.40437 – Apple – App Store Practices (music streaming))

(Text with EEA relevance)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union¹,

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation (EC) No 1/2003, of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty², and in particular Article 7, Article 23(2) and Article 24(1) thereof,

Having regard to the complaint lodged by Spotify AB on 11 March 2019, amended on 9 April 2019, alleging infringements of Article 102 of the Treaty and Article 54 of the EEA Agreement by Apple Inc. and requesting the Commission to put an end to those infringements,

Having regard to the Commission decision of 16 June 2020 to initiate proceedings in this case,

Having given the undertaking concerned the opportunity to make known its views on the objections raised by the Commission pursuant to Article 27(1) of Regulation (EC) No 1/2003 and Article 12 of 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 Treaty³,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Having regard to the final report of the hearing officer in this case,

Whereas:

¹ OJ, C 115, 9.5.2008, p.47.

² OJ L 1, 4.1.2003, p. 1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union (“the Treaty”). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the Treaty should be understood as references to Articles 81 and 82, respectively, of the EC Treaty when where appropriate. The Treaty also introduced certain changes in terminology, such as the replacement of “Community” by “Union” and “common market” by “internal market”. Where the meaning remains unchanged, the terminology of the Treaty will be used throughout this Decision.

³ OJ L 123, 27.4.2004, p. 18.

1. INTRODUCTION

- (1) This Decision is addressed to Apple Inc. and Apple Distribution International Limited. All the legal entities active within the corporate group of Apple Inc are referred to in this Decision as “Apple”.
- (2) This Decision concerns certain terms and conditions governing the use of Apple’s App Store (“App Store”) by developers of software applications (“apps”) for music streaming services on Apple’s smart mobile devices running on the operating systems iOS and iPadOS⁴ (namely, Apple’s smart mobile devices iPhone and iPad) in the European Economic Area (“EEA”).⁵ The Commission finds that Apple’s rules laid down, in particular, in the various versions of the App Store Review Guidelines applicable during the infringement period⁶ (the “Guidelines”) and in the terms of the Developer Program License Agreement⁷ (the “License Agreement”) preventing music streaming service providers from informing iOS users about alternative (and often cheaper) subscription possibilities existing outside of those providers’ iOS mobile app and from allowing iOS users to exercise an effective choice between alternative subscription possibilities (the so-called “Anti-Steering Provisions”)⁸ constitute a single and continuous infringement of Article 102 of the Treaty on the Functioning of the European Union (“the Treaty”) and Article 54 of the Agreement on the EEA (“EEA Agreement”).
- (3) This Decision is structured as follows:
 - Section 2 describes the undertaking concerned by this Decision;
 - Section 3 provides an overview of the complainant in this case;
 - Section 4 summarises the procedure relating to this case to date;
 - Sections 5 addresses and rebuts Apple’s allegations of procedural shortcomings;
 - Section 6 provides a description of the products concerned by this Decision;
 - Section 7 sets out the conduct subject to this Decision;

⁴ For the purposes of this Decision, “iOS” refers to smart mobile devices running on Apple’s mobile operating systems iOS and iPadOS, hence iPhones and iPads, while “iOS users” refers to the users of those devices.

⁵ Throughout this Decision, the EEA is understood to cover the 27 Member States of the European Union (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden) and the United Kingdom (the “UK”), as well as Iceland, Liechtenstein and Norway. Accordingly, any references made to the EEA in this Decision are meant to also include the UK. Although the UK withdrew from the European Union as of 1 February 2020, according to Article 92 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 29, 31.1.2020, p. 7), the Commission continues to be competent to apply Union law as regards the UK for administrative procedures which were initiated before the end of the transition period.

⁶ Latest version of the App Store Review Guidelines applicable since 5 June 2023, provided by Apple in response to the Commission’s request for information of 3 August 2023, IDs 3009 and 3011, as well as previous versions applicable since 30 June 2015.

⁷ Latest version provided by Apple in response to the Commission’s request for information of 3 August 2023, ID 3015 (Apple Developer Program License Agreement); ID 3028 (Schedule 2), as well as previous versions applicable since 30 June 2015.

⁸ Section 3.1.3 of the Guidelines, ID 3011.

- Section 8 describes the relevant product and geographic markets concerned by this Decision, outlines general principles on dominance and concludes that Apple holds a dominant position in the EEA on the market for the provision to developers of platforms for the distribution of music streaming apps to iOS users;
- Section 9 concludes that Apple has abused its dominant position in the EEA market for the provision to developers of platforms for the distribution of music streaming apps to iOS users since at least 2015. In particular, the abuse consists in the imposition by Apple, through the Anti-Steering Provisions, of unfair trading conditions within the meaning of Article 102(a) of the Treaty upon music streaming service providers which are detrimental to the interests of iOS users;
- Section 10 concludes that the Commission has jurisdiction to pursue this case;
- Section 11 concludes that Apple’s conduct has an effect on trade between Member States;
- Section 12 concludes on the duration of the infringement;
- Section 13 sets out the addressees of this Decision;
- Section 14 finds that Apple’s conduct constitutes a single and continuous infringement;
- Section 15 outlines the remedies imposed by this Decision;
- Section 16 describes the periodic penalty payments necessary to compel Apple to bring effectively to an end the infringement of Article 102 of the Treaty;
- Section 17 sets out the methodology for calculating the fine and the amount of the fine imposed; and
- Section 18 presents the Commission’s conclusion.

2. THE UNDERTAKING

- (4) Apple is a multinational technology company headquartered in the United States of America (“the US”). Apple designs, manufactures, and markets mobile communication and media devices, personal computers and portable digital music players as well as related software and digital services.
- (5) The Apple group is composed of Apple and all companies controlled by Apple. The Apple group encompasses companies incorporated in Ireland, namely Apple Operations International Limited and Apple Distribution International Limited. The latter company, which is one of the addressees of this Decision (see Section 13.2), provides Apple’s App Store services (including Apple Music) to customers in the EEA and is the company which developers appoint as a commissionaire for the distribution of approved apps. In the past, other Apple entities were involved in the provision of App Store related services.⁹

⁹ From 1 January 2015 to 24 September 2016, iTunes Sàrl provided the App Store Services to customers in the EEA. On 25 September 2016 iTunes Sàrl merged into Apple Distribution International in a cross-border merger with Apple Distribution International as the surviving entity. Accordingly, Apple Distribution International began to provide the services to EEA customers from the merger date and it

- (6) Apple’s business model is based on a vertically integrated ecosystem centred around its hardware devices, including iPhones and iPads, from which it generates the main source of its revenue. Apple operates various services, including the App Store which allows customers to discover and download apps. Apple also offers digital content through subscription-based services, including Apple Music, which is a paid-subscription based, on-demand music streaming service (for a more detail description of Apple’s products business model, see Section 6.2).
- (7) Apple is one of the highest valued companies worldwide. In June 2023, Apple exceeded USD 3 000 000 000 in market value, making it the first company worldwide to do so.¹⁰ In Apple’s Financial Year (“FY”) 2023, which lasted from 25 September 2022 to 30 September 2023, Apple Inc.’s total worldwide consolidated turnover amounted to EUR 359 674 000 000.¹¹ During Apple’s FY 2023, the App Store commission fees paid by the main music streaming service providers active in the EEA generated over EUR [...].¹²

3. THE COMPLAINANT

3.1. Spotify

- (8) Spotify AB (“Spotify”) is a Swedish music streaming service provider, active in the EEA and globally. It offers users the ability to search for or browse music according to different criteria such as album, artist, genre, or record labels. Spotify users can create, edit and share playlists, including on social media, and also make playlists together with other users. Spotify’s listeners have the option to listen to content for free with advertisements as well as to purchase a premium subscription to allow for unlimited ad-free music streaming.
- (9) Spotify was first launched in 2008 in Sweden and then in other European countries and the U.S. by 2011. The music streaming service is available through Spotify’s website and can be used on various devices.¹³ Spotify launched its iOS native mobile app in September 2009 (see Section 6.3.2).
- (10) As of the first quarter of 2023, Spotify had 210 million premium subscribers worldwide, up from 182 million in the corresponding quarter of 2022.¹⁴ In the first quarter of 2023, it had over 500 million monthly active users worldwide (including through its ad-supported tier).¹⁵ In July 2023, Spotify reported that in the second

has continued to do so, exclusively, to the present. Apple Distribution International has subsequently converted to an Irish limited liability company, effective on 6 February 2020, as a result of which its name has changed to "Apple Distribution International Limited". Both iTunes Sàrl and Apple Distribution International were at all times discussed above indirectly 100 %-owned subsidiaries of Apple.

¹⁰ See <https://www.wsj.com/articles/apple-becomes-first-u-s-company-to-reach-3-trillion-market-value-11641235625>, accessed on 13 January 2022, ID 2336;

<https://www.forbes.com/sites/dereksaul/2023/06/30/apple-hits-3-trillion-market-value-and-could-soar-another-800-billion/?sh=a968d7952b17>, accessed on 10 October 2023, ID 3119.

¹¹ Apple’s response to the Commission’s request for information of 1 December 2023, ID 3312.

¹² Apple’s response to the request for information dated 1 December 2023, ID 3312 and Annex Q6, ID 3310.

¹³ Spotify’s Complaint, ID 1457, page 9, paragraph 25.

¹⁴ Statista, [Spotify: number of premium subscribers worldwide 2023 | Statista](#), accessed on 10 October 2023, ID 3121. ID 3262, accessed on 14 December 2023, contains underlying data of Statista figures.

¹⁵ Statista, [Spotify MAUs worldwide 2023 | Statista](#), accessed on 10 October 2023, ID 3120. ID 3289, accessed on 14 December 2023, contains underlying data of Statista figures.

quarter of 2023 it had reached over 550 million monthly active users, out of which 220 million were premium subscribers worldwide,¹⁶ representing almost 40 % of its overall user base.¹⁷

- (11) In 2022, Spotify generated revenues of over EUR 11 700 000 000, up from EUR 9 670 000 000 in the previous year. The majority of these revenues came from Spotify's premium subscribers.¹⁸ Nevertheless, Spotify has been operating at a loss, as also confirmed by recent figures: in 2022, Spotify had a net loss of EUR 430 000 000;¹⁹ for Q2 2023, it registered EUR 112 000 000 in adjusted operating losses.²⁰ This is without prejudice of the existence of a few sporadic profitable quarters. Indeed, since the beginning of 2017, Spotify reached a positive net balance in only eight quarters in total, including in Q3 2023 where Spotify generated EUR 62 000 000 net profit.²¹

3.2. Spotify's complaint

- (12) In March 2019, the Commission received a formal complaint by Spotify against Apple pursuant to Article 7(2) of Regulation (EC) No 1/2003 and an amended (final) version on 9 April 2019 ("Spotify's Complaint"). In this complaint, Spotify alleged that Apple infringed Article 102 of the Treaty by (i) requiring developers that offer paid digital content or subscriptions to such content, such as music streaming subscriptions, in their iOS apps to make use of Apple's in-app purchase mechanism ("IAP")²² and pay a 30 % or 15 % commission fee to Apple, and (ii) preventing the possibility for developers, such as music streaming service providers, from informing iOS users about alternative (and often cheaper) subscription possibilities outside of the app and allowing an effective choice.
- (13) Spotify indicated that, between 2011 and 2014, it did not offer Premium subscriptions in-app on iPhones or iPads and was therefore not using IAP. Spotify signed up to IAP in June 2014 and started offering Premium subscriptions paid through IAP. It increased the price of the Premium offer (for an individual subscription) in its iOS app from EUR 9.99 (as available on its website and other subscription channels) to EUR 12.99 to pass-on to users the commission fee charged by Apple. However, in May 2016 – less than a year after Apple launched Apple Music on 30 June 2015 at EUR 9.99 – Spotify decided to disable IAP and turned off

¹⁶ Spotify's Q2 2023 update, available at sec.gov/Archives/edgar/data/1639920/000114036123035965/brhc20056303_ex99-1.htm, accessed on 10 October 2023, ID 3149.

¹⁷ [Spotify reports strong user growth as it is raising subscription price | TechCrunch](https://www.techcrunch.com/2023/10/10/spotify-reports-strong-user-growth-as-it-is-raising-subscription-price/), accessed on 10 October 2023, ID 3151.

¹⁸ See [Spotify revenue 2013-2022 | Statista](https://www.statista.com/statistics/244990/spotify-revenue-2013-2022/), accessed on 10 October 2023, ID 3150.

¹⁹ See <https://www.statista.com/statistics/244990/spotify-revenue-and-net-income/>, accessed on 10 October 2023, ID 3152.

²⁰ Spotify's Q2 2023 update, available at sec.gov/Archives/edgar/data/1639920/000114036123035965/brhc20056303_ex99-1.htm, accessed on 10 October 2023, ID 3149.

²¹ See <https://www.statista.com/chart/26773/profitability-development-of-spotify/#:~:text=Music%20streaming&text=At%20the%20end%20of%20September,6%20million%20euros%20net%20profit>, accessed on 25 October 2023, ID 3128 and <https://www.ft.com/content/dcb2e9ee-8baa-4442-b13d-5babbfee04e5>, accessed on 25 October 2023, ID 3146.

²² In this Decision, Apple's requirement *vis-à-vis* developers to use IAP is also referred to as "the IAP obligation". Through the use of IAP, Apple charges a 30 % commission fee to developers during the first year of subscription and 15 % after the first year of uninterrupted subscription.

the ability to subscribe to its Premium offer in its iOS app, as it would otherwise have been forced to continuously offer its premium subscription on its iOS app at a higher price than outside the iOS environment (see Section 7.5).

- (14) Spotify also alleged that Apple rejected without justification updates of its iOS app and tightened the wording and interpretation of the Guidelines in such a manner as to increasingly prevent it from advertising the existence of its Premium option within and – to some extent – also outside the app, for instance through links to its website (Spotify.com) or other “calls to action” addressed to its iOS users (for the current wording of the Anti-Steering Provisions, see Section 7.1). As a result, Spotify submitted having been effectively restricted from promoting subscription possibilities available at a competitive price outside the iOS environment to iOS users in its iOS app.
- (15) Spotify claims that it makes substantial investments to increase the quality of its free service as well as to target users of that service with promotional campaigns such as reduced prices or free trials for the Premium offer that it communicates to the users of its free tier by email, banners on its website, or pop-ups within the Spotify mobile or desktop app.

4. PROCEDURE

- (16) The Commission started to investigate Apple’s conduct in relation to the IAP obligation and the Anti-Steering Provisions in July 2015.²³
- (17) The Commission received Spotify’s Complaint on 9 April 2019. The Commission transmitted Spotify’s Complaint to Apple, which provided comments. Subsequently, the Commission organised a data room upon Apple’s request. Following the data room, the Commission received observations from Spotify regarding further comments to Spotify’s Complaint submitted by Apple.
- (18) Between April 2019 and December 2020, the Commission sent a number of requests of information under Article 18(2) and 18(3) of Regulation (EC) No 1/2003 to Apple and, in 2019 and 2020, to Spotify as well as to a series of other music streaming service providers active in the EEA, namely Amazon Music, Deezer, Google Play Music, Napster (Rhapsody), SoundCloud, Qobuz, YouTube Music and Tidal. In parallel, between October 2019 and March 2021, Apple submitted numerous papers to the Commission.
- (19) In February and July 2020, Spotify [...] conducted surveys of users to analyse consumer choice of smart mobile devices (and mobile OS) and [...] ([...] “the Spotify Survey” [...]).²⁴
- (20) On 16 June 2020, the Commission initiated proceedings *vis-à-vis* Apple in the present case within the meaning of Article 2(1) of Commission Regulation No 773/2004.²⁵
- (21) On 30 June 2020, the Commission held a state of play meeting with Apple.
- (22) On 12 February 2021, the Commission had a state of play call with Apple.

²³ Commission’s request for information (2015/076377) of 31 July 2015, addressed to Spotify, ID 1486, ID 1511 and ID 1512.

²⁴ [...].

²⁵ Decision n° C(2020) 4065 final adopted on 16 June 2020, ID 664.

- (23) A Statement of Objections was issued in this case on 30 April 2021 (the “Statement of Objections of 30 April 2021”). This statement of objections took issue with the terms that govern the use of Apple’s App Store which: (i) require music streaming app developers to exclusively and mandatorily use Apple’s IAP for the distribution of paid content (i.e., music streaming service subscriptions) and which (ii) restrict the developers’ ability to inform iOS users inside those providers’ iOS app and to a certain extent also outside of that app, about alternative (cheaper) subscriptions possibilities outside of the app and from allowing iOS users to exercise an effective choice. The Statement of Objections of 30 April 2021 also preliminarily found that the Anti-Steering Provisions constitute a standalone infringement of Article 102 of the Treaty. Apple submitted its response to the Statement of Objections of 30 April 2021 on 17 September 2021. It did not request the opportunity to express its views at an oral hearing pursuant to Article 12(1) of Regulation (EC) No 773/2004.
- (24) The Statement of Objections of 30 April 2021 was subsequently replaced by a revised statement of objections dated 28 February 2023 (the “Statement of Objections of 28 February 2023”). The Statement of Objections of 28 February 2023 limited the scope of the objections raised in this case against Apple to Apple’s Anti-Steering Provisions and presented the facts, the Commission’s preliminary objections as well as the Commission’s legal analysis in a comprehensive manner. The cover letter to the Statement of Objections of 28 February 2023, which was notified to Apple on 1 March 2023, also addressed the comments in relation to the completeness of the Commission’s case file previously raised by Apple. In addition, on 3 March 2023, the Commission sent Apple a corrigendum clarifying that some modifications to the cover letter were necessary to reflect that the Statement of Objections of 28 February 2023 did not supplement but rather replaced the Statement of Objections of 30 April 2021.²⁶
- (25) On 19 May 2023, Apple submitted its response to the Statement of Objections of 28 February 2023 and at the same time requested the opportunity to express its views at an oral hearing pursuant to Article 12(1) of Regulation (EC) No 773/2004.²⁷
- (26) The oral hearing took place on 30 June 2023 (hereinafter, the “oral hearing”).²⁸ Spotify and the European Consumer Organisation BEUC (“BEUC”) were admitted to the oral hearing as complainant and interested third person, respectively, in accordance with Article 6 of Decision 2011/695/EU.²⁹
- (27) On 3 August 2023 the Commission sent a request for information to Apple,³⁰ to which Apple replied on 4 and 28 September 2023.³¹

²⁶ The complainant Spotify as well as Google and BEUC – which, along with the Computer & Communication Industry Association (‘CCIA’) were admitted as third interested parties within the meaning of Article 5 of decision 2011/695/EU – submitted comments to the Statement of Objections of 28 February 2023, see documents entitled “BEUC comments as interested third person within the meaning of Article 5 of decision 2011/695/EU on the Redacted Statement of Objections of 28.2.2023” (hereinafter “BEUC’s comments to the Statement of Objections of 28 February 2023”), ID 2870; “Google’s Observations on the EC’s Statement of Objections in Case AT.40437 – Apple App Store Practices”, ID 2871; “Spotify’s observations on the Statement of Objections dated 28 February 2023, ID 1972 and Addendum, ID 2869.

²⁷ ID 2821.

²⁸ Recording of the oral hearing in Case AT.40437, ID 3131.

²⁹ Decision of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings, OJ L 275, 20.10.2011, p. 29–37.

³⁰ IDs 2987 and 2988.

- (28) On 25 September 2023, the Commission sent a request for information to Spotify,³² to which Spotify replied on 12 October 2023.³³
- (29) On 1 December 2023, the Commission sent a request for information to Apple, to which Apple replied on 20 December 2023.³⁴
- (30) On 6 December 2023, the Commission sent Apple a letter of facts (the “Letter of Facts”)³⁵ 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 as well as about updated evidence on which the Commission intended to rely for the purposes of this Decision. The Letter of Facts set out that the Commission intended to focus on the unfairness of Apple’s Anti-Steering Provisions *vis-à-vis* iOS users and that it did not intend to further rely on its additional preliminary finding in the Statement of Objections of 28 February 2023 that the Anti-Steering Provisions are also unfair *vis-à-vis* music streaming service providers. In addition, the Letter of Facts set out that the Commission intended to consider calculating the fine by (i) relying only on the App Store commission fees that Apple obtains from music streaming app developers under the general methodology of the Commission’s Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (“the Guidelines on Fines”)³⁶ and, in addition, (ii) imposing a lump sum on the basis of point 37 of the Guidelines on Fines which would ensure that the fine imposed is sufficiently deterrent.
- (31) On 7 December 2023, the Commission granted Apple access to the file following the Letter of Facts.
- (32) On 13 December 2023, Apple sent a letter to the Commission alleging, among others, incompleteness of the Commission’s file to which it had obtained access on 7 December 2023. The Commission replied by letter of 15 December 2023 and granted Apple, on the same day, supplementary access to the file.
- (33) On 15 December 2023, Apple addressed a letter to the Hearing Officer where it expressed, among others, concerns regarding the allegedly inappropriate use of a Letter of Facts, and where it requested the Hearing Officer to issue observations in that respect as well as to extend the deadline to reply to the Letter of Facts until the Commission had issued a supplementary Statement of Objections. In its reply by letter of 21 December 2023, the Hearing Officer rejected Apple’s requests.
- (34) On 12 January 2024, Apple submitted its response to the Letter of Facts of 6 December 2023 (“the Response to the Letter of Facts”) where Apple criticised that the Commission adopted a letter of facts rather than a new statement of objections and requested an oral hearing to further present its views. The Commission rejected Apple’s request for an oral hearing by letter of 17 January 2024. In reaction, Apple referred the matter to the Hearing Officer. In its letter of 30 January 2024, the Hearing Officer rejected Apple’s request for an oral hearing.

³¹ IDs 3009 and 3042.

³² ID 3050.

³³ ID 3058.

³⁴ ID 3312.

³⁵ ID 3230.

³⁶ Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (Text with EEA relevance), OJ C 210, 1.9.2006, p. 2–5.

- (35) On 25 January 2024, Apple announced changes to iOS, Safari and the App Store rules in the European Union.³⁷ These announced changes are not in force on the day of adoption of this Decision.
- (36) On 6 February 2024, the Commission held a state of play meeting with Apple.

5. APPLE’S ALLEGATIONS OF PROCEDURAL SHORTCOMINGS

- (37) In its Responses to the Statement of Objections of 28 February 2023 and to the Letter of Facts, Apple raised a number of alleged procedural shortcomings, in particular: (i) that the Commission infringed Apple’s rights of defence by adopting a Letter of Facts instead of a supplementary statement of objections; (ii) that the Commission has not discharged its burden of proof by relying on outdated and incomplete information and has not taken serious investigative steps to collect the evidence required in support of its findings and (iii) that the investigation is vitiated by procedural breaches as 29 minutes of meetings between the Commission and Spotify and BEUC registered on the file are not sufficiently detailed and have not allowed Apple to exercise its rights of defence properly.
- (38) The Commission considers that these allegations are unfounded for the following reasons.

5.1. The Letter of Facts was an appropriate instrument and did not infringe Apple’s rights of defence

5.1.1. Apple’s arguments

- (39) In the Response to the Letter of Facts, Apple argued that by adopting a letter of facts instead of a new statement of objections the Commission infringed Apple’s rights of defence.³⁸
- (40) First, Apple argues that the use of a letter of facts was inappropriate because in its view the Commission materially altered the allegations and body of evidence in the Statement of Objections of 28 February 2023. Apple claims that considering its conduct exclusively an exploitative abuse vis-à-vis consumers should be considered as substantially supplementing the substance and scope of the objections in line with the General Court’s judgment in *Google Android*.³⁹
- (41) Second, Apple also considers that the use of a letter of facts was inappropriate because the Commission changed the methodology for the calculation of the fine and its magnitude. Apple argues that the change of methodology constitutes a departure from the previous statements of objections and envisages a lump sum which could result in an unprecedented large fine which could be higher than the fine proposed in the Statement of Objections of 28 February 2023 under the standard methodology, even if under such proposal Apple Music’s revenues would have been included.⁴⁰

³⁷ “Apple announces changes to iOS, Safari, and the App Store in the European Union”, see: <https://www.apple.com/newsroom/2024/01/apple-announces-changes-to-ios-safari-and-the-app-store-in-the-european-union/>, accessed on 9 February 2024, ID 3367.

³⁸ Apple’s Response to the Letter of Facts, ID 3330, paragraphs 27 to 42.

³⁹ Apple’s Response to the Letter of Facts, ID 3330, paragraph 31, citing the judgement of 14 September 2022 in Case T-604/18 *Google v Commission (Google Android judgement)*, EU:T:2022:541, paragraphs 979 and 996.

⁴⁰ Apple’s Response to the Letter of Facts, ID 3330, paragraph 41.

5.1.2. Assessment of Apple's arguments

5.1.2.1. The Letter of Facts was an appropriate instrument to communicate to Apple a reduction of the objections and how the Commission intended to use the relevant evidence in a potential decision

- (42) It is settled case law that adopting a supplementary statement of objections is only required “*if additional objections are issued or the intrinsic nature of the infringement in question is altered*”.⁴¹
- (43) The Letter of Facts informed Apple that the Commission did not intend to further rely on its preliminary finding in the Statement of Objections of 28 February 2023 (Section 9.4) that the Anti-Steering Provisions give rise to the imposition of unfair trading conditions to the detriment of developers of music streaming apps. In this regard, in its Statement of Objections of 28 February 2023 the Commission set out its preliminary conclusion that the Anti-Steering provisions at issue “*give rise to the imposition of unfair trading conditions to the detriment of iOS users, which in itself is sufficient to qualify them as abusive under Article 102 (a) TFEU*”. In addition, the Commission reached the preliminary conclusion “*that Apple's Anti-Steering Provisions also constitute unfair trading conditions which are detrimental to the interests of competing music streaming service providers and that they are therefore abusive under Article 102 (a) TFEU also on this ground*”.⁴² Therefore, the Commission preliminarily concluded that the Anti-Steering provisions are detrimental to the interests of consumers but additionally also to the interests of app developers and thus constituted unfair trading conditions under Article 102 of the Treaty vis-à-vis both groups separately.⁴³ The Commission did not infringe Apple's rights of defence by informing it in the Letter of Facts that the Commission was dropping one of the two objections.
- (44) The objection which was maintained concerning harm to consumers had been explained and substantiated in detail in section 9.3 of the Statement of Objections of 28 February 2023. In particular, the Commission explained there that the unfair trading conditions Apple imposes on developers of music streaming apps affect consumers insofar as music streaming app developers are prevented from informing iOS users about the options available to them and from allowing them to effectively exercise an informed choice.⁴⁴
- (45) The Statement of Objections of 28 February 2023 set out the two objections comprehensively in different sections (Sections 9.3 and 9.4). Apple was therefore well aware that both were seen to constitute separate objections for the purposes of the Statement of Objections of 28 February 2023.
- (46) Furthermore, the Letter of Facts set out, for each item of evidence, how it relates to the harm to consumers and how the Commission intended to use it in a potential decision and granted Apple the possibility of submitting written observations in this regard.

⁴¹ Case T-682/14 *Mylan Laboratories*, EU:T:2018 :907, paragraph 316.

⁴² Statement of Objections of 28 February 2023, ID 2811, paragraph 738.

⁴³ Statement of Objections of 28 February 2023, ID 2821, paragraph 621: “*besides being detrimental to iOS users' interest, are also detrimental to the interests of music streaming service providers*”.

⁴⁴ Statement of Objections of 28 February 2023, ID 2821, paragraphs 525 to 529.

(47) Consequently, the Commission considers that the Letter of Facts issued in this case was an appropriate instrument as it did not materially alter the preliminary findings set out in the Statement of Objections of 28 February 2023, but dropped the additional objection concerning the unfairness of Anti-Steering provisions towards music streaming app developers. Moreover, it allowed Apple to exercise its rights of defence concerning the body of evidence the Commission intended to use in support of the primary objection concerning the unfairness of Anti-Steering provisions towards consumers.

5.1.2.2. The proposed change in the methodology of the fine did not warrant a supplementary statement of objections

(48) It is settled case law that the Commission is required to set out in a statement of objections the main factual and legal criteria on which it will base its calculation of the amount of the potential fine, such as the gravity and the duration of the alleged infringement.⁴⁵ However, a letter of facts is an appropriate instrument to inform the investigated company of new elements or changes to the method for determining the amount of the fine.⁴⁶ In this regard, the General Court clarified in *Campine* that an increase of the fine on the basis of point 37 of the Guidelines on Fines in order to take into account the particularities of the case and to achieve deterrence does not constitute an element of fact and of law that the Commission is required to mention in a statement of objections.⁴⁷

(49) The Commission informed Apple in the Statement of Objections of 28 February 2023 of its intention to impose a fine taking into account the gravity and duration of the infringement and specified how it intended to calculate the potential fine based on the facts of the case.⁴⁸ In addition, the Commission specifically mentioned the need to ensure that fines have a sufficiently deterrent effect.⁴⁹

(50) In its Letter of Facts, the Commission informed Apple about the potential application of point 37 of the Guidelines on Fines.

(51) In this way, Apple was made fully aware and given the opportunity to comment on the method of determining the final amount of a potential fine.

5.2. The Commission has taken appropriate investigatory steps and discharged the burden of proof

5.2.1. Apple's arguments

(52) In its Responses to the Statement of Objections of 28 February 2023⁵⁰ and to the Letter of Facts, Apple argued that the Commission failed to discharge its burden of proof by relying on incomplete and inappropriate information.

(53) First, Apple considers that the Commission relies disproportionately and without scrutiny on third-party sources such as market data from third-party reports, user

⁴⁵ Case C-180/16 P *Toshiba v Commission*, EU:C:2017:520, paragraph 21 and Case T-15/02 *BASF v Commission*, EU:T:2006:74, paragraph 48.

⁴⁶ Case C-180/16 P *Toshiba v Commission*, EU:C:2017:520, paragraph 34 and Case T-240/17 *Campine v Commission*, EU:T:2019:778, paragraphs 339 et seq.

⁴⁷ Case T-240/17 *Campine v Commission*, EU:T:2019:778, paragraph 357.

⁴⁸ Statement of Objections of 28 February 2023, ID 2821, paragraphs 770 to 775.

⁴⁹ Statement of Objections of 28 February 2023, ID 2821, paragraphs 776.

⁵⁰ Apple's Response to the Statement of Objections of 28 February 2023, ID 2821, Section D.

comments on discussion forums and economic analysis prepared by the complainant.⁵¹

- (54) Second, Apple argues that the Commission relies on outdated data and information which cannot support an ongoing infringement.⁵² In particular, Apple contests the use of Spotify’ 2018 experiments⁵³ (see recitals (743) et seq.) and [...]⁵⁴ [...]⁵⁵ (see recitals (617) et seq.).
- (55) Third, Apple claims that the Commission’s investigation is incomplete, as it failed to collect information from essential stakeholders and hence the Commission has not discharged its burden of proof.⁵⁶ In particular, Apple complains that the Commission did not carry out a consumer survey to seek input from consumers and failed to investigate the impact of out-of-the app communication tools to inform consumers.⁵⁷
- (56) Fourth, Apple argues that the Commission has failed to collect the information and evidence it needs to support its conclusions, which it was obliged to do pursuant to the General Court’s *Intel* judgement.⁵⁸ In particular, Apple claims that following its request in March 2022 and during the Oral Hearing the Commission should have requested the following information from music streaming service providers which Apple could not have access to in any other way: (i) the number of emails that music streaming service providers sent to iOS and Android users within six months after having obtained their email addresses through the sign-up function within the iOS and Android apps, and (ii) a description of any differences in the music streaming service providers’ practices between iOS and Android with respect to sending out promotional emails, as well as internal documents of music streaming service providers that refer to differences in platform-specific practices, if any.⁵⁹

5.2.2. *Assessment of Apple’s arguments*

- (57) The Commission disagrees with Apple’s views and considers that it has taken all necessary investigative steps to collect the appropriate evidence in support of its conclusions. In particular, the Commission notes the following.
- (58) First, the Commission relies on various data sources, including market data analytics providers such as Statista, StatCounter and MIDiA. There is no indication that these sources are erroneous or do not give a correct picture of the market. In fact, these sources are recognised and accepted within the industry.
- (59) Second, there have been no significant market developments which call into question the results of the 2018 Spotify experiments or [...] (see in this regard recitals (166) to (182)), which therefore have remained valid and support the Commission’s findings for the whole duration of the infringement. In this regard, Apple continues to be

⁵¹ Apple’s Response to the Letter of Facts, ID 3330, paragraph 50 and Apple’s Response to the Statement of Objections of 28 February 2023, ID 2821, paragraph 60.

⁵² Apple’s Response to the Letter of Facts, ID 3330, paragraphs 55 and Apple’s Response to the Statement of Objections of 28 February 2023, ID 2821, paragraphs 61 to 67.

⁵³ Statement of Objections of 28 February 2023, ID 2821, paragraphs 679 et seq.

⁵⁴ [...]

⁵⁵ Letter of Facts, ID 3230, paragraphs 539 et seq.

⁵⁶ Apple’s Response to the Letter of Facts, ID 3330, paragraphs 56 to 67.

⁵⁷ Apple’s Response to the Letter of Facts, ID 3330, paragraphs 7, 64 and 231.

⁵⁸ Apple’s Response to the Letter of Facts, ID 3330, paragraphs 68 to 72 and Apple’s Response to the Statement of Objections of 28 February 2023, ID 2821 paragraphs 57 to 67.

⁵⁹ Apple’s Response to the Letter of Facts, ID 3330, paragraph 70.

dominant in the market for the provision to developers of platforms for the distribution of music streaming apps to iOS users (recital (520)) and to impose Anti-Steering Provisions unilaterally (see recitals (228) to (231)). Therefore, their results are perfectly suited to support the finding of an infringement, which started on 30 June 2015 and is ongoing at the date of the adoption of this Decision. Moreover, the Commission does not uncritically rely on these two pieces of evidence to reach conclusions but has made an overall assessment of all the circumstances and information available to show harm to consumers.

- (60) Third, concerning Apple’s criticisms that the investigation is incomplete, the Commission notes that according to settled case law the Commission “cannot be required to carry out further investigations where it considers that the preliminary investigation of the case has been sufficient” and that “the Commission is not required to reply to all the arguments of the party concerned, to carry out further investigations [...] where it considers that the preliminary investigation of the case has been sufficient”.⁶⁰ In this regard, the Commission maintains that its investigation is complete and sufficient.
- (61) The Commission notes that its finding that Apple’s Anti-Steering Provisions are detrimental to consumers is based on a sound body of evidence gathered throughout the investigation. In particular, the monetary and non-monetary harm inflicted on consumers is based, among others, on internal documents from Apple and information collected from Apple and music streaming service providers through requests for information, including data on conversion channels, as well as on the 2018 Spotify experiments and [...] (see Section 9.3.2.1 on “Monetary harm to consumers” and Section 9.3.2.2 on “Non-monetary harm to consumers”). The Commission considers that the evidence collected was sufficient to prove the infringement and in particular the harm to consumers so that no further investigation was necessary.
- (62) In addition, it should be noted that the consumer association BEUC, which represents forty-five independent consumer organisations from thirty-one countries, was admitted as an interested third party in this case on 31 May 2021.⁶¹ BEUC provided observations to the two statements of objections issued by the Commission and participated in the oral hearing. The Commission considers that BEUC’s views as a recognised European consumer association are fully representative of consumers’ views in this case and further supported the findings that Apple’s Anti-Steering Provisions are detrimental vis-à-vis consumers.
- (63) With respect to Apple’s allegation that the Commission has not taken into account the effect of out-of-the app communications in its assessment, the Commission notes that it examines this issue extensively in recitals (205) to (207) and (700), concluding that these tools constitute inferior ways of communicating with users not equivalent to effective in-app price information at the time when the user is engaging with the service.⁶²
- (64) Fourth, as regards Apple’s claim that the Commission had an obligation to obtain certain information from music streaming service providers which Apple could not

⁶⁰ Case T-758/14 *Infineon*, EU:T:2016:737, paragraphs 73 and 110.

⁶¹ Letter of admission of BEUC as an interested third-party, ID 1748.

⁶² See also Statement of Objections of 28 February 2023, ID 2821, paragraphs 948, 675 and 692; Letter of Facts, ID 3230, paragraph 54 and footnote 152.

have accessed in any other way (see recital (56)), the Commission notes that in the (annulled) *Intel* judgment invoked by Apple, the General Court stated that, “[w]here an undertaking which is the subject of an investigation has become aware of the existence of an exculpatory document, but is unable to obtain it itself or is prevented from submitting it to the Commission, whereas the Commission is able to obtain that document and use it, the Commission may be obliged in certain circumstances to obtain that document following an express request to that effect by the undertaking concerned”.⁶³ The General Court emphasised that “such an obligation must be limited to exceptional cases”⁶⁴ and noted that “[t]he mere fact that certain documents may contain exculpatory evidence does not suffice to establish an obligation on the Commission to obtain them at the request of a party concerned by the investigation”.⁶⁵ The case law more generally clarifies that the Commission “has a margin of discretion in deciding whether it should obtain the documents [requested by an investigated undertaking]. The parties to a procedure have no unconditional right to the Commission’s obtaining certain documents, since it is for the Commission to decide how it conducts the investigation of a case.”⁶⁶

- (65) In this case, Apple has not “become aware of the existence of an exculpatory document” but asked the Commission to obtain documents and information since, so it claims, in their absence it “would be missing a key piece of potentially exculpatory evidence that would demonstrate the effectiveness of one of the key alternative acquisition channels for [Music Streaming Service] providers”.⁶⁷ In such a situation, the Commission was not obliged to request the documents and information in question. In exercising its margin of discretion, the Commission considered that its file was sufficiently complete and that obtaining the information according to Apple’s request was not necessary in view of the various other pieces of evidence cited in this Decision concerning the effectiveness of promotional emails as a way of conversion to premium subscriptions.
- (66) In addition, according to the Commission’s assessment of the evidence on the file, the possibility to send emails and run promotional campaigns outside of the app conducted by music streaming providers are not effective ways of communicating with users and do not end nor call into question the infringement (see recitals (189) to (201), (700) and (769)). Consequently, the Commission considers that, contrary to Apple’s claim,⁶⁸ obtaining the information requested by Apple from music streaming providers concerning the frequency of email communications within six months after obtaining the user’s email address and about differences among practices in the Android and iOS platforms would have unlikely lead to obtaining exculpatory evidence.

⁶³ Case T-286/09 *Intel*, EU:T:2014:547, paragraph 372 (emphasis added).

⁶⁴ *Ibid.*, paragraph 375.

⁶⁵ *Ibid.*, paragraph 379.

⁶⁶ Case T-758/14 *Infineon*, EU:T:2016:737, paragraph 73.

⁶⁷ Apple’s Response to the Letter of Facts, ID 3320, paragraph 71.

⁶⁸ Apple’s Response to the Letter of Facts, ID 3330, paragraph 71.

5.3. The Commission did not infringe Apple’s rights of defence in relation to minutes of meetings

5.3.1. Apple’s arguments

(67) Apple argues that the Commission has failed to properly record information received during meetings with third parties with respect to 29 minutes of meetings with Spotify and BEUC contained in the case file.⁶⁹ According to its view, those minutes are insufficiently detailed to reflect the content of the discussions between the case team and the complainant or interested party.⁷⁰ In addition, Apple claims that, to exercise its rights of defence, it needed access to the information discussed during each of those 29 meetings.⁷¹ Lastly, Apple argues that the Commission communicated minutes and sought comments from Spotify with delay, which in Apple’s views questions the accuracy of such minutes.⁷²

5.3.2. Principles

(68) Pursuant to the case law of the Court of Justice, the Commission has a duty to record and add to the case file the content of interviews aimed at collecting information on the subject matter of the investigation and therefore falling within the scope of Article 19 of Regulation (EC) No 1/2003.⁷³ The case law clarified over time that the Commission must provide an indication of the content of the discussions which took place during the interview, in particular the nature of the information provided from the subjects, but is free to record the statements made by the persons interviewed in the form of its choosing.⁷⁴

(69) In *Intermarché Casino Achats*, the Court of Justice stressed that interviews conducted under Article 19 of Regulation (EC) No 1/2003 are those “conducted for the purpose of collecting information relating to the subject matter of an investigation, which presupposes that an investigation is ongoing”.⁷⁵ Therefore, meetings discussing purely procedural or technical matters and not conducted for the purpose of collecting information relating to the subject matter of the investigation do not fall within the scope of Article 19 of Regulation (EC) No 1/2003 and therefore do not trigger an obligation to record minutes.

(70) The Court of Justice further clarified that, in order to find an infringement of the rights of defence of the investigated undertaking for lack or incompleteness of interview records, the investigated company would need to establish that: (i) it did not have access to certain exculpatory evidence and (ii) it could have used that evidence for its defence.⁷⁶

⁶⁹ Annex 5 to Apple’s Response to the Letter of Facts, ID 3320.

⁷⁰ Apple’s Response to the Letter of Facts, ID 3330, paragraph 77 and Section II of Annex 5 to Apple’s Response to the Letter of Facts, ID 3320.

⁷¹ Apple’s Response to the Letter of Facts, ID 3330, paragraph 78 and Section III of Annex 5 to Apple’s Response to the Letter of Facts, ID 3320.

⁷² Apple’s Response to the Letter of Facts, ID 3330, paragraph 79 and Section IV of Annex 5 to Apple’s Response to the Letter of Facts, ID 3320.

⁷³ Case C-413/14 P *Intel v Commission*, EU:C:2017 :632, paragraphs 89-93.

⁷⁴ Case C-413/14 P *Intel v Commission*, EU:C:2017 :632, paragraphs 90 and 91; Case T-604/18 *Alphabet v Commission (Google Android)*, EU:T:2022:541, paragraph 912.

⁷⁵ Case C-693/20 P *Intermarché Casino Achats v Commission*, EU:C:2023:172, paragraph 112. See also Case T-604/18 *Alphabet v Commission (Google Android)*, EU:T:2022:541, paragraph 911.

⁷⁶ Case C-413/14 P *Intel v Commission*, EU:C:2017:632, paragraph 98.

(71) In particular, the General Court established that in assessing procedural errors in relation to records of interviews with third parties under Article 19 of Regulation (EC) No 1/2003, it is necessary to determine whether, in view of the factual and legal circumstances specific to the case, the investigated undertaking “*has adequately demonstrated that it would have been better able to ensure its defence had those errors not occurred*”. The General Court concluded that if that is not demonstrated, no infringement of rights of defence can be established.⁷⁷

(72) Moreover, in *Google Android* the General Court took favourably into consideration that in the absence of records of interviews the Commission (i) “*endeavoured to reconstitute their content in order to enable Google to exercise its rights of defence*” (ii) “*had not made use of any of the notes provided as inculpatory evidence*” and (iii) “*it had provided Google with all potential exculpatory evidence provided at each of those meetings that could be useful for Google’s defence*”.⁷⁸

5.3.3. Assessment of Apple’s arguments

(73) The Commission maintains that Apple’s rights of defence have been preserved with respect to the minutes in question, in line with the principles set out by the case law of the Union Courts for the following reasons.

5.3.3.1. Meetings which do not constitute interviews pursuant to Article 19 Regulation (EC) No 1/2003

(74) First, it should be noted that not all of the meetings Apple takes issue with were interviews pursuant to Article 19 of Regulation (EC) No 1/2003, as these did not all collect information relating to the subject-matter of the investigation and were not conducted for that purpose. In those meetings, the Commission discussed purely technical or procedural aspects with third parties.

(75) This concerns the following meetings, which did not collect information relating to the subject-matter of the investigation but for which the Commission, in the spirit of full transparency, provided Apple with agreed minutes⁷⁹:

(1) The first of these minutes concerns a call between the case team and Spotify on 12 March 2019, the day following the submission of its complaint.⁸⁰ The content of the discussions were practicalities and procedural aspects following the submission of the complaint, such as public disclosure to the press and next steps of the procedure.⁸¹

(2) Two minutes⁸² concern calls between the case team and Spotify’s economic advisors about the organisation of a data room which took place in June 2019. On 4 and 19 June 2019, the case team discussed technical issues concerning the display and replicability of the code and data submitted by Spotify in the software available in the data room.⁸³ These calls aimed at making data and

⁷⁷ Case T-604/18 *Alphabet v Commission (Google Android)*, EU:T:2022:541, paragraph 934.

⁷⁸ Case T-604/18 *Alphabet v Commission (Google Android)*, EU:T:2022:541, paragraphs 941 and 942.

⁷⁹ Agreed minutes were signed by Spotify or BEUC under the following formulation at the end of each minute “*Spotify/BEUC confirms that this note fully reflects the content of the discussions as held during the videocall*”.

⁸⁰ Minutes of the meeting of 12 March 2019 (ID 1416).

⁸¹ The non-confidential version of the complaint was shared with Apple on 28 March 2019 (ID 93).

⁸² Minutes of the meetings of 4 June 2019 (ID 1414) and 19 June 2019 (ID 1420).

⁸³ In addition to the agreed minutes Apple had access to email exchanges between the case team and Spotify’s economic advisors (ID 273) in which the case team explained the technical issue it had

code available in the data room to Apple, and not at collecting or discussing relevant information.

- (3) Following the data room in June 2019, the case team organized a meeting on 3 July 2019⁸⁴ with Spotify's economic advisors in order to verify that the redacted version of the data room report prepared by Apple's economic advisors during the data room did not contain any confidential data from Spotify.⁸⁵ The purpose of the meeting was to double check whether the non-confidential version of the data room report was correct, and not to collect any information.
- (4) On 15 July, 8 and 19 November 2019,⁸⁶ the case team held calls with Spotify concerning the set-up, methodology and questions of a survey to evaluate lock-in of iPhone users into iOS and whether the pricing of music streaming services on apps could have an influence in a user's decision to purchase a smart mobile device. In the first call, the case team and Spotify discussed a first proposal consisting of a survey directed by DG Competition and conducted by a third-party vendor, an option which finally was not pursued. Spotify expressed its concerns around such set-up in the call of 15 July, as it would have required sharing personal Spotify user data with a third-party.⁸⁷ Following exchanges about a potential survey with both Spotify and Apple, both companies decided to conduct their own independent surveys with external contractors under the Commission's guidance to overcome data sharing problems. To this end, the case team exchanged proposed written questions by email with both Apple and Spotify and held several calls with the two companies.⁸⁸ In this context, the calls held on 8 and 19 November 2019 with Spotify discussed draft questions in preparation of the final Spotify survey, which was finally launched on February 2020 and to which Apple had full access.⁸⁹ Given the preparatory nature of these exchanges, and the fact that the relevant evidence used to assess iOS user's lock-in was the result of the surveys, these three calls are not interviews in the sense of Article 19 of Regulation (EC) No 1/2003 as no information was collected in these calls.⁹⁰

encounter (missing "do files" for Eview analysis) and Spotify's economic advisors provided written instructions following the call.

⁸⁴ Minutes of the meeting of 3 July 2019 (ID 1427).

⁸⁵ In addition to the agreed minutes, Apple had access to an email exchange (ID 283) in which the case team explained the purpose of this meeting.

⁸⁶ Minutes of the meetings of 15 July 2019 (ID 1415), 8 November 2019 (ID 1411) and 19 November 2019 (ID 1421).

⁸⁷ In addition to the agreed minutes of the call on 15 July 2019, Apple had access to email exchanges between the case team and Spotify (ID 308 and 309) concerning the possibility of conducting a survey by a third-party vendor selected by DG Competition using Spotify's user email data.

⁸⁸ Apple had access to abundant email correspondence including draft questions between the case team and Spotify between September and November 2019 (see IDs 374 375, 376, 380, 381, 382, 385, 408, 409, 419, 420). Moreover, Apple equally shared survey drafts (see for instance IDs 371, 372, 425, 442, 443, 489, 490, 521, 554, 555, 559, 601, 602, 620), so it had first-hand information about the Commission's views on the survey design. [...]

⁸⁹ Apple had access to the final version of the survey conducted by Spotify (ID 500) and to a Compass Lexecon report presenting the survey's methodology, questions and results (ID 900).

⁹⁰ In the call on 19 November 2019 (ID 1421), Spotify briefly reported to the Commission on the discussions it had with the United States Department of Justice, to which it raised similar concerns. Insofar such discussions concern an investigation by a third-party competition authority, they are

- (5) On 16 June 2020,⁹¹ the Commission held a call with Spotify's legal and economic advisors concerning a data submission from Spotify in reply to a request for information⁹² and in preparation of an upcoming submission⁹³, both related to Spotify's 2018 experiments. These submissions included the raw data, logs and documentation underlying the 2018 Spotify experiments which would enable the Commission to replicate the economic analysis. Given the large size of this data submission this call was organised to sort out logistics (e.g., Spotify agreed to minimise the size of raw data and include all codes to ensure replicability) concerning data sharing, but no substantive information was disclosed or discussed in this meeting.
- (6) On 7 May 2021,⁹⁴ following the adoption of the Statement of Objections of 30 April 2021, a call took place between the case team and BEUC at BEUC's request in order to discuss BEUC's possible intervention in the case. The case team gave BEUC a general overview of the consumer related aspects of the case and the appropriate timing of such intervention. No information was gathered by the Commission in this meeting.
- (7) On 10 May 2021,⁹⁵ a meeting took place between Spotify and the Commission, following the adoption of the Statement of Objections of 30 April 2021, but before Spotify received a non-confidential version. The case team broadly described the preliminary conclusions reached in its statement of objections, which were known to Apple, and explained the next procedural steps, but did not collect any information from Spotify in this call.

5.3.3.2. Apple's rights of defence have been preserved with respect to the meetings that may constitute interviews pursuant to Article 19 Regulation (EC) No 1/2003

- (76) With respect to other meetings which may constitute interviews pursuant to Article 19 Regulation (EC) No 1/2003, the Commission notes that Apple's rights of defence have been respected.⁹⁶
- (77) The Commission provided Apple with agreed minutes or internal notes or e-mails reflecting the content of the discussions with respect to all the nineteen meetings concerned.
- (78) For most of those meetings, the Commission also provided Apple with evidence corroborating their content. This included slide deck presentations used in meetings by Spotify, email exchanges surrounding the meetings and submissions discussed in the meetings or submitted as follow-up to the meetings. Read together, those documents provide further details and context on the matters discussed in the relevant meetings and are sufficiently detailed to allow Apple to understand the discussions and information provided by Spotify.

outside of the scope of the investigation and did not entail collection of relevant evidence by the Commission.

⁹¹ Minutes of the call of 16 June 2020 (ID 1430).

⁹² The data submission discussed concerned Spotify's reply to question 35 of the request for information 2020/002646, dated 10 January 2020 (ID 1431).

⁹³ With respect to the upcoming data submission, see email from Spotify's economic advisors on 8 June 2020 explaining the issues encountered and proposing a call. Apple had access to this email (ID 656).

⁹⁴ Minutes of the meeting of 7 May 2021 (ID 2843).

⁹⁵ Minutes of the meeting of 10 May 2021 (ID 2535).

⁹⁶ Not all of these meetings necessarily constitute interviews under Article 19. However, in the spirit of transparency, the Commission has provided information to Apple as to the content of these meetings.

- (79) Apple complains about the record of a number of meetings in which Spotify met with the Commission to present its position on Apple’s alleged anticompetitive conduct.⁹⁷ The Commission notes that for some of these meetings, Apple had access to agreed minutes summarising the topics discussed at the meeting.⁹⁸ For others, Apple had access to internal notes or e-mails drafted by Commission officials present in the meetings summarising the discussions during the meeting.⁹⁹ In any event, for all these meetings, Apple also had access to documents in the file that provide sufficient detail and context to understand the content of the discussions in those meetings and could exercise of its rights of defence thereupon. [...],¹⁰⁰ [...],¹⁰¹ [...],¹⁰² [...].¹⁰³ [...].
- (80) Apple also submits concerns about a number of agreed minutes which relate to short calls or meetings in which Spotify updated the Commission on its business relationship with Apple.¹⁰⁴ This concerns updates on alleged delays and blocking of Spotify’s app updates by Apple and unexpected changes in Apple’s interpretation of the App Review Guidelines. The minutes mostly relate to short calls in which Spotify briefly updated the Commission on specific examples of Apple’s conduct, which were sufficiently summarised in the agreed minutes provided in the file.¹⁰⁵ Only one of the meetings¹⁰⁶ concerned a longer exchange in which Spotify reiterated its concerns on Apple’s alleged anticompetitive practices at the time, as explained in footnote 101, and also mentioned specific examples in which Apple had been allegedly delaying updates, blocking and even threatening to withdraw Spotify’s app from the App Store. Spotify’s concerns were detailed in a written submission sent in advance of the meeting, as well as in exchanges between Spotify and Apple discussing the issue and a legal memorandum submitted by Spotify after the meeting, to which Apple had access.¹⁰⁷ Moreover, most of these concerns and examples were

⁹⁷ Minutes of the meetings of 4 July 2013 (ID 2452), 6 February 2015 (IDs 2456 and ID 2748), 16 March 2015 (ID 2451), 25 June 2015 (ID 1640), 10 December 2015 (ID 1564), 13 July 2016 (ID 1639), 25 July 2016 (ID 1562), 28 July 2016 (ID 1641), 18 September 2018 (ID 1419) and 15 November 2018 (ID 1638).

⁹⁸ For the meetings of 25 June 2015 (ID 1640), 10 December 2015 (ID 1564), 13 July 2016 (ID 1639), 25 July 2016 (ID 1562), 28 July 2016 (ID 1641), 18 September 2018 (ID 1419) and 15 November 2018 (ID 1638).

⁹⁹ For the meetings of 4 July 2013 (ID 2452), 6 February 2015 (IDs 2456 and ID 2748) and 16 March 2015 (ID 2451).

¹⁰⁰ [...].

¹⁰¹ [...].

¹⁰² [...].

¹⁰³ [...].

¹⁰⁴ In particular, minutes of the meetings of 13 July 2016 (ID 1639), 6 January 2017 (1637), 16 October 2017 (ID 1561), 12 February 2018 (ID 1559), 30 September 2021 (ID 2541).

¹⁰⁵ The call of 6 January 2017 (ID 1637) was a short call, in which Spotify informed the Commission on Apple’s continued delays of the Spotify app updates, invoking new and different reasons to do so. The call of 16 October 2017 (ID 1561) was again a short call in which a Spotify’s representative updated the Commission on its relationship with Apple, including new instances in which Apple had delayed updates of Spotify’s app and new changes in Apple’s terms for distribution in the App Store. The call of 12 February 2018 (ID 1559) was again a specific update from Spotify on a new blockage by Apple of a Spotify update because it contained a reference to prices. The call of 30 September 2021 (ID 2541) was again a catch up on Apple’s rejection of certain actions and updates. Spotify explained a specific recent example in which Apple rejected Spotify’s latest marketing campaign.

¹⁰⁶ Minutes of the meeting of 13 July 2016 (ID 1639).

¹⁰⁷ See Spotify’s written submission of 29 June 2016 (ID 799), in which Spotify also urged the Commission to consider ordering interim measures prohibiting Apple from removing Spotify’s app

again detailed in Spotify's formal complaint, to which Apple had access.¹⁰⁸ Therefore, the agreed minutes of all these meetings, together with the other relevant documents in the file, provided Apple with sufficient detail and context on Spotify's allegations.

- (81) Regarding Apple's objections concerning the record of the call of 16 July 2015,¹⁰⁹ the Commission notes that this was a spontaneous call from Spotify's legal advisors to inquire about next steps in the handling of their preliminary complaints. The Commission took the opportunity to briefly inquire about an experiment that Spotify was carrying out at the time regarding the use of IAP, before it disabled that option in May 2016. The internal Commission e-mail reporting on this call includes an e-mail from Spotify's lawyers to the Commission explaining what they had discussed over the call¹¹⁰ and makes reference to previous exchanges with Spotify on this topic,¹¹¹ to which Apple had access. Apple also had access to an e-mail exchange following this call in which Spotify's advisors further explained the conclusions drawn from the experiments they had carried out in 2015.¹¹² Thus, the documents in the file provided Apple with sufficient detail and context on the call of 16 July 2015 and, more generally, about the experiments that Spotify was carrying out around that time, which, in any event, were not used as inculpatory evidence during the investigation.
- (82) Apple further complains about the minutes of the meetings of 7 December 2016 and 14 December 2016.¹¹³ The purpose of these meetings was to discuss with Spotify Apple's informal proposal to change Rule 3.1.1. of the App Store Review Guidelines. In the first meeting of 7 December 2016, the Commission explained the proposal to Spotify and asked for feedback. Spotify claimed it would only be able to give substantive feedback on the specific proposal after discussing the proposal internally and only gave some preliminary and general views on what the App Store

from the App Store and cease to block app updates, and the letters exchanged between Spotify and Apple, submitted by Spotify (IDs 844 and 838).

As explained in footnote 101, following the meeting of 13 July 2016 and prior to the meeting of 25 July 2016, Spotify submitted, among other documents, a legal memorandum summarising Spotify's key legal arguments (IDs 1452), including reference to examples in which Apple had been allegedly delaying updates, blocking and even threatening to withdraw Spotify's app from the App Store.

¹⁰⁸ Spotify's Complaint dated 11 March 2019, ID 1457, Section 3.3.

¹⁰⁹ ID 2551.

¹¹⁰ See e-mail from Spotify's legal counsel of 16 July 2015 in ID 1579 and screenshots attached to the email concerning the experiment discussed over the call in IDs 1580, 1581, 1582 and 1583.

¹¹¹ See e-mail from Spotify's legal counsel of 13 July 2015 in ID 1595, explaining the experiment Spotify had carried out concerning the use of IAP and its initial conclusions. According to Spotify, the data obtained by Spotify between 16 June and 5 July showed the importance of IAP for obtaining subscribers. The launch of this experiment had already been advanced in a previous meeting of 25 June 2015 (see ID 1640).

¹¹² See e-mail from Spotify's legal counsel of 14 September 2015 in ID 1576 and attachment in ID 1578.

As explained in the e-mail (ID 1576), Spotify run an experiment from 16 June 2015 to 12 July 2015 which tested the use and importance of IAP. Spotify was still using IAP at that time but disabled this option in May 2016. According to Spotify, the experiment showed the importance of IAP for obtaining subscribers and how users prefer in-app purchasing. Spotify also run an e-mail campaign in the UK and the US on 16 June 2015 which, according to Spotify, showed that e-mails are not a viable alternative to in-app communication.

These first experiments are different from the ones carried out by Spotify in 2018, which it submitted together with its formal complaint (see ID 1459-2). The 2015 experiments were not used as inculpatory evidence by the Commission.

¹¹³ See minutes of the meetings of 7 December 2016 in ID 1560 and 14 December 2016 in ID 1563.

Review Guidelines should allow.¹¹⁴ Spotify submitted its written observations on the proposal on 11 December 2016, to which Apple had access.¹¹⁵ Spotify's observations were then discussed on 14 December 2016.¹¹⁶ Evidence in the file also shows that Apple was aware at the time of the discussions that the Commission was having with Spotify concerning these proposed changes.¹¹⁷ Therefore, Apple had access to detailed information in the file about these discussions and could exercise its rights of defence.

- (83) Apple further complains about the minutes of the call between Spotify and the case team of 24 March 2020.¹¹⁸ This call was organized by the case team to seek two clarifications following Spotify's reply to a request for information.¹¹⁹ First, the case team inquired Spotify about the availability of certain data and code in the data submission provided in reply to the request for information concerning the Spotify experiments.¹²⁰ This concerned a purely technical data-related aspect which did not involve the collection of relevant information. Second, the case team aimed at clarifying some doubts concerning Spotify's reply to its questions on acquisition channels, associated costs and Spotify's decision to switch off IAP.¹²¹ Concerning those points, the Commission included new follow up questions in its next request for information dated 23 April 2020,¹²² to which Spotify replied in detail including a note annexed to its reply. Apple had access to Spotify's reply,¹²³ in addition to an email exchange between the case team and Spotify related to this meeting.¹²⁴ Therefore, Apple had access to detailed information concerning the allegations brought forward in this meeting and could exercise its rights of defence.
- (84) Lastly, Apple raised concerns on the minutes of a call between Spotify and the case team on 28 October 2020.¹²⁵ This call was organised to allow Spotify to present its views on an economic paper submitted by Apple. Besides the agreed minutes provided, Apple had access to the 15-slide deck presentation used by Spotify's economic advisors in the call¹²⁶ as well as to a 39 pages submission entitled "CL Response to CRA Submission".¹²⁷ These documents, read together, provided Apple

¹¹⁴ This is reflected in the minutes of the meeting (ID 1560), but also in a follow up email of 9 December 2016 (ID 836).

¹¹⁵ See cover e-mail in ID 818 and Spotify's submission of 11 December 2016 in ID 819.

¹¹⁶ See minutes of the meeting of 14 December 2016 in ID 1563.

Ahead of the call on 14 December 2016, Spotify submitted specific points for discussion (ID 829), information on Deezer discussed during the meeting (IDs 788 to 791) and an e-mail exchange with Apple concerning a disagreement on an e-mail campaign from Spotify which Apple considered violated the App Store Review Guidelines (ID 808).

¹¹⁷ See e-mail from Apple to a Commission official on 31 October 2016 advancing the changes they planned to do in the Guidelines and attaching a letter sent by Apple to Spotify on 28 October 2016 (ID 845 and 846) and an e-mail from Apple to a Commission official on 24 December 2016 explaining they understood Spotify had objected their proposal and informing that Apple was assessing internally Spotify's new request (ID 835).

¹¹⁸ Minutes of meeting on 24 March 2020 (ID 1422).

¹¹⁹ Spotify's reply to request for information 2020/002646 dated 10 January 2020 (ID 1431).

¹²⁰ See question 35 of request for information 2020/002646 dated 10 January 2020 (ID 1431).

¹²¹ See question 18 of request for information 2020/002646 dated 10 January 2020 (ID 1431).

¹²² Request for information 2020/050944 dated 23 April 2020 (ID 564).

¹²³ Spotify's reply to request for information 2020/050944 dated 23 April 2020 (ID 1434).

¹²⁴ ID 527.

¹²⁵ Minutes of meeting of 28 October 2020 (ID 1346).

¹²⁶ ID 1349.

¹²⁷ ID 881.

with sufficiently detailed information to understand Spotify's arguments brought forward in this call and enabled it to exercise its rights of defence.

- (85) For the reasons explained above, the Commission concludes that the record of the nineteen meetings with Spotify, together with the additional evidence available in the file, allowed Apple to know the content of the discussions and the nature of the information provided and show that the Commission did not withhold exculpatory evidence that could have allowed Apple to better defend itself. The substantive issues discussed during those meetings were presented by Spotify, in more detail, in submissions or replies to questions to which Apple had access. Apple was therefore aware of the content of the discussions in those meetings, as well as the views of Spotify in the context of the investigation and those meetings in particular. Moreover, none of the specific minutes of the meetings for which Apple raises concerns were used as inculpatory evidence by the Commission.¹²⁸ In these circumstances, having had access to the record of the meetings as well as contextual information, Apple has not put forward sufficiently detailed arguments that could explain how it might have been better able to ensure its defence in the present case, had the alleged procedural errors regarding records of those nineteen meetings for the purposes of Article 19(1) of Regulation No 1/2003 not occurred.¹²⁹
- (86) In addition, Apple complains that it did not have access to correspondence between the Commission and Spotify concerning minutes of meetings between September 2018 and January 2021 and between May 2021 and June 2022.
- (87) In this regard, the Commission notes that correspondence with the complainant and third parties concerning draft minutes prepared by the Commission, to which the undertaking interviewed may propose corrections pursuant to Article 3(3) of Regulation (EC) 773/2004, and confidential information contained therein is not accessible information, according to the Commission's Notice on access to file.¹³⁰ Only once the person or undertaking in question has agreed the minutes and provided a non-confidential version, will such minutes be made accessible after deletion of any business secrets or other confidential information. Therefore, draft minutes of meetings with Spotify or third parties are confidential vis-à-vis Apple until the relevant party agrees to the content of such minutes and does not validly claim confidentiality with respect to its content. The exchanges concerning the Commission's internal drafts, the agreement of those minutes and the confidentiality of certain information contained therein are therefore also not accessible and confidential.

5.4. Conclusion

- (88) In light of the above, the Commission concludes that the Letter of Facts issued in this case was an appropriate instrument, that the Commission took all necessary investigative steps to discharge the burden of proof and that the record of the meetings provided are sufficiently detailed and have allowed Apple to exercise its

¹²⁸ Case T-604/18 *Alphabet v Commission (Google Android)*, EU:T:2022:541, paragraphs 941 to 943.

¹²⁹ See, to that effect, case T-604/18 *Alphabet v Commission (Google Android)*, EU:T:2022:541, paragraphs 946, 950 and 953.

¹³⁰ Point 17 of the Commission Notice on the rules for access to the Commission file in cases pursuant to Articles 81 and 82 of the EC Treaty, Articles 53, 54 and 57 of the EEA Agreement and Council Regulation (EC) No 139/2004, OJ C 325, 22.12.2005, p. 7–15.

rights of defence. Therefore, the Commission has not committed any procedural breach in conducting its investigation.

6. THE PRODUCTS CONCERNED BY THE DECISION

6.1. Smart mobile devices, operating systems and app stores

- (89) This Decision concerns the distribution of apps and of paid content to users through mobile app stores, i.e., digital distribution platforms, constituted by online services and related apps that are dedicated to enabling users to download, install and manage a wide range of diverse apps from a single point in the interface of the smart mobile device.¹³¹
- (90) Apps are types of software through which users can access World Wide Web (“web”) content and services on their smart mobile devices. Apps can be “standalone” and serve offline tasks (such as games or photography) or incorporate some form of online service (such as geolocation, integration with social networks or streamed content).¹³² Apps are optimised for the characteristics of smart mobile devices, as compared with PCs, such as reduced text input, limited screen size or convenience of touch-based interfaces.¹³³ Apps can principally be divided into native and non-native ones.¹³⁴ Native apps are apps written in a specific programming language of a given device – typically Swift or Objective-C in the case of Apple’s devices.¹³⁵ They cannot be used on multiple smart mobile operating systems, but need to be re-written for each smart mobile operating system in the respective programming language. Native apps can have access to the functionalities of the smart mobile operating system, like GPS and camera. They are typically also faster than non-native apps, because of their better compatibility with the hardware of a given smart mobile operating system. Non-native (web-based) apps can be used in different smart mobile operating system without the need to develop an app for each smart mobile operating system. An example of a non-native app is a progressive web app, which is a mobile version of a website that can be accessed via the browser and is optimised for the use on smart mobile devices. The app’s icon can be stored on the iPhone so that the underlying website can be consulted directly by a user.
- (91) An app store is a digital distribution platform where free and paid apps can be offered and downloaded on devices (e.g., smart mobile devices).¹³⁶ App stores intermediate transactions between companies offering apps (subsequently called “developers”¹³⁷) and (smart mobile) device users downloading and using those

¹³¹ Commission decision of 18 July 2018 in Case AT.40099 – *Google Android*, paragraph 86.

¹³² Commission decision of 18 July 2018 in Case AT.40099 – *Google Android*, paragraph 84.

¹³³ Commission decision of 18 July 2018 in Case AT.40099 – *Google Android*, paragraph 84.

¹³⁴ Commission decision of 18 July 2018 in Case AT.40099 – *Google Android*, paragraph 85.

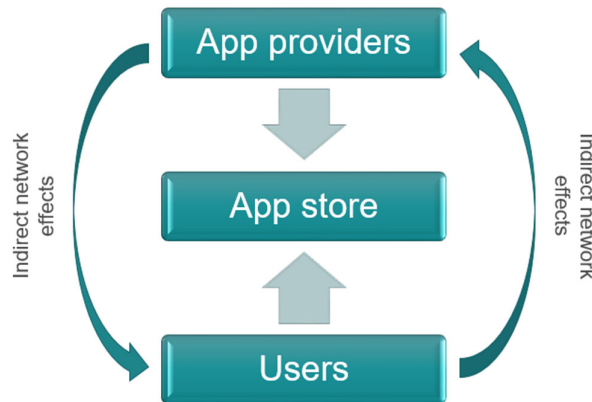
¹³⁵ See <https://developer.apple.com/swift/>, ID 1105 and <https://www.upwork.com/resources/swift-vs-objective-c-a-look-at-ios-programming-languages>, both accessed on 13 January 2021, ID 1106.

¹³⁶ For the purpose of this Decision, the Commission focuses on app stores integrated on smart mobile devices, given that the conduct at issue concerns the distribution of music streaming apps on iOS.

¹³⁷ Not all parties offering apps on the App Store will necessarily be developers as many may outsource the development of apps to third parties. Nonetheless, and in line with industry practice, this Decision refers to companies offering apps in the App Store as “developers”.

apps¹³⁸. App stores therefore have two distinct, but interlinked user groups, developers and users of (smart mobile) devices, as Figure 1 illustrates.¹³⁹

Figure 1 – Basic model of an app store platform



- (92) App stores typically take the form of an online portal, where users can browse through different app categories or look for a particular app or developer, view information about each app and download the ones of their interest. App stores are generally available to users for free. Users only pay to download certain apps or acquire paid content within apps (“in-app purchases”).¹⁴⁰ The app selected by the user is offered as an automatic download, after which the app installs on the user’s mobile device. App stores are often pre-installed on smart mobile devices.
- (93) Smart mobile devices can be broadly divided between smartphones and tablets¹⁴¹. In particular, the smartphone has become increasingly important to buy and access services online.¹⁴² The value and usefulness of smart mobile devices lies to a great extent in the ability to download a wide variety of apps offered by different developers, since most online services and IoT devices are accessed and controlled through apps.
- (94) Smart mobile devices rely on operating systems (“OSs”), which are software systems that control their basic functions. OSs are designed to support the functioning of smart mobile devices and the corresponding apps are hereinafter referred to as “smart mobile OSs”. Smart mobile OSs typically provide a graphical user interface (“GUI”), APIs¹⁴³, and other ancillary functions. These are required for the operation of a smart mobile device and enable new combinations of functions to offer richer usability and innovations.¹⁴⁴ Apps written for a given smart mobile operating system will typically

¹³⁸ Commission decision of 18 July 2018 in Case AT.40099 – *Google Android*, paragraph 86 defines app stores as “digital distribution platforms, constituted by online services and related apps that are dedicated to enabling users to download, install and manage a wide range of diverse apps from a single point in the interface of the smartphone”.

¹³⁹ In multi-sided platforms such as app store platforms the activity and scale of one user group can influence competition, welfare and scale of one or more of the other user groups on the platform in various ways.

¹⁴⁰ Commission decision of 18 July 2018 in Case AT.40099 – *Google Android*, paragraph 88.

¹⁴¹ Commission decision of 13 February 2012 in Case M.6381 – *Google/Motorola Mobility*, footnote 13.

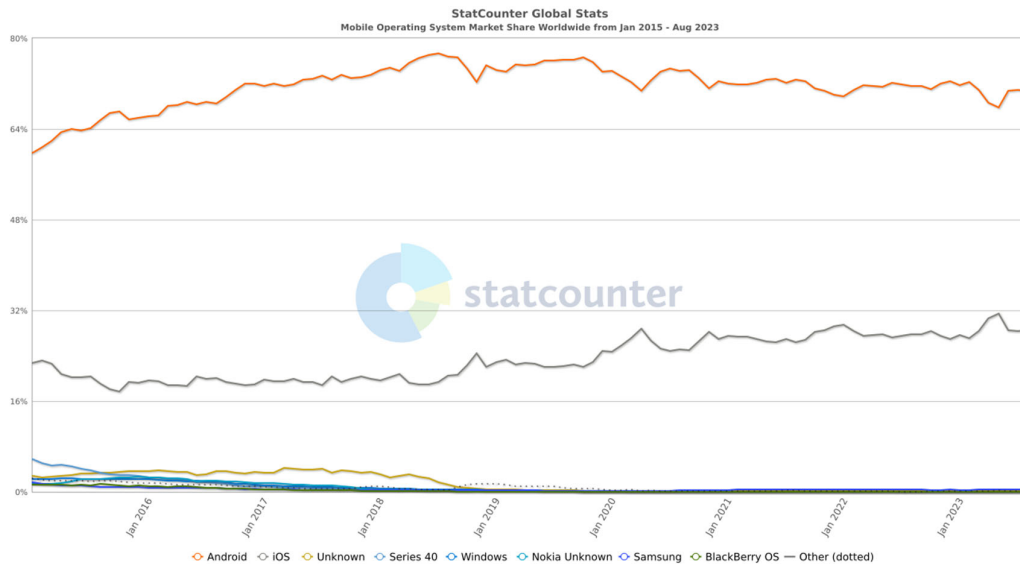
¹⁴² ACM “Market study into mobile app stores”, accessed on 12 November 2020, ID 886, page 15.

¹⁴³ Application Programming Interfaces or APIs allow software programmes to communicate with and exchange data between each other and with the hardware on which they are installed.

¹⁴⁴ Commission decision of 18 July 2018 in Case AT.40099 – *Google Android*, paragraph 80.

run on a smart mobile device using the same OS.¹⁴⁵ Smart mobile OSs are developed by vertically integrated original equipment manufacturers (“OEMs”) such as Apple for captive use on their own smart mobile devices (“non-licensable smart mobile OSs”), or by providers such as Google (with Android), which license their smart mobile operating system to OEMs (“licensable smart mobile OSs”). As shown in Figure 2, Google’s Android and Apple’s iOS are the two main mobile operating systems for smartphones worldwide, with nearly 100 % of smartphones running on one of them. In August 2023, Android had a 70.76 % market share in terms of operating systems in active smartphones worldwide and iOS had a 28.53 % market share.¹⁴⁶ With regard to tablets, in August 2023 Android run 45.11 % of devices and iPadOS 54.68 %, as shown in Figure 3.

Figure 2 – Evolution of mobile operating systems’ market share worldwide from 2015 to August 2023¹⁴⁷

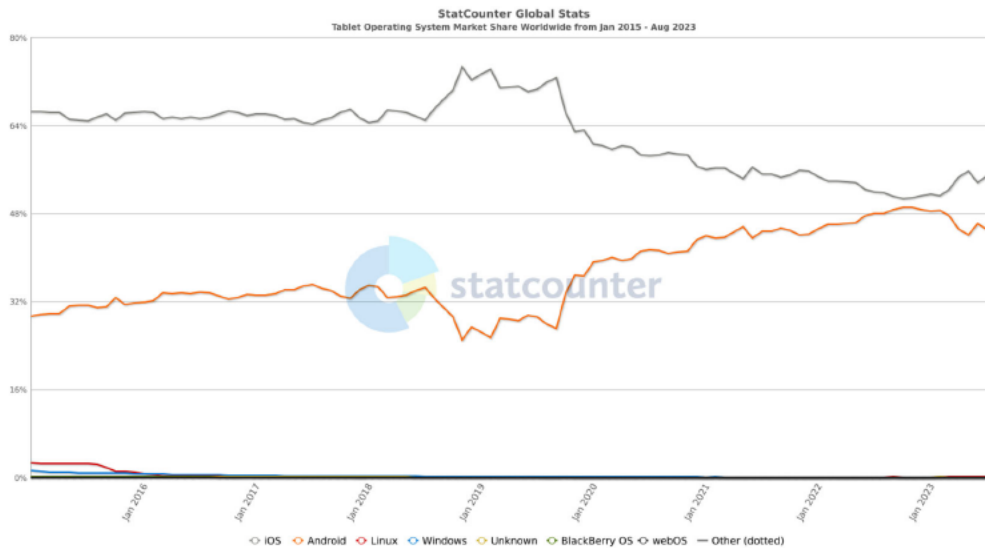


¹⁴⁵ *Ibid.*, paragraph 81.

¹⁴⁶ See <https://gs.statcounter.com/os-market-share/mobile/worldwide/#monthly-201501-202308>, accessed on 14 December 2023, IDs 3282 and 3286. StatCounter market shares are based on data on website views by different devices. For more information on StatCounter’s methodology see <https://gs.statcounter.com/faq#methodology>, accessed on 6 April 2022, ID 2316.

¹⁴⁷ *Ibid.*

Figure 3 – Evolution of tablet operating system market share worldwide from 2015 to August 2023¹⁴⁸



(95) Although the majority of smartphones run on Android (around 70 % worldwide)¹⁴⁹, 1.46 billion active iPhones worldwide run on Apple’s iOS.¹⁵⁰ The installed base of iPhone users in the EEA has constantly grown between 2015 and 2022, as shown in Table 1.

Table 1 – Installed base of iPhones in the EEA (excluding Cyprus, Iceland, Liechtenstein, and Malta)¹⁵¹

Year	Installed base in millions of units
2015	[...]
2016	[...]
2017	[...]
2018	[...]
2019	[...]
2020	[...]

¹⁴⁸ See <https://gs.statcounter.com/os-market-share/tablet/worldwide/#monthly-201501-202308>, accessed on 14 December 2023, IDs 3275 and 3268.

¹⁴⁹ <https://www.businessofapps.com/data/android-statistics/#:~:text=Android%20dominates%20in%20global%20market,iOS%20has%20more%20overall%20users>, accessed on 14 December 2023, ID 3279.

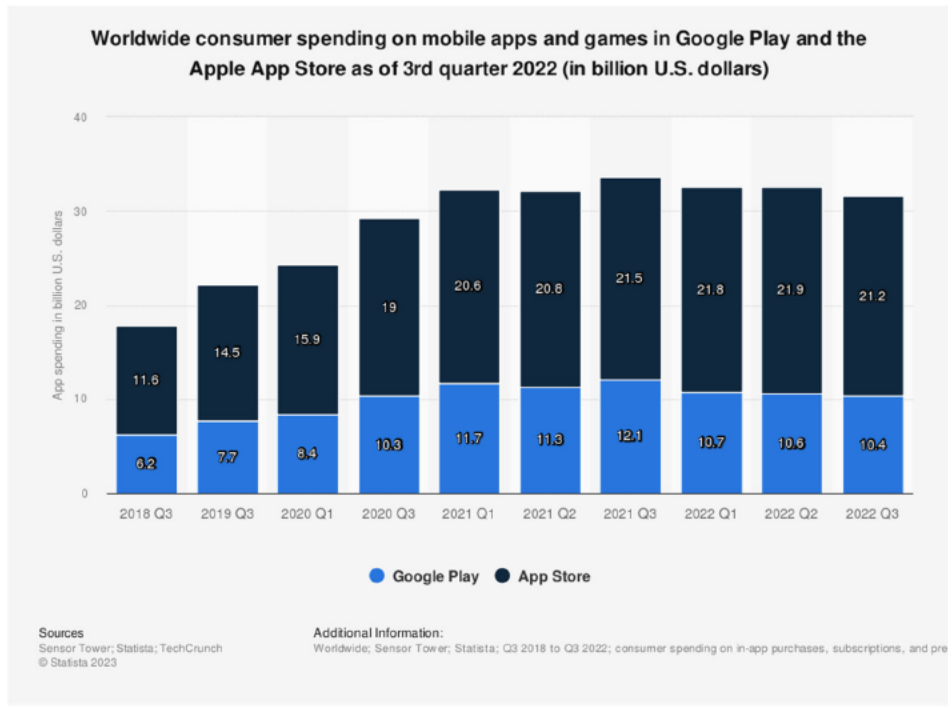
¹⁵⁰ [https://www.demandsage.com/iphone-user-statistics/#:~:text=Key%20iPhone%20Statistics%20\(2023\),units%20were%20shipped%20in%202022](https://www.demandsage.com/iphone-user-statistics/#:~:text=Key%20iPhone%20Statistics%20(2023),units%20were%20shipped%20in%202022), accessed on 10 October 2023, ID 3155.

¹⁵¹ Data provided by Apple in IDs 770, 2298 and ID 2992. For the purposes of comparability, figures for the UK have also been taken into account for the years 2020, 2021 and 2022, although the latter withdrew from the European Union as of 1 February 2020.

2021	[...]
2022	[...]

(96) The iOS user base differs from Android in that iOS users spend much more money on apps as compared to Android users. As shown in Figure 4, in the first three quarters of 2022, global consumer spending on mobile apps via the Apple App Store doubled that of consumers on the Google Play platform, a trend that has been consistent in recent years.¹⁵² In 2021 consumers spent USD 85.1 billion in Apple App Store apps (including in-app purchases, subscriptions and paid apps), while the app spending on Google Play was of USD 48 billion.¹⁵³ In 2022 the iOS app and game revenue increased to USD 86.8 billion, while Google Play’s equivalent revenue decreased to USD 42.3 billion.¹⁵⁴

Figure 4 – Worldwide consumer spending on mobile apps and games in Google Play and the Apple App Store from Q3 2018 to Q3 2022 (in USD billion)¹⁵⁵



(97) Apple’s iOS is only available on iPhones (and iPadOS on iPads),¹⁵⁶ since Apple does not license its operating systems to third parties. Furthermore, iPhones and iPads do not support third-party operating systems. In the iOS ecosystem, the App Store is the

¹⁵² Industry estimates of app spending in Google Play and the App Store in the third quarter of 2018, 2019, 2020, 2021 and 2022, show that consumers have been consistently spending almost double the amount on the App Store’s apps than on Google Play’s ones. See <https://www.statista.com/statistics/183469/app-stores-global-revenues/>, accessed on 10 October 2023, ID 2330.

¹⁵³ Statista Dossier “App Stores”, pages 70 and 81, accessed on 10 December 2021, ID 2415.

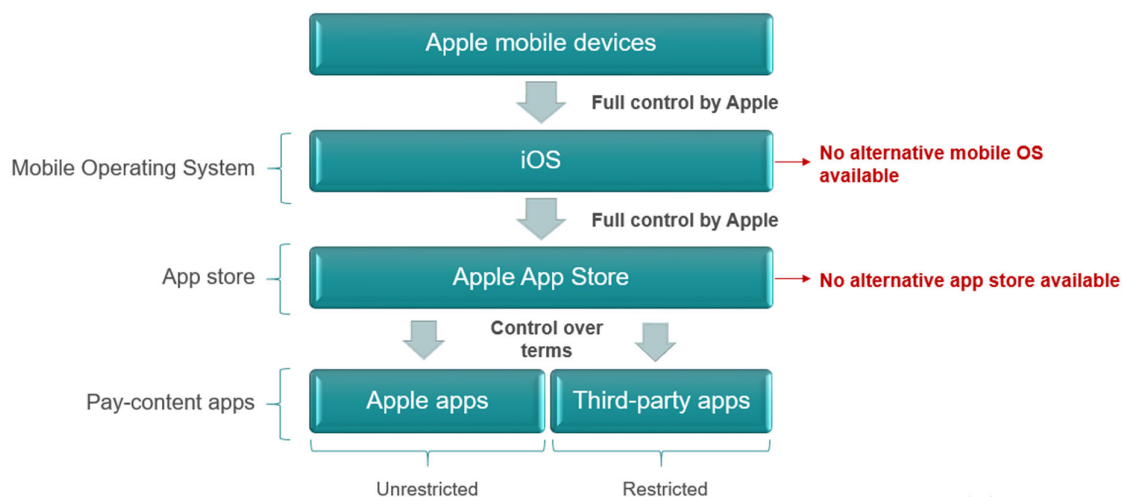
¹⁵⁴ See <https://www.businessofapps.com/data/app-revenues/>, accessed on 14 December 2023, ID 3281.

¹⁵⁵ See <https://www.statista.com/statistics/183469/app-stores-global-revenues/>, accessed on 10 October 2023, ID 2330.

¹⁵⁶ However, as previously explained in footnote 4, for the purposes of this Decision, “iOS” and “iOS users” refers to Apple’s OSs iOS and iPadOS and their users.

only approved app store and the only gateway for developers to reach iOS users. In addition, Apple’s mobile devices come with certain Apple apps pre-installed.¹⁵⁷ Only Apple’s own apps can be pre-installed on the iPhone or the iPad, and some of them cannot be removed. Figure 5 provides an overview of Apple’s app ecosystem.

Figure 5 – Apple’s mobile app ecosystem



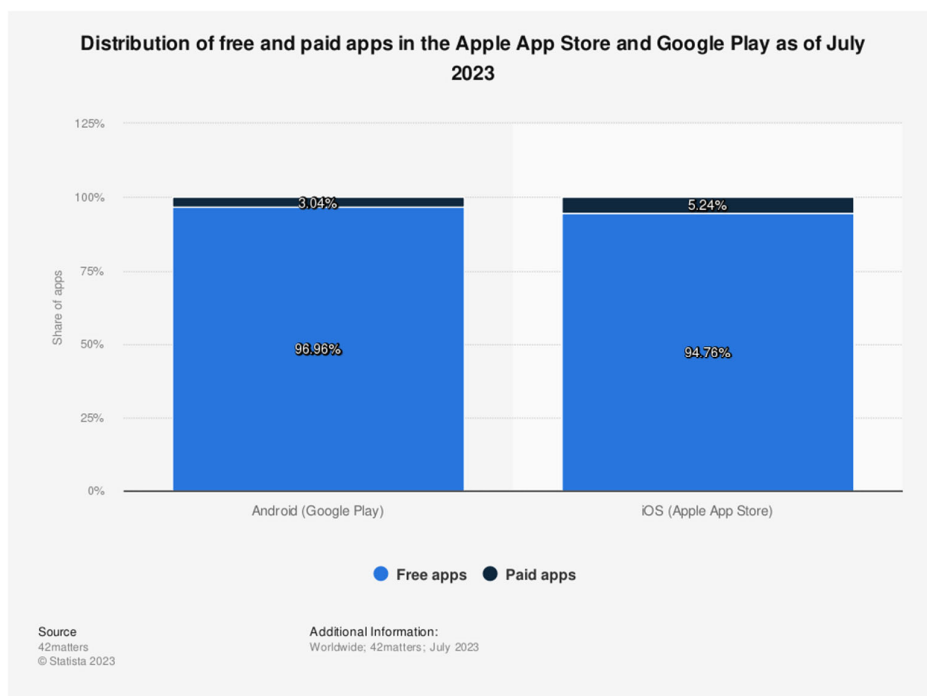
- (98) Differently from Apple, Google licenses its Android mobile operating systems to Original Equipment Manufacturers (OEMs) such as Samsung, LG or Huawei and also shares the source code of Android allowing anyone to build their own versions (so-called Android Forks). Google’s app store “Play Store” (or “Google Play”) is the primary app pre-installed on any smartphone running on Android. Unlike Apple, in principle Google does not prohibit alternative app stores on Android. However, in practice, no alternative app store has achieved any meaningful market share¹⁵⁸ and in 90-100 % of the cases users download their apps via the Play Store, which comes preinstalled with Android operating systems.¹⁵⁹
- (99) While free apps account for the vast majority of apps on both platforms, the share of paid apps in the App Store (5.24 %) is higher than in the Google Play Store (around 3 %), as shown in Figure 6.

¹⁵⁷ For a comprehensive list of apps preinstalled on iPhones, including the App Store and Apple Music, see <https://support.apple.com/en-us/HT208094>, ID 1023. Some of these apps can be removed, while other ones cannot, see <https://support.apple.com/en-us/HT204221>, both accessed on 11 December 2020, ID 1118.

¹⁵⁸ Commission decision of 18 July 2018 in Case AT.40099 – *Google Android*, paragraph 598: “No downloadable app store has achieved any meaningful market share. Aptoide, which claims to be the largest “independent” app store outside China, has only achieved a market share of 0-5 % in the period 2011-2016”.

¹⁵⁹ Commission decision of 18 July 2018 in Case AT.40099 – *Google Android*, paragraph 597.

Figure 6 – Distribution of free and paid apps in the App Store and Google Play Store as of July 2023¹⁶⁰



6.2. Apple’s ecosystem and its business model with regard to its App Store

6.2.1. Apple’s business model

- (100) Apple has a vertically integrated and largely closed ecosystem around its mobile devices comprising different layers of hardware, software and digital services. For iPhone and iPads, Apple only allows its proprietary operating system iOS¹⁶¹ and the App Store. It also includes many of its own apps as defaults on iPhones and iPads. The tech industry often refers to Apple’s ecosystem of devices and software as a “walled garden” in which Apple has a tight control over many aspects of the user experience.¹⁶²
- (101) Apple was, according to Forbes, the most valuable technology brand worldwide in 2022,¹⁶³ and counted with an estimated market capitalisation of USD 3 000 000 000

¹⁶⁰ See <https://www.statista.com/statistics/263797/number-of-applications-for-mobile-phones/>, accessed on 10 October 2023, ID 3156.

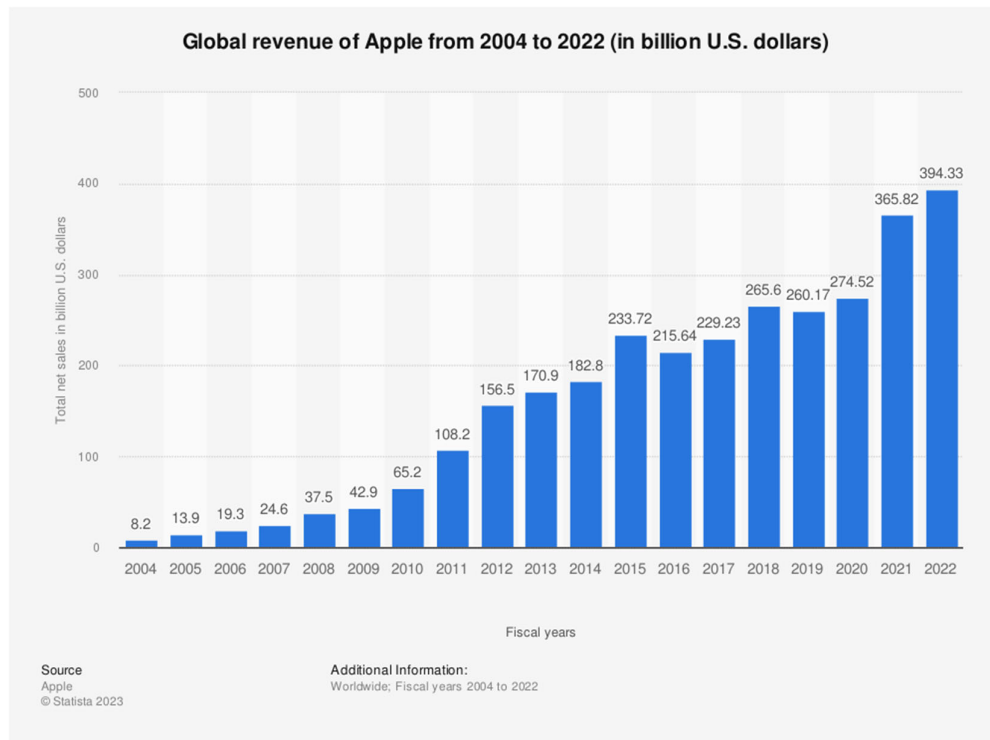
¹⁶¹ Which includes for the purposes of this Decision iPadOS, see footnote 4.

¹⁶² See for instance “Apple’s ‘walled garden’ walls will get even higher with iOS 13, iPadOS 14 and MacOS Big Sur” (2 July 2020): <https://www.cnet.com/news/apple-walled-garden-walls-will-get-even-higher-with-ios-14-ipados-14-macos-big-sur/>, accessed on 11 December 2020, ID 1015; and “Apple expands its walled garden with shift to integrated Mac chips” (23 June 2020): <https://www.ft.com/content/93fa4fae-7cac-41cb-af07-059138575488>, accessed on 10 December 2020, ID 1041.

¹⁶³ <https://www.forbes.com/sites/jonathanponciano/2022/05/12/the-worlds-largest-technology-companies-in-2022-apple-still-dominates-as-brutal-market-selloff-wipes-trillions-in-market-value/?sh=7a2c5f134488>, accessed on 14 December 2023, IDs 3273 and 3277.

in June 2023.¹⁶⁴ Apple’s global revenues have increased significantly between 2004 and 2022 as shown in Figure 7.

Figure 7 - Apple’s revenue worldwide from 2004 to 2022 (in billion US dollars)
Statista¹⁶⁵



- (102) Apple’s sales of hardware devices represent most of Apple’s income, which stems mainly from the iPhone sales. According to Apple, its business model is built around the sale of devices, distinctive in design and style, and the digital ecosystem it has integrated with those devices.¹⁶⁶ Apple’s revenue share from hardware is declining in favour of a stable growth of its service offering, including among other services, the App Store, Apple Music, Apple Books, Apple TV+ and Apple Pay.¹⁶⁷

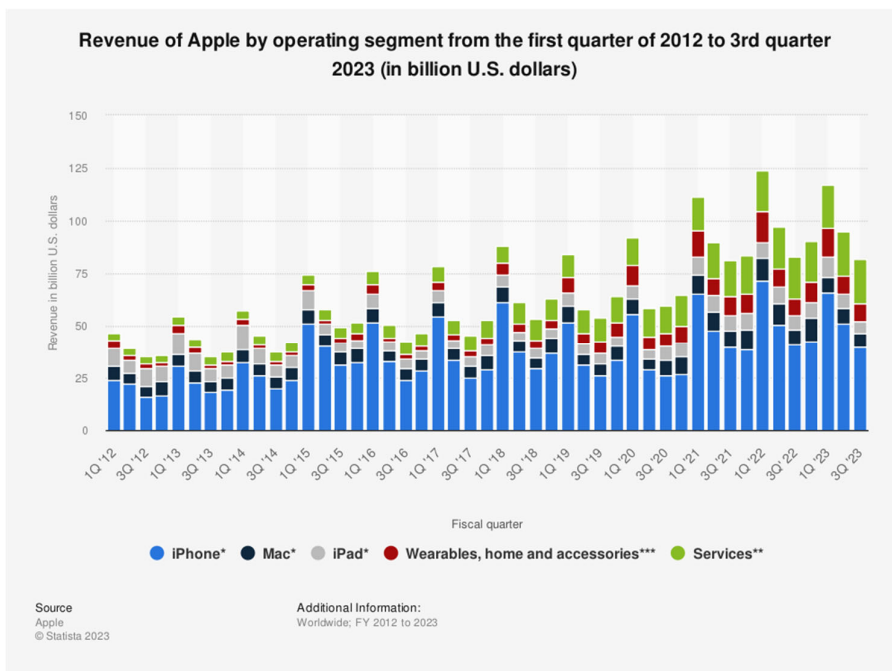
¹⁶⁴ See <https://www.forbes.com/sites/dereksaul/2023/06/30/apple-hits-3-trillion-market-value-and-could-soar-another-800-billion/?sh=a968d7952b17>, accessed on 10 October 2023, ID 3119.

¹⁶⁵ See <https://www.statista.com/statistics/265125/total-net-sales-of-apple-since-2004/>, accessed on 10 October 2023, ID 3160. ID 3284, accessed on 14 December 2023 contains underlying data of Statista figures.

¹⁶⁶ Apple’s comments on Spotify’s Complaint, ID 330, paragraph 40.

¹⁶⁷ Statista reported in May 2023 that “Apple’s services segment has grown into a beast of its own in recent years. In the first three months of 2023, it generated almost \$ 21 billion in revenue, making it larger than many Fortune 500 companies, including household names such as Nike, Boeing, Coca-Cola or McDonald’s”, see <https://www.statista.com/chart/29237/apple-services-sales-compared-to-fortune-500-companies/>, accessed on 10 October 2023, ID 3136. Statista further reported on Tim Cook’s statements: “we are pleased to report an all-time record in Services and a March quarter record for iPhone despite the challenging macroeconomic environment”, see <https://www.statista.com/chart/29925/apples-share-of-the-global-smartphone-market/>, accessed on 10 October 2023, ID 3137.

Figure 8 – Revenue of Apple by operating segment from the first quarter of 2012 to Q3 2023 (in billion US dollars)¹⁶⁸



- (103) Apple is the company that makes most revenues from smartphone sales.¹⁶⁹ In the first quarter of 2023, iPhone shipments amounted to 55.2 million, only overcome by Samsung.¹⁷⁰ Since its introduction in 2007, Apple’s iPhone sales have consistently increased, generating more than USD 200 billion only in 2022.¹⁷¹ The iPhone is the most successful Apple product to date and represented around 65 % of the company’s total revenue in the first quarter of 2023.¹⁷²
- (104) Apple is able to charge higher prices for its high-end and consumer oriented mobile devices with an integrated ecosystem controlled by Apple and addressed to a public with a higher willingness to pay for high-end devices and related services.¹⁷³ Apple has also made privacy and security within its ecosystem one of its unique selling points.¹⁷⁴

¹⁶⁸ See <https://www.statista.com/statistics/382136/quarterly-segments-revenue-of-apple/>, accessed on 10 October 2023, ID 3161. ID 3276, accessed on 14 December 2023, contains underlying data of Statista figures.

¹⁶⁹ See <https://www.statista.com/statistics/1097358/leading-mobile-phone-brands-worldwide-by-shipment-sales-profit/>, accessed on 29 April 2022, ID 2320. According to this source in the year 2019 Apple was the leading brand in profits from the sale of smartphones with 38.35 million US dollars in profits, followed by a broad margin by Samsung which made 18.94 million US dollars in profits from smartphone sales.

¹⁷⁰ See <https://www.statista.com/statistics/271490/quarterly-global-smartphone-shipments-by-vendor/>, accessed on 10 October 2023, ID 3147. ID 3255, accessed on 14 December 2023, contains underlying data of Statista figures.

¹⁷¹ See <https://www.businessofapps.com/data/apple-statistics/>, accessed on 10 October 2023, ID 3162.

¹⁷² See <https://www.statista.com/statistics/382136/quarterly-segments-revenue-of-apple/>, accessed on 10 October 2023, ID 3161.

¹⁷³ Apple’s comments on Spotify’s Complaint, paragraph 40, ID 330.

¹⁷⁴ See in this respect paragraphs 40, 43 and 56 of Apple’s comments on Spotify’s Complaint, ID 330.

6.2.2. *Apple's App Store*

- (105) Apple first launched the iPhone in January 2007 supporting only Apple's own native apps. In February 2008, Apple made the iOS Software Development Kit (SDK) available to developers, allowing them to create native apps to run on the iPhone. Apple launched the App Store in July 2008 with 500 apps available, which significantly expanded the functionalities of the iPhone as firstly introduced in 2007, increasing its attractiveness.
- (106) Google opened its own app store Google Play a few months later, in October 2008. The introduction of app stores gave rise to an entirely new product space for smartphones, which have a far greater functionality than normal mobile phones due to their ability to run mobile apps.¹⁷⁵
- (107) App stores benefit from direct and indirect network effects in that the more developers they attract, the more will be willing to join and the more appealing they will become for users. From the developer's perspective, however, there are costs involved in the creation of apps and in making these apps available on different platforms.¹⁷⁶ Consequently, app store operators at first aimed at attracting successful apps to their platforms, aware of the added value that a variety of apps would bring to their ecosystems.
- (108) According to Apple the App Store is "the world's safest and most vibrant app marketplace, with over half a billion people visiting each week" across 175 countries and regions. Currently, there are around 1.8 million apps worldwide available for downloading on the App Store.¹⁷⁷
- (109) The growth of the App Store made the iPhone more attractive. The more utility, functionalities and capabilities a user could get through its iPhone, the more compelling it became to purchase one. In 2009, Apple launched a campaign "There's an app for that" which precisely underlined the added value that third-party apps brought to the iPhone.¹⁷⁸ The value kept growing as more developers joined the ecosystem and offered new use cases to iPhone' users. [...].¹⁷⁹
- (110) To find apps within the App Store, consumers can use the search function offered in the App Store or choose a specific category ("Today", "Games", "Apps", "Arcade") within the App Store. Consumers can also find apps via the search function on their mobile browser. In addition, a link to the app can often be found on the developer's website.
- (111) Evidence shows that large developers typically bring their own audience to their iOS apps typing the name of the service provider they are looking for. For example,

¹⁷⁵ See <https://joint-research-centre.ec.europa.eu/system/files/2017-06/jrc106299.pdf>, ID 1076, page 15.

¹⁷⁶ See <https://ec.europa.eu/jrc/sites/jrcsh/files/jrc106299.pdf>, ID 1076, page 17: "Apps for different app stores have to be written using specific code libraries (Swift or Objective-C for iOS/Java for Android) using app store-specific Software Development Kits. Targeting multiple app stores involves significant effort in re-writing or modifying the apps so that they can be included in the corresponding app store. There is an additional cost involved in keeping up with the different OS updates. Moreover, once available in one app store, the app's reviews and related information cannot be easily ported from one app store to the other".

¹⁷⁷ See <https://www.apple.com/app-store/>, accessed on 16 November 2023, ID 3201.

¹⁷⁸ "There's an app for that" commercial in 2009 <https://www.youtube.com/watch?v=szrsfeyLzyg> (YouTube commercial – available online on 14 January 2021).

¹⁷⁹ [...]

Match Group found that the majority of new users from the App Store organically searched for its apps (e.g., by typing “Tinder”) while Apple contributed only 6 % of discovery.¹⁸⁰ In such cases, curation by Apple has little or no effect in-app discovery. Apple itself acknowledges that in general “65 – 70 % of searches are for specific apps rather than searches for general topics such as music or travel.”¹⁸¹

6.2.3. *Apple’s rules on the App Store*

- (112) The App Store is the only channel for distribution of native apps to iPhone and iPad users.¹⁸² If a developer wishes to reach iOS users it has to enter into the License Agreement and pay a general annual fee of USD 99¹⁸³ for participating in the Apple Developer Program, gain access to the iOS development software tool kit (iOS SDK) to create compatible native apps and being able to upload them. Developers need to abide by the terms and conditions determined by Apple and set through the License Agreement and the Guidelines, under risk of removal from the App Store.¹⁸⁴ Conversely, Apple’s own apps are not subject to these terms and conditions; some of them are pre-installed on Apple’s devices and cannot be removed.
- (113) The License Agreement is a contract of adhesion, pre-defined by Apple and non-negotiable. The Guidelines are, according to Apple a “living document” that has been unilaterally updated by Apple many times.¹⁸⁵ [...] ¹⁸⁶ [...] ¹⁸⁷ [...] ¹⁸⁸
- (114) Adherence to the License Agreement and the Guidelines do not entitle a developer to have its app(s) distributed through the App Store. Instead, Apple retains full discretion to approve or reject apps. In particular, pursuant to Section 6.9 of the License Agreement with developers, Apple and the developer agree that “*Apple may, in its sole discretion [...] reject Your Application for distribution for any reason,*

¹⁸⁰ Epic Games, Inc. v. Apple Inc., Rule 52 Order after Trial on the Merits, Case No. 4:20-cv-05640-YGR, 10 September 2021, page 119, <https://cand.uscourts.gov/wp-content/uploads/cases-of-interest/epic-games-v-apple/Epic-v.-Apple-20-cv-05640-YGR-Dkt-812-Order.pdf>, accessed on 2 May 2022, ID 2378.

¹⁸¹ Apple’s response to question 1 of Annex 1(a) of the Commission’s request for information (decision C(2019)7904 final), ID 449-1.

Apple’s response to question 1 of Annex 1(a) of the Commission’s request for information (decision C(2019)7904 final), ID 449-1.

¹⁸² The use of alternative “app stores” for iOS devices such as Cydia requires “jailbreaking” the iOS device which requires hacking skills, see also paragraph 297. Such app stores are therefore only available to a small group of technically educated consumers. They do not present an alternative for developers to reach ordinary iOS users.

¹⁸³ Since 2018, non-profit organisations, accredited educational institutions and government entities may apply for a waiver from the USD 99 fee provided that they will distribute only free apps on the App Store and are based in certain eligible countries (in the EU the waiver possibility applies in France, Germany and Italy), see <https://developer.apple.com/support/membership-fee-waiver/>, accessed on 15 December 2020, ID 1040.

¹⁸⁴ The applicable versions of these documents can be accessed via the following link: <https://developer.apple.com/support/terms/>. See License Agreement, ID 3015; Schedules 2 and 3 to the License Agreement, ID 3028; Exhibits to Schedules 2 and 3 to the License Agreement, ID 3013; and the Guidelines, ID 3011.

¹⁸⁵ See Apple’s comments on Spotify’s Complaint, ID 330, paragraph 52.

¹⁸⁶ [...]

¹⁸⁷ [...]

¹⁸⁸ Interview to Phillip Shoemaker on 12 January 2021 in the context of the Epic Games, Inc. v. Apple, Inc., Case No. 4:20-cv-05640-YGR, <https://app.box.com/s/6b9wmjvr582c95uzma1136exumk6p989/file/806840116174>, accessed on 6 May 2022, ID 2293.

even if Your Application meets the Documentation and Program Requirements."¹⁸⁹ On the basis of the License Agreement, Apple has full control over which apps can be distributed on the App Store and under which conditions.

- (115) Apple scrutinises compliance with its Guidelines through its app review process and determines whether to approve or reject every third-party app or update application submitted. The review process covers issues concerning performance, content, monetisation, advertising, security and privacy, although developers have little insight into the actual review process.¹⁹⁰ According to Apple, it reviews on average 100 000 submissions each week including both new apps and app updates. The app approval process involves a team of app reviewers – the App Store Review Team – that review each app and update in order to assess whether they are appropriate for the App Store, use proper APIs and whether they are in compliance with Apple’s Guidelines.¹⁹¹ According to Apple, the majority of these reviews take place in less than 24 hours, [...].¹⁹² [...].¹⁹³ [...].¹⁹⁴
- (116) According to Apple, [...] % of apps or updates submitted to Apple are rejected, but many of those are subsequently approved after minor changes. When an app submission is rejected by the App Store Review Team, the developer is informed via App Store Connect¹⁹⁵ about the reasons for the rejection and how to resolve the issue. According to Apple, developers who disagree with a decision can appeal to the App Review Board, to get the decision overturned. A senior executive team, the so-called Executive Review Board (“ERB”) also regularly review apps that are escalated when they raise complex or new issues that may set a precedent that affects policies on the App Store.¹⁹⁶ [...].¹⁹⁷ [...].¹⁹⁸
- (117) Despite these processes and review mechanisms, some developers complain that their apps or app updates are refused for reasons that are unclear, unreasonable, or even without explanation. Others complain that the process can sometimes take weeks and that correspondence on the reasons for refusal with Apple’s App Store Review Team takes very long time.¹⁹⁹ In this respect, Apple maintains that the app review process with human intervention is necessary for protecting its system, ensure an adequate level of protection of the device and avoid fraudulent or pirated apps.

¹⁸⁹ See License agreement, ID 3015.

¹⁹⁰ ACM “Market study into mobile app stores”, ID 886, page 76.

¹⁹¹ [...]

¹⁹² See Apple’s comments on Spotify’s Complaint, ID 330, paragraph 54.

¹⁹³ [...]

¹⁹⁴ See <https://www.apple.com/app-store/>, accessed on 16 November 2023, ID 3201. Epic Games, Inc. v. Apple Inc., Rule 52 Order after Trial on the Merits, Case No. 4:20-cv-05640-YGR, 10 September 2021, Page 103, <https://cand.uscourts.gov/wp-content/uploads/cases-of-interest/epic-games-v-apple/Epic-v.-Apple-20-cv-05640-YGR-Dkt-812-Order.pdf>, accessed on 2 May 2022, ID 2378.

¹⁹⁵ App Store Connect is a system created by Apple which allows developers to upload, submit and manage apps. Apple typically communicates with developers about their apps through this system. Previously, the system was called iTunes Connect.

¹⁹⁶ Apple’s response to question 10 of the Commission’s request for information (2019/050361), ID 268-1.

¹⁹⁷ [...]

¹⁹⁸ *Ibid.*

¹⁹⁹ See <https://medium.com/@krave/apple-s-app-store-review-process-is-hurting-users-but-we-re-not-allowed-to-talk-about-it-55d791451b>, accessed on 11 December 2020, ID 1055; and ACM “Market study into mobile app stores”, ID 886, page 77.

However, specialised press reported that scams still make it through the human review process.²⁰⁰

6.2.4. *Apple’s app and content distribution policy in the App Store*

6.2.4.1. The obligation to use IAP

- (118) Section 3.1.1 of the Guidelines requires developers to use Apple’s in-app purchase system IAP to “*unlock features or functionality*” within their app.²⁰¹ Developers who sell their apps or offer in-app purchase of digital goods or services are subject to a separate agreement called “Schedule 2”²⁰², which requires developers to use IAP for the distribution of paid content, appoint Apple Distribution International Limited as their commissionaire²⁰³ for the distribution of apps and pay a commission fee to Apple, calculated as a percentage of the price paid by end users. The obligation to sign a separate agreement is set out in Section 7.2 of the License Agreement.²⁰⁴ Developers which distribute free content within their app abide to “Schedule 1” which does not include an obligation to pay a commission fee to Apple.²⁰⁵
- (119) Apple introduced IAP as the compulsory payment mechanism for in-app purchases in June 2009. When it introduced the possibility of purchasing recurrent subscriptions in iOS apps as of February 2011, Apple equally mandated the use of IAP.²⁰⁶ Since 2009, and for subscriptions since 2011, Apple requires developers that want to sell paid digital content, including subscriptions to such content such as music streaming subscriptions, within their apps to make use of IAP. Because of this requirement, no other payment mechanisms are available on iOS for in-app purchases related to digital content.
- (120) The obligation to use IAP for the sale of subscriptions is set out in Section 3.11 of Schedule 2 to the Licence Agreement:²⁰⁷

²⁰⁰ See for instance <https://www.theverge.com/2021/4/21/22385859/apple-app-store-scams-fraud-review-enforcement-top-grossing-kosta-elftheriou>, accessed on 5 May 2022, ID 2386.

²⁰¹ See Guidelines, ID 3011.

²⁰² See License Agreement, ID 3015: “*Distribution of free (no charge) Applications (including those that use the In-App Purchase API for the delivery of free content) via the App Store or Custom App Distribution will be subject to the distribution terms contained in Schedule 1 to this Agreement. If You would like to distribute Applications for which You will charge a fee or would like to use the In-App Purchase API for the delivery of fee-based content, You must enter into a separate agreement with Apple (“Schedule 2”).*” See Schedule 2 to the License Agreement, ID 3028.

²⁰³ Exhibit A to Schedule 1 in the License Agreement, ID 3015 defines “commissionaire” as “*an agent who purports to act on their own behalf and concludes agreements in his own name but acts on behalf of other persons, as generally recognized in many Civil Law legal systems.*” While developers that offer “free” apps equally appoint Apple as their commissionaire under “Schedule 1”, Apple does not charge developers anything for the distribution of such apps.

²⁰⁴ See Section 7.2 of the License Agreement, ID 3015, that provides the following: “*Schedule 2 and Schedule 3 for Fee-Based Licensed Applications; Receipts: If Your Application qualifies as a Licensed Application and You intend to charge end-users a fee of any kind for Your Licensed Application or within Your Licensed Application through the use of the In-App Purchase API, You must enter into a separate agreement (Schedule 2) with Apple and/or an Apple Subsidiary before any such commercial distribution of Your Licensed Application may take place via the App Store or before any such commercial delivery of additional content, functionality or services for which You charge end-users a fee may be authorized through the use of the In-App Purchase API in Your Licensed Application. [...].*”

²⁰⁵ Apple’s Response to the Statement of Objections of 30 April 2021, ID 2165, paragraph 87.

²⁰⁶ See Apple’s comments on Spotify’s complaint, paragraphs 62 and 64, ID 201.

²⁰⁷ Schedule 2 to the License Agreement, ID 3028.

“Subscription services purchased within Licensed Applications must use In-App Purchase. [...]”

- (121) The obligation to make use of IAP for in-app purchases is set out in Section 3.1.1 (first bullet point) of the Guidelines,²⁰⁸ which has the following wording:

“In-App Purchase: If you want to unlock features or functionality within your app, (by way of example: subscriptions, in-game currencies, game levels, access to premium content, or unlocking a full version), you must use in-app purchase [...].”

- (122) This rule applies among other things to subscriptions to digital content (such as music streaming subscriptions), one-off purchases of digital content (such as a movie) as well as to the purchase of additional features in an online game.

- (123) Apple monitors and enforces this mandatory use of IAP and rejects or removes apps that offer within their apps alternative payment solutions in contradiction with – or setting aside – the IAP obligation.²⁰⁹

- (124) The obligation to use IAP for in-app purchases comes with an obligation to pay a non-negotiated 30 % commission fee to Apple on each in-app sale involving digital content during the first year (reduced to 15 % after one year of subscription). The requirement for developers to pay a 30 % commission fee on all earnings via the app is set out in Section 3.4 of Schedule 2 to the License agreement,²¹⁰ which has the following wording:

“a) For sales of Licensed Applications to End-Users Apple shall be entitled to a commission equal to thirty percent (30 %) of all prices payable by each End-User. Solely for auto-renewing subscription purchases made by customers who have accrued greater than one year of paid subscription service within a Subscription Group (as defined below) and notwithstanding any Retention Grace Periods or Renewal Extension Periods, Apple shall be entitled to a commission equal to fifteen percent (15 %) of all prices payable by each End-User for each subsequent renewal[...].”

- (125) According to Section 1.1 of Schedule 2²¹¹ “licensed application” includes the following digital services and products that are sold within the application:

“c) For the purposes of this Schedule 2, the term “Licensed Application” shall include any content, functionality, extensions, stickers, or services offered in the software application.”

- (126) Apple has charged a 30 % commission fee since the introduction of IAP for the distribution of digital content. The decision to set the commission at that level was without regard to or analysis of the costs to run the App Store. In the context of the litigation before the United States Northern District Court of California in the case *Epic Games, Inc. v. Apple, Inc.*, Eddy Cue, a senior Apple executive who made the pricing decision with Mr. Jobs recognised that “*there wasn’t really any kind of App*

²⁰⁸ Guidelines, ID 3011.

²⁰⁹ See “Market study into mobile app Stores” of 11 April 2019 of the Netherlands Authority for Consumers & Markets, ID 886, page 95 and rejections of the Spotify app described in Spotify’s complaint, pages 18 et seq., ID 1457 or rejection of updates of the Deezer iOS app in ID 1303. See also CCB news “*Apple removes Fortnite developer Epic from App Store*”, 28 August 2020 <https://www.bbc.com/news/world-us-canada-53955183>, accessed on 17 December 2020, ID 1067.

²¹⁰ Schedule 2 and 3, ID 3028.

²¹¹ Schedule 2 and 3, ID 3028.

Store” at the time, so Apple looked at distribution prices of hard goods and software instead.²¹² The economics of and the impact on the downstream markets were not taken into account when setting the level of the fee. [...].²¹³

- (127) In 2016, the commission fee was lowered to 15 % for uninterrupted subscriptions that go beyond 1 year in length of time as of the second year of subscription.²¹⁴ According to evidence in the Commission’s file, [...].²¹⁵
- (128) The fee is collected by Apple through IAP.²¹⁶ Apple automatically collects the amounts transferred by the user for the nominal purchase price of a given app, or in-app content, deducts its 30 % (or 15 %) commission fee and passes on the remaining amount to the developer concerned.
- (129) On 18 November 2020, Apple announced a new program for smaller businesses: developers that earn up to USD 1 000 000 in revenues through IAP in the previous calendar year would be subject to a reduced IAP commission fee of 15 %.²¹⁷ Apple launched this new program on 1 January 2021. The commission rate of 30 % remains in place for all apps exceeding USD 1 000 000 in developers’ earnings (amount calculated after deduction of the commission fee). Based on the information in the Commission’s file on the Apple’s billings figures for 2020, 2021 and 2022, [...], qualified for the reduced commission fee of 15 % under the new program.²¹⁸
- (130) [...].²¹⁹ [...].²²⁰ An example of the application of this [...] was displayed in August 2020, when Meta launched a new service for businesses, creators, educators and media publishers to earn money from online events on Facebook. While Meta initially decided to waive the fees that Meta itself would charge to event organisers for paid online events in its iOS app until 31 December 2020 in view of the Covid-19 pandemic (and later extended to August 2021), [...]. Meta therefore adapted its app to offer in-app purchases through IAP under Apple’s standard terms (requiring the payment of the commission fee to Apple) and re-submitted the app for approval. However, in this version of the app, Meta informed users that 30 % of the fee for the online event would go to Apple (“*Apple takes 30 % of this purchase*” *Learn more*). [...].²²¹ This [...] reduces transparency for iOS users on the prices set for app

²¹² Epic Games, Inc. v. Apple, Inc., Rule 52 Order after Trial on the Merits, Case No. 4:20-cv-05640-YGR, 10 September 2021, page 36, <https://cand.uscourts.gov/wp-content/uploads/cases-of-interest/epic-games-v-apple/Epic-v.-Apple-20-cv-05640-YGR-Dkt-812-Order.pdf>, accessed on 2 May 2022 ID 2378.

²¹³ [...]

²¹⁴ <https://www.mobiloud.com/help/knowledge-base/what-are-apple-and-googles-fees-and-revenue-share-percentage-on-in-app-purchases-and-subscriptions/>, accessed on 15 December 2020, ID 1080.

²¹⁵ [...]

²¹⁶ Section 3.1.1 of the Guidelines, ID 2589.

²¹⁷ See <https://www.apple.com/newsroom/2020/11/apple-announces-app-store-small-business-program/>, accessed on 29 April 2022, ID 2334; and ID 1077 (accessed on 11 December 2020).

²¹⁸ See Annex 14 to Apple’s response to the Commission’s request for information (2020/146914) with IAP revenues for the year 2020, ID 1193-41; Annex 4 (revised) to Apple’s response to Commission’s request for information (2022/019122) for the year 2021, ID 2274 and Annex Q5 to Apple’s response to the Commission’s request for information of 3 August 2023, ID 2998 for the year 2022.

²¹⁹ Or 15 % after one year of subscription.

²²⁰ [...]

²²¹ See <https://about.fb.com/news/2020/08/paid-online-events/>, accessed on 16 December 2020, ID 1089; and Katie Paul, Stephen Nellis, “Exclusive: Facebook says Apple rejected its attempt to tell users about App Store fees”, Reuters, 28 August 2020, available at <https://www.reuters.com/article/us-facebookapple-exclusive-idUSKBN25O042>, accessed on 17 December 2020, ID 1037.

distribution and in-app purchases on the iOS platform and makes it more difficult for them to understand that these prices may have been influenced to a significant degree by fees charged by the app store operator Apple to developers.

- (131) IAP also enables Apple to collect certain data. In order to collect payments, Apple requires consumers to fill out payment details and personal information, including credit card information, name, email address and zip code. In the case of payments for third-party apps via IAP, Apple controls the billing relationship with the respective customer and becomes the “merchant of record” for those transactions whereas developers are cut off from payment-related information on and communication with their customers.²²²
- (132) The obligation to use IAP for in-app purchases does not apply to the majority of apps that are distributed through the App Store, since Section 3.1.3 (e) of the Guidelines²²³ stipulates the use of alternative payment mechanisms to IAP for sales of physical goods and services that are consumed outside the app, such as purchases of goods on an Amazon website, an Uber ride, an AirBnB booking of a hotel room or the use of Deliveroo for food or groceries delivery.²²⁴ Sales of similar “physical” goods or services to be consumed outside the app in iOS apps are therefore not covered by the IAP obligation and are also not subject to any commission fee. Purchases of such goods and services within the app can instead only be done through third-party providers of alternative payment solutions (e.g., credit cards, PayPal) or through Apple Pay.²²⁵
- (133) Certain providers of digital content that offer video content on Apple TV and agree to support Apple TV features may either be dispensed from the IAP obligation or benefit from a reduced IAP commission fee of 15 % by joining Apple’s Video Partner Program.²²⁶ That program allows third-party premium video apps to integrate with certain services and features on Apple TV and tvOS, in an effort to increase the availability of premium video content through Apple TV.²²⁷ [...] ²²⁸ [...] ²²⁹

²²² Spotify’s response to question 33 of the Commission’s request for information (2020/002646), ID 1431-2.

²²³ See Section 3.1.3 (e) of the Guidelines, ID 3011, *Goods and Services Outside of the App*: “If your app enables people to purchase physical goods or services that will be consumed outside of the app, you must use purchase methods other than in-app purchase to collect those payments, such as Apple Pay or traditional credit card entry.”

²²⁴ See Apple’s response to question 22 of the Commission’s request for information (2019/050361), IDs 268 and 269.

²²⁵ Consumers can use Apple Pay to purchase physical goods (e.g., groceries, clothing or appliances) or services (e.g., memberships, reservations, tickets, donations), in brick-and-mortar stores as well as in digital stores. Sellers can use Apple Pay in their app when the purchasable item falls in these categories. IAP can only be used for digital goods products and services. The IAP is linked to a user’s Apple ID, which is not the case for Apple Pay. For Apple Pay, Apple charges a EUR 0.25 quarterly fee to the card issuing bank, as well as a percentage fee for each transaction (depending on the use of either a debit or credit card in either a physical or digital store).

²²⁶ The program is currently available in the following EEA countries: Austria, Belgium, Denmark, France, Germany, the Netherlands, Norway, Portugal, Spain and Sweden, See Apple’s response to question 1 of the Commission’s request for information (2020/084167), ID 764.

²²⁷ [...].

²²⁸ See Apple’s response to question 31 of the Commission’s request for information (2019/050361), IDs 268 and 269.

²²⁹ See Apple’s response to question 1 of the Commission’s request for information (2020/084167), ID 764.

6.2.4.2. The reader and multiplatform rule

(134) The IAP obligation (and also the requirement to pay the commission fee) do not apply to certain digital content that was “*previously purchased*” outside the iOS app and which is subsequently consumed within the iOS app. Already before February 2011 – when Apple formally introduced the so-called “reader rule” in the Guidelines – providers of music streaming apps were allowed to provide access to content (including subscriptions) to users of their iOS app that had previously been purchased outside of the iOS app.²³⁰ This policy was mentioned in the Guidelines in February 2011 in the form of the so-called “reader rule” and – since 2018 – the so-called “multiplatform rule”. These rules explicitly allow iOS users to access content that they previously purchased outside the app, such as a subscription to a music streaming service, within the iOS app.

(135) In this regard, Section 3.1.3 of the Guidelines²³¹ describes different situations and types of apps in which purchase methods other than IAP are allowed, including the so-called “reader” and “multiplatform” rules:

“Other Purchase Methods: The following apps may use purchase methods other than in-app purchase. [...]

(a) *“Reader” Apps: Apps may allow a user to access previously purchased content or content subscriptions (specifically: magazines, newspapers, books, audio, music, and video). Reader apps may offer account creation for free tiers, and account management functionality for existing customers. Reader app developers may apply for the External Link Account Entitlement to provide an informational link in their app to a web site the developer owns or maintains responsibility for in order to create or manage an account [...].*

(b) *Multiplatform Services: Apps that operate across multiple platforms may allow users to access content, subscriptions, or features they have acquired in your app on other platforms or your web site, including consumable items in multiplatform games, provided those items are also available as in-app purchases within the app.”*

(136) The reader rule is also mentioned in Section 3.11 of Schedule 2 to the Licence Agreement²³²:

“Subscription services purchased within Licensed Applications must use In-App Purchase.

In addition to using the In-App Purchase API, a Licensed Application may read or play content (magazines, newspapers, books, audio, music, video) that is offered outside of the Licensed Application (such as, by way of example, through Your website) provided that You do not link to or market external offers for such content within the Licensed Application.[...]”.

(137) According to Apple, the reader rule essentially allows apps to provide access to content purchased outside the app without selling this content also in-app.²³³ Apple

²³⁰ [...]

²³¹ Guidelines, ID 3011.

²³² Schedule 2 to the License Agreement, ID 3028.

²³³ Apple’s response to question 23 of the Commission’s request for information (2020/146914), ID 1194.

explains that the possibility to access music streaming subscriptions acquired outside of the app is also available to developers that offer in-app purchases of subscriptions through IAP. This latter possibility is covered by the so-called “multiplatform rule” which is currently present in Section 3.1.3 (b) of the Guidelines.²³⁴

- (138) Music streaming service providers therefore have a choice to either provide iOS users access to content purchased outside the app without offering any option of purchasing content in-app at all or with the possibility to purchase content in-app (which – in the latter case – requires the use of IAP and the payment of the 30 / 15 % commission fee by the developer to Apple). Spotify’s app falls – since 2016 when IAP was disabled – under the reader rule. Conversely, the multiplatform rule applies to the apps operated by other music streaming service providers such as Deezer, YouTube Music or SoundCloud all of which offer in-app subscriptions through IAP while at the same time allowing users that have subscribed elsewhere to access subscriptions purchased elsewhere through their iOS app.
- (139) Prior to June 2018, when the multiplatform rule was included in the Guidelines²³⁵, the ability of music streaming service providers that do sell in-app subscriptions through IAP to provide access to content within their iOS apps that was purchased elsewhere derived from the “reader rule” and only after that date from the “multiplatform rule”.
- (140) Apple’s former CEO Steve Jobs explained the reader rule in 2011 as follows: “*our philosophy is simple- when Apple brings a new subscriber to the app, Apple earns a 30 % share; when the publisher brings an existing or new subscriber to the app, the publisher keeps 100 % and Apple earns nothing*”.²³⁶

6.2.5. Apple’s revenues in the App Store

- (141) Apple does not disclose the total amount of revenue it makes from its App Store per year. It does, however, disclose the billings and sales concluded through the App Store. According to Apple, for the year 2022, USD 104 billion were billed through the App Store corresponding to sales of digital goods and services (including apps for music and video streaming, fitness, education, e-books and audiobooks, games, news and magazines, and dating services, among others), up from USD 86 billion in 2020.²³⁷ From those billings, Apple retained USD [...] from commission fees

²³⁴ Guidelines, ID 3011.

²³⁵ See Guidelines of 4 June 2018, ID 1193-60.

²³⁶ See Apple’s announcement made on 15 February 2011, <https://www.apple.com/newsroom/2011/02/15Apple-Launches-Subscriptions-on-the-App-Store/>, accessed on 15 December 2020, ID 1062. In that announcement, Apple explained the reader rule in the following way: “*Publishers who use Apple’s subscription service in their app can also leverage other methods for acquiring digital subscribers outside of the app. For example, publishers can sell digital subscriptions on their web sites, or can choose to provide free access to existing subscribers. Since Apple is not involved in these transactions, there is no revenue sharing or exchange of customer information with Apple. Publishers must provide their own authentication process inside the app for subscribers that have signed up outside of the app. However, Apple does require that if a publisher chooses to sell a digital subscription separately outside of the app, that same subscription offer must be made available, at the same price or less, to customers who wish to subscribe from within the app. In addition, publishers may no longer provide links in their apps (to a web site, for example) which allow the customer to purchase content or subscriptions outside of the app.*”

²³⁷ Reports from ANALYSIS GROUP “A Global Perspective on the Apple App Store Ecosystem”, June 2021 <https://www.apple.com/newsroom/pdfs/apple-app-store-study-2020.pdf>, accessed on 29 April 2022, ID 2338; and “The Continued Growth and Resilience of Apple’s App Store Ecosystem”,

worldwide in year 2020. Such revenues increased up to USD [...] worldwide and USD [...] in the EEA for the year 2022.²³⁸

- (142) Figure 9 includes the billings and sales that Apple generated from App Purchases, In-App Purchases and recurring and non-recurring In-App Subscriptions in the EEA from 2010 to 2022 (in USD). The dark blue line shows the revenues Apple obtained from recurring IAP subscriptions.

May 2023 <https://www.apple.com/newsroom/pdfs/the-continued-growth-and-resilience-of-apples-app-store-ecosystem.pdf>, accessed on 10 October 2023, ID 3145.

²³⁸ Annex Q12 to Apple' response to the Commission's request for information of 3 August 2023, ID 3001.

Figure 9 – [...] ²³⁹

[...]

- (143) Figure 10 reflects the EEA revenues obtained by Apple from the commission fees it charges to the main music streaming service providers selling paid content and subscriptions through their iOS app from 2010 to 2022 (in USD).

Figure 10 – [...] ²⁴⁰

[...]

- (144) In this context, Apple also offers Apple Search Ads against payment to developers, a tool which Apple claims is an “*efficient and easy way to help people discover your app at the top of App Store search results*”, driving app discovery and engaging users at the time they are searching for an app.²⁴¹ Apple offers two options “Apple Search Ads Basic” and “Apple Search Ads Advanced”. Through Search Ads Basic Apple obtains a Cost Per Installation (CPI) but the developer sets a monthly budget (up to USD 10 000 per app, per month), while the advanced option uses a Cost Per Tap (CPT) model based on an auction system for appearing on top of the App Store search results when a user enters a keyword, and under which developers pay only when a user taps on their app²⁴². The Apple Search Ads service is another way in which Apple monetises the App Store. It was introduced in late 2016 and gained popularity quickly. In the EEA alone, where it was introduced later in 2018, Apple’s Search Ads generated revenues of USD [...] in 2022, up from USD [...] in 2021 and USD [...] in 2020.²⁴³

²³⁹ Commission calculations in ID 3217 based on data provided in Apple’s responses (in EUR) to question 2 of the Commission’s request for information (2019/050361), ID 268-1 and ID 268-3, question 13 of the Commission’s request for information (2020/146914), IDs 1194 and 1193-79; question 3 of the Commission’s request for information (2022/019122), IDs 2270 and 2273; and question 4 of the Commission’s request for information of 3 August 2023, ID 2997. For the purposes of comparability of different years, figures for the UK have also been taken into account for the years 2020, 2021 and 2022, although the UK withdrew from the European Union as of 1 February 2020.

²⁴⁰ Commission calculations in ID 3217 based on data from Apple’s response to question 3 of the Commission’s request for information (2019/050361), IDs 268-1 and 268-4, question 14 of the Commission’s request for information (2020/146914), IDs 1194 and 1193-41; question 4 of the Commission’s request for information (2022/019122), IDs 2270 and 2273 and question 5 of the Commission’s request for information of 3 August 2023, ID 2998. Please note that IAP revenues from music streaming service providers are based on data provided by Apple which includes a number of additional non-EEA music apps and their revenues for 2019 to 2022. For the purposes of comparability of different years, figures for the UK have also been taken into account for the years 2020, 2021 and 2022, although the UK withdrew from the European Union as of 1 February 2020.

²⁴¹ See <https://searchads.apple.com/>, accessed on 17 December 2020, ID 1011.

²⁴² For this CPT model, developers present bids for the maximum amount of money they are willing to pay per tap. The more developers there are and the more aggressive their bidding is, the higher the cost per tap will be. See <https://searchads.apple.com/best-practices/bidding>, accessed on 2 February 2023, ID 2606.

²⁴³ Annex Q6 of Apple’s response to the Commission’s request for information of 3 August 2023, ID 2999.

6.3. The music streaming business

6.3.1. Music streaming industry overview

- (145) Industry data confirm the growing trend of music streaming services which enable users to access music catalogues of millions of songs, albums and playlists which they can enjoy until their subscription is terminated.²⁴⁴
- (146) The music streaming market has been growing continuously over the past 15 years. In 2022, global music streaming revenue amounted to USD 17.5 billion, representing 67 % of global recorded music revenue.²⁴⁵
- (147) At the end of June 2022, the global base of music streaming subscribers reached over 610 million, up from 520 million one year earlier. Globally, Spotify was the market leader with 30.5 %, down from 31 % in Q2 2021, 33 % in Q2 2020 and 34 % in Q2 2019. Apple Music was second with 13.7 %, followed by Tencent and Amazon Music (with 13.4 % and 13.3 % respectively) and YouTube Music with 8.9 %.²⁴⁶
- (148) The main music streaming service providers in the EEA are Amazon Music (both Unlimited and Prime), Apple Music, Deezer, Spotify, YouTube Music; other minor players include Napster (Rhapsody), Qobuz, SoundCloud and Tidal.
- (149) The following tables based on data by MIDiA provided by Apple show the evolution of market shares of music streaming service providers in Europe based, respectively, on the number of annual average subscribers and subscription revenues:

²⁴⁴ Digital streaming can be complemented with additional features and the listener's experience enriched by personalised recommendations and curated playlists. See <https://www.competitionpolicyinternational.com/long-tail-or-bottleneck-whats-next-for-spotify/>, ID 1385, accessed on 4 March 2021.

²⁴⁵ IFPI 2023 report (data for 2022). Accessible at: https://ifpi-website-cms.s3.eu-west-2.amazonaws.com/GMR_2023_State_of_the_Industry_e2ea600e2.pdf, accessed on 10 October 2023, ID 3134.

²⁴⁶ See <https://www.midiaresearch.com/blog/music-subscriber-market-shares-2022#:~:text=Subscribers%3A%20There%20were%20616.2%20million,at%20the%20slowing%20global%20economy>, accessed on 10 October 2023, ID 3135.

Table 2 – Market shares for music streaming market in Europe based on annual average subscribers data 2015-2022²⁴⁷

	2015	2016	2017	2018	2019	2020	2021	2022
Amazon Music	3 %	6 %	10 %	13 %	16 %	17 %	17 %	19 %
Apple Music	12 %	13 %	15 %	16 %	14 %	13 %	12 %	11 %
Deezer	17 %	13 %	10 %	8 %	6 %	5 %	4 %	4 %
Other	10 %	8 %	6 %	3 %	2 %	1 %	1 %	1 %
SoundCloud	0 %	0 %	0 %	1 %	1 %	1 %	1 %	1 %
Spotify	54 %	54 %	56 %	55 %	55 %	56 %	57 %	56 %
Tidal	2 %	2 %	1 %	1 %	1 %	0 %	0 %	0 %
YouTube Music	3 %	3 %	3 %	4 %	6 %	7 %	8 %	8 %

Table 3 – Market shares for music streaming market in Europe based on subscriptions revenue data²⁴⁸

	2015	2016	2017	2018	2019	2020	2021
Amazon Music	2 %	5 %	6 %	10 %	11 %	11 %	11 %
Apple Music	8 %	13 %	16 %	18 %	17 %	16 %	15 %
Deezer	15 %	10 %	8 %	6 %	6 %	5 %	4 %
SoundCloud	0 %	0 %	0 %	1 %	1 %	1 %	1 %
Spotify	62 %	62 %	61 %	58 %	58 %	61 %	62 %
Tidal	0 %	0 %	0 %	0 %	0 %	0 %	0 %
YouTube Music	3 %	3 %	3 %	4 %	5 %	6 %	6 %
Other	8 %	6 %	5 %	3 %	2 %	1 %	1 %

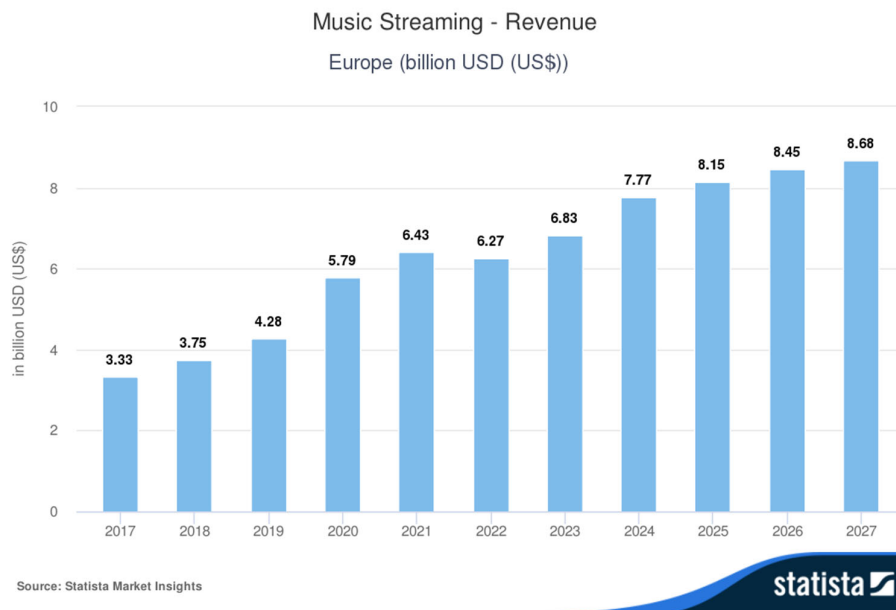
(150) Figure 11 shows, the music streaming market in Europe generated in 2022 USD 6.27 billion, and it is expected to reach USD 6.83 billion in 2023. Estimates predict a growth up to USD 8.68 billion in 2027.²⁴⁹

²⁴⁷ Based on data from MIDiA's Music Subscriber Market Shares dated November 2022 provided by Apple in its response to the Commission's Request for Information of 3 August 2023, ID 3019. Countries included are Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Netherlands, Norway, Spain, Sweden, UK and the category « Other Europe ». Data for 2015 relates to the fourth quarter of 2015 only; data for 2022 relates to the first and second quarters of 2022 only. Calculations in ID 3217.

²⁴⁸ Based on data from MIDiA's Music Subscriber Market Shares dated November 2022 provided by Apple in its response to the Commission's Request for Information of 2 August 2023, ID 3019. Countries included are Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Netherlands, Norway, Spain, Sweden, UK and the category « Other Europe ». Calculations in ID 3217.

²⁴⁹ See <https://www.statista.com/outlook/dmo/digital-media/digital-music/music-streaming/europe>, accessed on 14 December 2023, ID 3264 and ID 3270, accessed on 14 December 2023, contains underlying data of Statista figures.

Figure 11 – Revenues in the Music Streaming Market in Europe 2017-2027²⁵⁰



- (151) Music streaming service providers operating in the EEA offer their music streaming services primarily through dedicated apps both on Apple’s App Store and on the Google Play Store. Services such as Spotify, YouTube and Deezer operate based on a Freemium²⁵¹ model, i.e., with a free, ad-supported tier and a premium, subscription-based tier which offers additional functionalities such as unlimited plays of songs, higher quality sound and a larger music library in return of payment of a monthly fee. Therefore, for these services conversion of free users into paid subscribers is very important. In 2018, Spotify’s CFO explained that it takes on average 12 months of a user subscribing to the premium service for the company to recuperate the cost of having them as a free user.²⁵² Converting users from the free tier to the paid tier is therefore crucial for these providers²⁵³ who consider their free, ad-supported service as critical to attract Premium customers and to convert users to the Premium tier.
- (152) Other services such as Apple Music are subscription-only without a free tier. Amazon has a subscription model for Amazon Music and also provides access to music catalogues through Amazon Prime as part of the overall subscription service.
- (153) While the ad-supported free tier is an important funnel to convert users to the paid service, approximately 90 % of revenues are generated via paid subscriptions, compared to 10 % generated via the ad-supported free-tier.²⁵⁴

²⁵⁰ *Ibid.*

²⁵¹ “Freemium” is a business model in which a company offers basic or limited features to users at no cost and then charges a premium for supplemental or advanced features.

²⁵² See <https://finance.yahoo.com/news/spotify-takes-12-months-break-202400547.html>, accessed on 9 May 2022, ID 2399.

²⁵³ The free service has been considered as a “marketing and acquisition expense” by Spotify – see <https://finance.yahoo.com/news/spotify-takes-12-months-break-202400547.html>, accessed on 9 May 2022, ID 2399.

²⁵⁴ See <https://www.businesswire.com/news/home/20220427005371/en/>, accessed on 11 May 2022, ID 2414.

6.3.2. *Apple Music*

- (154) Apple Music is Apple’s paid-subscription based, on-demand music streaming service that offers users curated playlists, radio-like functionality and an off-line mode. The Apple Music app also allows access to the user’s music library, including iTunes music downloads from multiple Apple devices and music imported from other sources such as CDs.
- (155) Based on the previous acquisition and integration of Beats Music,²⁵⁵ Apple Music officially launched on 30 June 2015²⁵⁶ at a monthly subscription price of USD/EUR 9.99.²⁵⁷ In October 2022, Apple introduced its first price increase since the launch of Apple Music in 2015 across the US, UK and Europe, following increased costs of content licensing.²⁵⁸ In the EEA, the subscription price increased by EUR 1 for individual monthly accounts, by EUR 2 for Family monthly accounts, by EUR 0.5 for Student monthly accounts and by EUR 10 for individual annual accounts.²⁵⁹ These price increases were applied irrespective of the channel through which the subscription would be concluded.²⁶⁰
- (156) Apple Music is preinstalled on Apple’s smart mobile devices. It does not offer free-tier but paid-only subscription possibilities, often accompanied by a short free trial period. For example, at launch Apple offered users a full-service trial period of three months at no cost as well as a number of pricing advantages, including in most EU countries, such as discounted prices for students and an attractive family plan for multiple users within the same family.²⁶¹ [...],²⁶² Apple Music became the music streaming service provider allowing in-app subscriptions on iOS at a price lower than its competitors (also Google Play Music was launched at USD 7.99/month but then increased to USD 9.99/month).²⁶³
- (157) In November 2015, Apple launched the Apple Music app on Android.²⁶⁴ Apple Music app offered a web-based checkout for that version, through which many Apple Music subscriptions were concluded until recently (e.g., [...] % in 2021 and 2022 –

²⁵⁵ In 2014, Apple acquired Beats which had started a music streaming business in the US via a software application called Beats Music which allowed subscribers to stream music on their mobile devices or computers for a monthly or yearly fixed fee. [...].

²⁵⁶ See <https://www.apple.com/newsroom/2015/06/08Introducing-Apple-Music-All-The-Ways-You-Love-Music-All-in-One-Place/>, accessed on 15 December 2020, ID 1127.

²⁵⁷ Apple Music also became available on Android and Windows later that year.

²⁵⁸ Futuresource consulting, “Global Music Industry Market Outlook”, June 2023, submitted by Apple on 7 September 2023, ID 3043.

²⁵⁹ Apple’s response to question 8 of the Commission’s request for information of 3 August 2023, ID 2987.

²⁶⁰ See <https://www.theverge.com/2022/10/24/23420902/apple-tv-plus-music-price-increase>, accessed on 5 December 2022, ID 2599 and <https://www.apple.com/de/apple-music/>, accessed on 5 December 2022, ID 2598.

²⁶¹ Apple’s response to the Commission’s request for information (2016/075943) - C(2016) 5210, IDs 10-17. The family plan requires iCloud Family Sharing - another Apple service. At the end of the trial period, “*the membership will automatically renew and payment method will be charged on a monthly basis until auto-renewal is turned off in account settings*” – see <https://www.apple.com/newsroom/2015/06/08Introducing-Apple-Music-All-The-Ways-You-Love-Music-All-in-One-Place/>, accessed on 15 December 2020, ID 1127.

²⁶² [...]

²⁶³ See <https://9to5mac.com/2015/02/04/apple-beats-cheaper-android-ios/>, accessed on 15 December 2020, ID 1069.

²⁶⁴ ID 17-2547. See also <https://www.theverge.com/2015/11/10/9705434/apple-music-android-launch>, accessed on 15 December 2020, ID 1022.

- see Table 11). Apple Music currently uses Google Play Store’s standard in-app payment functionality (Google Play Billing) for direct sign-ups in its Android app.²⁶⁵
- (158) Shortly after its launch, Apple Music allowed in-app subscriptions on Apple smart mobile devices at a price lower than that charged by competing music streaming service providers.²⁶⁶ Apple Music is neither obliged to pay a commission fee nor restricted in its ability to communicate to its users about purchasing mechanisms and available offers outside of the app, as other third-party music streaming apps subject to the Apple’s Guidelines.
- (159) Since its launch, the number of Apple Music’s subscribers has increased rapidly: in August 2016, Apple Music had 17 million paid users²⁶⁷ with a catalogue of music of initially over 30 million songs. At the end of 2020, Apple Music had over 72 million subscribers and its catalogue accounted for over 40 million songs.²⁶⁸ In 2022, Apple Music reached a total of 94.5 million subscribers globally.²⁶⁹ At the end of October 2022, its catalogue was estimated to include over 100 million tracks and 30 000 playlists.²⁷⁰
- (160) The data submitted by Apple for the period from June 2015 to June 2023 confirms the steady increase in the number of Apple Music subscribers in the EEA as shown in Figure 12.

²⁶⁵ Apple’s Response to the Statement of Objections 28 February 2023, paragraph 301, ID 2800.

²⁶⁶ See <https://9to5mac.com/2015/02/04/apple-beats-cheaper-android-ios/>, accessed on 15 December 2020, ID 1069.

²⁶⁷ Apple’s response to the Commission’s request for information (2016/075943) - C(2016) 5210, IDs 10-17.

²⁶⁸ See <https://www.apple.com/befr/apple-music/>, accessed on 15 December 2020, ID 1020.

²⁶⁹ Futuresource consulting, “Global Music Industry Market Outlook”, June 2023, submitted by Apple on 7 September 2023, ID 3043.

²⁷⁰ See <https://www.apple.com/befr/apple-music/>, accessed on 25 October 2022, ID 2579.

Figure 12 – [...]²⁷¹

[...]

7. THE CONDUCT SUBJECT OF THE DECISION

(161) This Decision takes issue with Apple’s Anti-Steering Provisions as explained in the present Section.

(162) Apple’s Anti-Steering Provisions are enshrined in the Guidelines and to a more limited extent in the License Agreement. Apple has changed the wording of the provisions in the Guidelines multiple times since 2009, including during the course of the present proceedings. The Anti-Steering Provisions have to be analysed in the context of Apple’s obligation imposed on developers to use Apple’s own purchasing method IAP for in-app sales of digital content or services through which Apple collects a 30 / 15 % commission fee for in-app sales of digital content and services as well as the reader rule and the multiplatform rule (See Section 6.2.3).

7.1. The current wording of the Anti-Steering Provisions

(163) The most recent version of Section 3.1.1. of the Guidelines applicable since 5 June 2023 provides for the following:

*“3.1.1 In-App Purchase: If you want to unlock features or functionality within your app, (by way of example: subscriptions, in-game currencies, game levels, access to premium content, or unlocking a full version), you must use in-app purchase. [...]. Apps and their metadata may not include buttons, external links, or other calls to action that direct customers to purchasing mechanisms other than in-app purchase, except as set forth in 3.1.3 (a).”*²⁷²

(164) Section 3.1.3 of the Guidelines specifies the Anti-Steering Provisions with respect to apps for which purchase methods other than in-app purchase are in principle allowed for content to be consumed in the app (e.g., apps subject to the reader / multiplatform rules).

²⁷¹ Commission calculations in ID 3217 based on data provided in Apple’s response to questions 2 and 3 of the Commission’s request for information (2016/075943), IDs 10 and 11, question 1 of the Commission’s request for information (2019/050361), IDs 268-1 and 268-2 and Apple’s response to question 13 of the Commission’s request for information (2022/019122), IDs 2270 and 2278 as well as Apple’s response to question 7 of the Commission’s request for information of 3 August 2023, ID 3000.

²⁷² Guidelines, ID 3011. In January 2024, following the US Supreme Court’s Order on 16 January 2023 declining to hear on the case Epic Games, Inc. v. Apple Inc which confirmed the judgment of the US Court of Appeals for the Ninth Circuit of 24 April 2023, Apple introduced in its App Store Guidelines applicable to the US storefront the “Storekit External Purchase Link Entitlement” under Section 3.1.1 (a) “Link to Other Purchase Methods”. Pursuant to this entitlement, to which developers need to apply, developers may include a link to the developer’s website that informs users of other ways to purchase digital goods or services. This new rule reads as follows: 3.1.1(a) *Link to Other Purchase Methods: Developers may apply for an entitlement to provide a link in their app to a website the developer owns or maintains responsibility for in order to purchase such items. Learn more about the entitlement. In accordance with the entitlement agreement, the link may inform users about where and how to purchase those in-app purchase items, and the fact that such items may be available for a comparatively lower price. The entitlement is limited to use only in the iOS or iPadOS App Store on the United States storefront. In all other storefronts, apps and their metadata may not include buttons, external links, or other calls to action that direct customers to purchasing mechanisms other than in-app purchase. If your app engages in misleading marketing practices, scams, or fraud in relation to the entitlement, your app will be removed from the App Store and you may be removed from the Apple Developer Program”.*

“3.1.3 Other Purchase Methods: The following apps may use purchase methods other than in-app purchase. Apps in this section cannot within the app, encourage users to use a purchasing method other than in-app purchase, except as set forth in 3.1.3 (a). Developers can send communications outside of the app to their user base about purchasing methods other than in-app purchase”²⁷³

- (165) The Anti-Steering Provisions are contained not only in the Guidelines, but also in Section 3.11 of Schedule 2 to the Licence Agreement²⁷⁴:

“Subscription services purchased within Licensed Applications must use In-App Purchase.

In addition to using the In-App Purchase API, a Licensed Application may read or play content (magazines, newspapers, books, audio, music, video) that is offered outside of the Licensed Application (such as, by way of example, through Your website) provided that You do not link to or market external offers for such content within the Licensed Application.[...]”

7.2. Changes to the wording of the Anti-Steering Provisions over time

- (166) The Anti-Steering Provisions in the Guidelines have since their adoption been subject to multiple modifications by Apple over the years.
- (167) Between June 2009 and February 2011, Apple did not (yet) offer the possibility to developers to offer recurrent subscriptions to their services in their iOS apps. While before February 2011 Apple did not allow developers to “provide, unlock or enable” functionality inside the app through distribution mechanisms other than the App Store (i.e., to sell digital content or services within their apps using mechanisms other than IAP),²⁷⁵ developers could already during this period offer “free apps” which allowed access to subscriptions which were sold on the website of the developer and developers were not limited in mentioning their website in their app.²⁷⁶
- (168) In February 2011, Apple introduced the possibility for developers to sell subscriptions directly in their apps and made the use of IAP mandatory for such subscriptions. At the same time, Apple introduced the Anti-Steering Provisions

²⁷³ Guidelines, ID 3011.

²⁷⁴ Schedule 2 to the License Agreement, ID 3028.

²⁷⁵ “Without Apple’s prior written approval or as permitted under Section 3.3.17, an Application may not provide, unlock or enable additional features or functionality through distribution mechanisms other than the App Store.” See Sections 3.3.3 and 3.3.17 of Annex 19.40, submitted by Apple in response to the Commission’s request for information (2020/146914), ID 1193-3.

²⁷⁶ See Spotify’s response to question 3 of the Commission’s request for information (2020/147746), ID 1447: “We refer to the period between the launch of the Spotify app for the iPhone in 2009 and February 2011, when Apple first introduced IAP for subscriptions (and, with it, the IAP Obligation for subscription apps offering digital content). During that time, the functionalities of the Spotify app for iOS were focused on music streaming, i.e., enabling users to discover and play music on demand, create playlists and cache music for listening when offline (which presented a competitive threat to Apple’s iTunes). At the time, the Spotify iOS app was free to download, but could only be used by Spotify Premium subscribers, i.e., only users with Premium account credentials were allowed to log in to the app. As users of the Spotify iOS app were already Spotify Premium users, there was no need to advertise Premium subscriptions in-app. At the same time, there was no prohibition on Spotify sending promotional emails to users who were using the Spotify iOS app or against including a link to [spotify.com](https://www.spotify.com) inside the app.” See also the in-app screenshot in ID 1154 “Get help at Spotify.com”. See also further references in footnote 230 with respect to the ability of developers to provide their users with access to digital content purchased outside the app prior to February 2011.

subject to this Decision in the Guidelines which removed the ability of developers that decide to offer paid subscriptions in their iOS app through IAP to provide links in their apps to their website where such paid subscriptions are also made available.²⁷⁷

- (169) The IAP obligation and the Anti-Steering Provisions had the following wording in the Guidelines dating February 2011:²⁷⁸

“11.12 Apps offering subscriptions must do so using IAP, Apple will share the same 70/30 revenue split with developers for these purchases, as set forth in the Developer Program License Agreement.

11.13: Apps can read or play approved content (magazines, newspapers, audio, music, video) that is sold outside of the app, for which Apple will not receive any portion of the revenues, provided that the same content is also offered in the app using IAP at the same price or less than it is offered outside the app. This applies to both purchased content and subscriptions.”

“11.14: Apps that link to external mechanisms for purchasing content to be used in the app, such as a “buy” button that goes to a web site to purchase a digital book, will be rejected”.

- (170) In June 2011²⁷⁹, the Anti-Steering Provisions in the Guidelines were changed to the following wording:

“11.12 Apps offering subscriptions must do so using IAP, Apple will share the same 70/30 revenue split with developers for these purchases, as set forth in the Developer Program License Agreement.

11.13 Apps that link to external mechanisms for purchases or subscriptions to be used in the app, such as a “buy” button that goes to a web site to purchase a digital book, will be rejected.

11.14 Apps can read or play approved content (specifically magazines, newspapers, books, audio, music, and video) that is subscribed to or purchased outside of the app, as long as there is no button or external link in the app to purchase the approved content. Apple will not receive any portion of the revenues for approved content that is subscribed to or purchased outside of the app”.

²⁷⁷ See Apple’s press release: <https://www.apple.com/newsroom/2011/02/15Apple-Launches-Subscriptions-on-the-App-Store/>, accessed on 15 December 2020, ID 1062, stating *inter alia*: “Publishers who use Apple’s subscription service in their app can also leverage other methods for acquiring digital subscribers outside of the app. For example, publishers can sell digital subscriptions on their web sites, or can choose to provide free access to existing subscribers. Since Apple is not involved in these transactions, there is no revenue sharing or exchange of customer information with Apple. Publishers must provide their own authentication process inside the app for subscribers that have signed up outside of the app. However, Apple does require that if a publisher chooses to sell a digital subscription separately outside of the app, that same subscription offer must be made available, at the same price or less, to customers who wish to subscribe from within the app. In addition, publishers may no longer provide links in their apps (to a web site, for example) which allow the customer to purchase content or subscriptions outside of the app.”

²⁷⁸ Annex 19.3 to Apple’s response to the Commission’s request for information (2020/146914), ID 1193-42. [...].

²⁷⁹ Annex 19.4 to Apple’s response to the Commission’s request for information (2020/146914), ID 1193-33. [...].

- (171) On 13 June 2016²⁸⁰, the wording of the Anti-Steering Provisions was modified again. In addition to the previous prohibition for apps to contain buttons and external links to other purchase mechanisms than IAP, the wording of the prohibition in Section 3.1.1 was changed to include “*other calls to action that direct customers*” to such purchase mechanisms. In addition, the wording of the Anti-Steering Provisions for reader apps was modified to provide that reader apps must not “*direct users to a purchasing mechanism other than IAP*”, rather than not using “*buttons and external links*” to purchase possibilities outside the app. The revised wording of Section 3.1.1 and 3.1.3. of the Guidelines as of that date was the following:

“3.1.1 In-App Purchase: If you want to unlock features or functionality within your app (by way of example: subscriptions, in-game currencies, game levels, access to premium content, or unlocking a full version), you must use in-app purchase. Apps may not include buttons, external links, or other calls to action that direct customers to purchasing mechanisms other than IAP.”

3.1.3 Content-based "Reader" apps: Apps may allow a user to access previously purchased content or subscriptions (specifically: magazines, newspapers, books, audio, music, video, access to professional databases, ViOP, cloud storage, and approved devices such as educational apps that manage student grades and schedules), provided the app does not direct users to a purchasing mechanism other than IAP”.

- (172) In June 2017²⁸¹, Apple introduced further changes to the wording of the Anti-Steering Provisions to prohibit developers of reader apps from directly or indirectly targeting iOS users to use a purchasing method other than IAP as well as from designing “*general communications about other purchasing methods*” that “*discourage use of IAP*”. The revised wording of Section 3.1.3. of the Guidelines as of that date was the following:

3.1.3 “Reader” Apps: Apps may allow a user to access previously purchased content or content subscriptions (specifically: magazines, newspapers, books, audio, music, video, access to professional databases, VoIP, cloud storage, and approved services such as educational apps that manage student grades and schedules), as well as consumable items in multiplatform games, provided that you agree not to directly or indirectly target iOS users to use a purchasing method other than IAP, and your general communications about other purchasing methods are not designed to discourage use of IAP”.

- (173) In June 2018²⁸², Apple again modified the Guidelines by including in the prohibition the use of alternative mechanisms to unlock content or functionality such as licence keys, augmented reality markers or QR codes:

“3.1.1 In-App Purchase:

If you want to unlock features or functionality within your app, (by way of example: subscriptions, in-game currencies, game levels, access to premium

²⁸⁰ Annex 19.20 to Apple’s response to the Commission’s request for information (2020/146914), ID 1193-96. [...]. See also <https://developer.apple.com/news/?id=06132016c>, accessed on 6 May 2022, ID 2391.

²⁸¹ Annex 19.24 to Apple’s response to the Commission’s request for information (2020/146914), ID 1193-8. [...].

²⁸² Annex 19.29 to Apple’s response to the Commission’s request for information (2020/146914), ID 1193-60. [...].

content, or unlocking a full version), you must use in-app purchase. Apps may not use their own mechanisms to unlock content or functionality, such as license keys, augmented reality markers, QR codes, etc. Apps and their metadata may not include buttons, external links, or other calls to action that direct customers to purchasing mechanisms other than in-app purchase”.

- (174) The newly introduced rule for “multiplatform” services mirrors the anti-steering language of those for “reader” apps.

“3.1.3(b) Multiplatform Services: Apps that operate across multiple platforms may allow users to access content, subscriptions, or features they have acquired elsewhere, including consumable items in multiplatform games, provided those items are also available as in-app purchases within the app. You must not directly or indirectly target iOS users to use a purchasing method other than in-app purchase, and your general communications about other purchasing methods must not discourage use of in-app purchase”.

- (175) In September 2020, Apple again updated the Guidelines. With respect to “reader” apps, the Guidelines provided explicitly the possibility to offer account creation for free tiers²⁸³. According to information from Apple, [...].²⁸⁴ Further language was introduced explicitly stating that out of the app communication to iOS users violates the Guidelines when it encourages iOS users to use other purchasing methods than IAP through communications sent to points of contact obtained from account registration within the app.

“3.1.3(a): [...] Reader apps may offer account creation for free tiers, and account management functionality for existing customers.”

“3.1.3 Other Purchase Methods: The following apps may use purchase methods other than in-app purchase. Apps in this Section cannot, either within the app or through communications sent to points of contact obtained from account registration within the app (like email or text), encourage users to use a purchasing method other than in-app purchase.”

- (176) On 7 June 2021,²⁸⁵ after the Commission had sent the Statement of Objections of 30 April 2021 to Apple, Apple revised the Anti-Steering Provisions again:

“3.1.3 Other Purchase Methods: The following apps may use purchase methods other than in-app purchase. Apps in this Section cannot, either within the app or through communications sent to points of contact obtained from account registration within the app (like email or text), encourage users to use a purchasing method other than in-app purchase. Developers cannot use information obtained within the app to target individual users outside of the app to use purchasing methods other than in-app purchase (such as sending an individual user an email about other purchasing methods after that individual signs up for an account within the app). Developers can send communications

²⁸³ In the context of music streaming services, the free tier refers to the music streaming service offered by providers such as Spotify or Deezer for free with limited in-app features and frequent interruptions with ads. If consumers want to get additional features and enhance their experience, they have to convert to the paid/premium service. Apple Music does not offer a free tier of its service. Annex 19.35 to Apple’s response to the Commission’s request for information (2020/146914), ID 1193-47.

²⁸⁴ See Apple’s response to question 42 of the Commission’s request for information (2019/050361), ID 268-1.

²⁸⁵ Annex 26 to Apple’s response to the Commission’s request for information (2022/004722), ID 2233-11.

outside of the app to their user base about purchasing methods other than in-app purchase”.

- (177) Another change to the Anti-Steering Provisions occurred on 22 October 2021 after Apple had submitted its Response to the Statement of Objections of 30 April 2021. On that date, Apple removed the prohibition of out of the app communication that follows an initial sign-up by a user within the app. Apple deleted the following sentence from Article 3.1.3. *“Developers cannot use information obtained within the app to target individual users outside of the app to use purchasing methods other than in-app purchase (such as sending an individual user an email about other purchasing methods after that individual signs up for an account within the app)”.*
- (178) The deletion of the above sentence was triggered by a settlement in the US announced by Apple on 26 August 2021 following a class-action suit from US developers. In its response to a subsequent request for information,²⁸⁶ Apple indicated that the change would allow developers to communicate with individual users about payment methods outside of the iOS app through e-mails, but only as long as there is no “call to action” within the app itself in the sense of Section 3.1.3 of the Guidelines (in other words, whenever Apple considers that the iOS app itself contains any “call to action” to use alternative purchasing mechanisms outside the app, within the meaning of Section 3.1.1 of the Guidelines). Otherwise, the app is not in compliance with the App Store Review Guidelines and will be rejected by Apple. [...].²⁸⁷ It is noteworthy that this interpretation is inconsistent with Apple’s initial view of what the settlement would entail in its Response to the Statement of Objections of 30 April 2021 [...].²⁸⁸ [...].
- (179) On 30 March 2022, Apple introduced in Section 3.1.3 (a) of the Guidelines the possibility for “reader” apps (including music streaming apps which do not offer in-app subscriptions) to request an “entitlement” from Apple allowing for an inclusion of an informational link to their website for account creation and management purposes (so-called “External Link Account Entitlement program”).²⁸⁹ Following this modification Section 3.1.3. (a) reads as follows:

“3.1.3(a) “Reader” Apps: Apps may allow a user to access previously purchased content or content subscriptions (specifically: magazines, newspapers, books, audio, music, and video). Reader apps may offer account creation for free tiers, and account management functionality for existing customers. Reader app developers may apply for the External Link Account Entitlement to provide an informational link in their app to a web site the developer owns or maintains responsibility for in order to create or manage an account. Learn more about the External Link Account Entitlement”²⁹⁰.

²⁸⁶ See response by Apple to question 24 of the Commission’s request for information (2022/004722), ID 2232.

²⁸⁷ See response by Apple to question 24 of the Commission’s request for information (2022/004722), ID 2232.

²⁸⁸ Apple’s Response to the Statement of Objections of 30 April 2021, ID 2165, paragraph 109.

²⁸⁹ Section 3.1.3 (a) of the Guidelines, <https://developer.apple.com/news/?id=grjqafst>, accessed on 28 April 2022, ID 2314; and <https://developer.apple.com/support/reader-apps/>, accessed on 28 April 2022, ID 2337. Articles 3.1.1 and 3.1.3 were also slightly updated to make a reference to the External Link Account Entitlement program exception, i.e., “except as set forth in 3.1.3(a)”.

²⁹⁰ See Guidelines applicable as of 30 March 2022, accessed on 28 April 2022, ID 2312.

- (180) Developers that wish to introduce such a link must submit a request to Apple and are not allowed to offer in-app subscriptions through IAP in their app at the same time. Music streaming service providers that have so far offered subscriptions through IAP (like Deezer, SoundCloud or YouTubeMusic) could therefore only request such an entitlement if they were to disable in-app subscriptions through IAP altogether. Moreover, any link provided in a reader app must open a new window in the default browser and may not open a web view²⁹¹. The link may not include, or be used with, language that includes the price of items available on the website (acceptable language includes “go to example.com to create or manage your account”). In addition, when iOS users click the link, they receive a security message which warns them that they are leaving the app.²⁹² It can only be displayed once per app page and must display the same message in each instance.²⁹³ In essence, the possibility offered by Apple is limited to introducing a link for the purposes of account creation and management for apps that operate already as a reader app. Apart from this possibility, the Anti-Steering Provisions remain fully applicable.
- (181) Spotify – as the remaining music streaming service provider solely operating as a “reader app” – sought to make use of the External Link Account Entitlement program in 2022. While Apple initially accepted Spotify as a participant to the program, Apple started rejecting Spotify’s app update because the term “free”²⁹⁴ appeared on the same page of the Spotify iOS app as the link allowed under the program.²⁹⁵ According to Spotify, Apple claimed that the term “free” is prohibited under the Anti-Steering Provisions because it mentions the “*price of items available on the website*”.²⁹⁶ According to Spotify, the term “free” in its app was previously not objected by Apple and the term has featured prominently in Spotify’s iOS app for more than three years.²⁹⁷ According to Apple, however, the rule concerning the use of the word “free” is a longstanding rule that has been in place since before the introduction of the External Link Account Entitlement program.²⁹⁸ In any event, in light of the importance of being able to use the term “free” in its iOS app, Spotify stopped participating in the External Link Account Entitlement program.²⁹⁹

²⁹¹ A web view loads and displays rich web content, such as embedded HTML and websites, directly within an app, see <https://developer.apple.com/design/human-interface-guidelines/ios/views/web-views/>, accessed on 2 June 2022, ID 2425.

²⁹² See Apple’s Response to the Letter of Facts, ID 3330, paragraph 151 and Figure 9. See also statements by Spotify’s representative at the oral hearing (recording of the oral hearing in Case AT.40437, as of 06:12:00, ID 3131) and Spotify’s presentation at the oral hearing, page 10, ID 2930, which reproduces the security warning on the Netflix iOS app reading as follows: “*You’re about to leave the app and go to an external website. You will no longer be transacting with Apple (...)*”.

²⁹³ See <https://developer.apple.com/support/reader-apps/>, accessed on 28 April 2022, ID 2337.

²⁹⁴ In the app, Spotify used the following language “*3 months of Premium for free*”.

²⁹⁵ See Apple’s Response to the Letter of Facts, ID 3330, paragraph 157. According to Spotify, Apple has gone even further, prohibiting use of the link in the Spotify account settings in the iOS app, as long as the word “Free” remains anywhere in the app. See also page 11 of Spotify’s presentation made at the oral hearing, ID 2930.

²⁹⁶ See Spotify letter of 11 November 2022, page 2, ID 2583.

²⁹⁷ This information corresponds to the information provided by Apple in its Response to the Statement of Objections of 30 April 2021, ID 2165, where in Figure 8, Apple presents the in-app notice that users received from Spotify after registering on Spotify which states “*1 mois de Spotify Premium gratuit*” (English translation: “*1 month of Spotify Premium for free*”).

²⁹⁸ See Apple’s Response to the Letter of Facts, ID 3330, paragraph 157.

²⁹⁹ See Spotify letter of 11 November 2022, page 4, ID 2583. See also statements by Spotify’s representative at the oral hearing (recording of the oral hearing in Case AT.40437, as of 06:12:00, ID

- (182) To the Commission’s knowledge, none of the other main³⁰⁰ music streaming service providers has attempted to make use of this new possibility. In its Response to the Statement of Objections of 28 February 2023, Apple claimed that more than [...] apps are participating in the External Link Account Entitlement program, and including music-related and streaming apps.³⁰¹ In its Response to the Letter of Facts, Apple claims that more than [...] reader apps providing audio and video services participated in the External Link Account Entitlement program.³⁰² However, to the Commission’s knowledge, none of the main music streaming service providers currently make use of this possibility.³⁰³ Therefore, the Commission’s conclusions remain unchanged concerning the limited or rather absent impact of the External Link Account Entitlement program for music streaming service providers.
- (183) On 25 January 2024, Apple announced that, in March 2024, it will modify some of its App Store rules with regards to iPhone’s iOS in view to comply with Regulation (EU) 2022/1925.³⁰⁴ In particular, Apple will make changes to its fee structure and will allow developers to steer users outside the app, with some limitations.³⁰⁵ At the time of adoption of this Decision, these new rules are not yet in force. For that reason, they are not covered by the Commission's assessment in this Decision.

7.3. Interpretation and application of the Anti-Steering Provisions over time

- (184) The Anti-Steering Provisions as applied and interpreted by Apple prevent music streaming service providers from informing iOS users through their iOS app about the ability to purchase music streaming subscriptions outside of their iOS app and use these subscriptions in their iOS apps (as explicitly allowed under the reader rule and the multiplatform rule) as well as from effectively exercising their choice in that respect. More specifically, based on Apple’s interpretation and implementation of its Guidelines, the Anti-Steering Provisions prohibit developers from offering buy buttons or other direct links within their iOS apps to subscription possibilities outside of those apps. The Anti-Steering Provisions also prohibit developers from informing users within the apps about the prices of subscription offers outside of the app; about price differences between subscriptions through IAP and those available elsewhere; and about the developer’s website on which subscriptions can be bought. They also

3131): “Apple had allowed to use the word “free” in connection with our app for years, but once we decided to participate in the program, Apple suddenly not only barred us from mentioning the word “free” on the same page as the link, they went even further, stopping us from using the program as long as the word “free” remained anywhere on our app”, and Spotify’s presentation at the oral hearing, page 11, ID 2930, which includes screenshots of language rejected by Apple in Spotify’s iOS app when combined with the External Link Account Entitlement program.

³⁰⁰ See recital (148).

³⁰¹ Apple refers to several “music-related and streaming apps”: Mixcloud, Soundstripe and NOW (see Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 62 and 90), as well as Netflix and Perlego (see Apple’s Response to the Letter of Facts, ID 3330, paragraphs 152 et seq.). Although some of these apps are “music-related”, Soundstripe (<https://www.soundstripe.com/>, accessed on 10 October 2023, ID 3170) is oriented to music creators that offer the option of managing copyright, and Mixcloud (<https://www.mixcloud.com/>, accessed on 10 October 2023, ID 3153) is also oriented to offering options for music creators (mainly DJs) to manage their copyright and stream their music. None of the apps cited by Apple are pure music streaming services as investigated in this case.

³⁰² Apple’s Response to the Letter of Facts, ID 3330, paragraphs 146 and 150.

³⁰³ Apple’s Response to the Letter of Facts, ID 3330, paragraphs 146 and 150.

³⁰⁴ 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. 1–66.

³⁰⁵ See footnote 37.

prevent developers from providing any explanations or instructions to their users about how to subscribe to their offer outside of the iOS app environment.³⁰⁶ Based on Apple’s interpretation and implementation, the Anti-Steering Provisions also limit to some extent the possibility of developers to send outside e-mails to iOS users following an in-app activity of that user. Developers cannot – for example – allow iOS users to request in their app additional information about subscription possibilities directly from the developer, for example by requesting to receive information (such as via an e-mail) from the developer with specific information, offers or promotions or any instructions on where and how to subscribe outside the iOS app, because this would be considered by Apple as a “call to action” within the meaning of Section 3.1.1. of the Guidelines.³⁰⁷

- (185) Conversely, developers can – based on Apple’s interpretation and implementation of the Guidelines – inform iOS users within their iOS app in a general manner about the different services and subscription plans they offer.³⁰⁸ Developers can also mention that their services cannot be purchased in the app (provided they do not indicate where and how such services can be purchased and at what price).³⁰⁹ Apple has interpreted its own Guidelines, including the Anti-Steering Provisions, flexibly and beyond the wording of the respective provisions of the Guidelines. Changes to the interpretation of the Guidelines by Apple were often not communicated to the developer community at large through the Guidelines making it difficult for developers to understand the scope of the rules.³¹⁰ [...].³¹¹
- (186) Whenever a music streaming service provider includes certain links or other information (in its iOS app) which Apple deems incompatible with the Anti-Steering Provisions, Apple will reject the app update of the respective developer, thereby forcing the developer to remove the relevant links or information.

7.4. The Commission’s assessment of Apple’s arguments

- (187) Apple argues in its Response to the Statement of Objections of 28 February 2023 that its rules for app developers have not become stricter over time.³¹² In Apple’s view, [...]. According to Apple, the basic principle, however, remained the same as the one introduced long before Apple Music’s market entry – i.e., that developers should pay Apple the commission fee when using the App Store to monetise their digital services and should not circumvent this obligation. Apple argues that developers have numerous ways of communicating with iOS users and promote their

³⁰⁶ Response by Apple to question 25 of the Commission’s request for information (2022/004722), ID 2232.

³⁰⁷ Limitations on the possibility of sending outside e-mails following an in-app activity by a user have – based on the evidence in the file - only been introduced in June 2016. As of 7 June 2021, Apple only objects to app functionality that triggers outside e-mails, when the mechanism could be construed as a “call to action” within the app (which could for example be an “E-Mail me” button). For further explanations see recital (189) et seq.

³⁰⁸ Response by Apple to question 25 of the Commission’s request for information (2022/004722), ID 2232.

³⁰⁹ Apple’s Response to the Statement of Objections of 30 April 2021, ID 2165, paragraph 99. See also, the example of SoundCloud’s in-app advertisement of its student subscription provided by Apple in its Response to the Letter of Facts, Annex 8, ID 3323, Figure 16.

³¹⁰ For example, [...]; see Apple’s response to question 42 of the Commission’s request for information (2019/050361), ID 268-1.

³¹¹ [...].

³¹² Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 95 and 98.

subscriptions, such as through conventional and digital marketing activities in-app and outside of the app, including wide-spread e-mail marketing campaigns to iOS users, as it objects to such communications only to the extent that they are triggered by an in-app activity of the user.³¹³ In addition, Apple claims that the effect of the Anti-Steering Provisions is limited because of the reader and multiplatform rules. According to Apple, these rules limit the scope of Apple’s commission model and Anti-Steering Provisions, as they allow iOS users to consume music streaming subscriptions purchased outside the App Store without developers paying any commission to Apple.³¹⁴ Apple further claims that consumers are “*not clueless*” about their ability to transact directly with music streaming developers outside the app, as they can do online search on their devices or make use of price comparisons or consumer reports to get a clear picture about subscription prices differences in-app and outside of the app.³¹⁵ Lastly, Apple stresses that its External Link Account Entitlement program helps developers of reader apps, which can include an in-app link to their website under the conditions explained above.³¹⁶

- (188) The Commission considers that this is not fully accurate for the following reasons.
- (189) First, as explained in the following recitals, with respect to the permissibility of outside communication (i.e., e-mails or texts) and Apple’s claim that it has not changed the wording and interpretation of its rules, the evidence in the file shows that Apple had initially not objected to certain forms of e-mail communication by music streaming service providers even if triggered by an action of a user within the app. It was only later (after the launch of Apple Music in June 2015 and Spotify’s decision to disable IAP in May 2016), that Apple started to consider e-mail communication by Spotify that was triggered by an action in the app to be in contradiction with the Guidelines and modified the wording of the Guidelines accordingly.³¹⁷
- (190) [...] ³¹⁸ [...].
- (191) In 2014, when Apple monitored closely Spotify’s IAP launch, it noticed that Spotify was sending “out of the app communications” to its users in the Spotify iOS app in the form of emails. ³¹⁹ [...] ³²⁰ [...].
- (192) [...] ³²¹ [...].

³¹³ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 77 and Annex 5 of such response (ID 2805) and Apple’s Response to the Letter of Facts, ID 3330, paragraphs 126 et seq. and Annex 8 of such response, ID 3323.

³¹⁴ Response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 113, 115, 116 and 117.

³¹⁵ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 257 and 258 and Annex 4 of such response (ID 2804).

³¹⁶ See recital (179).

³¹⁷ It was only after the adoption of the Statement of Objections of 30 April 2021 that Apple started relaxing the Anti-Steering Provisions in its Guidelines to take a more permissible approach to out of the app communication triggered by an engagement in the app (provided however that there is no “call to action” within the app), see paragraphs 217 and 222.

³¹⁸ See ID 449-3, page 184/207.

³¹⁹ [...].

³²⁰ [...].

³²¹ [...].

- (193) Apple’s position that e-mails outside of the app are not objectionable under the Guidelines changed later on. This is supported by the evidence in the following recitals.
- (194) In May 2016, after Spotify had disabled IAP, Spotify launched one of its large seasonal promotions across all platforms (including on its website) which gave users the opportunity to purchase three months of Spotify’s Premium service for EUR 0.99.³²² In its iOS app, Spotify included an “Email Me” button, which, when clicked, would prompt Spotify to send an email to the user informing them about the promotion.³²³ [...] ³²⁴ [...] ³²⁵ [...].
- (195) On 13 June 2016,³²⁶ while Spotify was still trying to get its app approved, Apple changed the wording of the Guidelines to prohibit also “*other calls to action that direct customers to purchasing mechanisms other than IAP*” and required that reader apps should “*not direct users to a purchasing mechanism other than IAP*”³²⁷ (emphasis added).
- (196) At another promotional campaign in July 2016, Spotify offered users of its free-tier the opportunity to enjoy the features of the Premium service for a period of 7 days for free. The sign up to this trial period did not involve a transaction and users were not asked for their payment credentials. However, following the sign up to this trial and during the trial period, Spotify sent emails to users providing information about the Premium offer and the option to purchase a subscription. Apple again considered such “out of the app communication” as a violation of its Guidelines despite having previously allowed it.³²⁸
- (197) [...] ³²⁹
- (198) On 8 June 2017, Apple further modified the wording of the Anti-Steering Provisions with respect to “reader apps”, such as those of music streaming services, and required developers to agree “*not to directly or indirectly target iOS users to use a purchasing method other than IAP, and your general communications about other purchasing methods are not designed to discourage use of IAP*”³³⁰ (emphasis added).
- (199) In September 2020, Apple then added explicitly to the Anti-Steering Provisions for reader apps in Section 3.1.3. of the Guidelines that “*communications sent to points of contact obtained from account registration within the app (like email or text)*” that “*encourage users to use a purchasing method other than in-app purchase*” are prohibited.
- (200) The changes in the Anti-Steering Provisions contained in the Guidelines in 2016, 2017 and 2020 clearly show that Apple did not only clarify the wording but tightened the scope of these rules with the purpose of limiting the possibility of music

³²² Spotify’s Complaint, paragraphs 27 and 68, ID 1457.

³²³ Spotify’s Complaint, paragraph 68, ID 1457.

³²⁴ [...].

³²⁵ [...].

³²⁶ Annex 19.20 to Apple’s response to the Commission’s request for information (2020/146914), ID 1193-96. See also <https://developer.apple.com/news/?id=06132016c>, accessed on 6 May 2022, ID 2391.

³²⁷ Rule 11.13 was at the same time renumbered in the Guidelines as rule 3.1.1.

³²⁸ [...]

³²⁹ See Deezer’s response to the Commission’s request for information (2019/048643), ID 1303.

³³⁰ [...].

streaming service providers to communicate with users also outside of the app, which was not envisaged in the original wording from 2011.

- (201) It was only after the adoption of the Statement of Objections of 30 April 2021 that Apple started relaxing the Anti-Steering Provisions to take a slightly more permissible approach to out of the app communication in its Guidelines and that it also introduced the possibility to request an entitlement to introduce an informational link in reader apps for the purposes of creating or managing accounts.
- (202) Second, the evidence in the file contradicts the allegation that Apple only ever objected to out-of-the-app communication in the form of e-mails to the extent that such communication was specifically targeted at individual iOS users in a way that shows that it was effectively the result of an in-app activity of the user.
- (203) [...].³³¹ [...].³³²
- (204) [...].³³³ [...].³³⁴
- (205) Moreover, the provisions limiting the ability of developers to send e-mails to users that Apple integrated into its Guidelines in Section 3.1.3 and communicated to its developers in 2017 and 2020³³⁵ did not contain any limitation based on whether certain communication is triggered by an in-app activity of the user or immediately follows it or not. Conversely, the Guidelines in force between September 2020 and 22 October 2021 contained explicit language prohibiting out of app communications to points of contact obtained from account registration in order to encourage those users to use a purchasing method other than IAP, irrespective of whether such e-mail communication was triggered by an in-app activity or not. According to Apple, prior to September 2020 Apple’s policy prohibited to use *“the App Store to collect information, and then use this contact information to email or send a text message to a specific person, encouraging them to cancel an IAP subscription, and re-subscribe on the developer’s web site or other property.”*³³⁶ Third, with respect to Apple’s claim that music streaming service providers communicate with users through general marketing activities, including via in-app advertising, it should be noted that Apple does not allow music streaming developers to include information about outside of the app prices of music-streaming subscriptions and on how to subscribe outside of the app in in-app advertising campaigns. This prohibition extends to in-app premium pop-ups and premium tabs, as well as in-streaming and pop-up advertisements, which appear to the user while engaging with the service.³³⁷ In view

³³¹ See ID 819.

³³² [...].

³³³ [...].

³³⁴ Apple’s Response to the Statement of Objections of 28 February 2023, Annex 5, ID 2879, Figure 4 on page 6, and Apple’s Response to the Letter of Facts, Annex 8; ID 3323, Figure 1 and paragraph 10.

³³⁵ 2017: “[...] provided that you agree not to directly or indirectly target iOS users to use a purchasing method other than IAP, and your general communications about other purchasing methods are not designed to discourage use of IAP.”

2020: “3.1.3 Other Purchase Methods: The following apps may use purchase methods other than in-app purchase. Apps in this Section cannot, either within the app or through communications sent to points of contact obtained from account registration within the app (like email or text), encourage users to use a purchasing method other than in-app purchase.”

³³⁶ See response by Apple to question 21 c. to the Commission’s request for information (2022/004722), ID 2232.

³³⁷ Apple’s response to the Statement of Objections of 28 February 2023, ID 2800, Figures 3 and 4, and Annex 5 of Apple’s Response, ID 2805, Figure 3, include screenshots of Spotify’s premium tab.

of the importance of price in order to convert to a premium subscription,³³⁸ in-app advertising such as in-app premium pop-ups and tabs do not constitute an effective way of communicating with iOS users with such limitations in place.

- (206) Moreover, general marketing activities outside of the app, both conventional and digital, including partnerships or social media platforms, but also e-mail campaigns, are a suboptimal and less efficient option to attract and convert free subscribers into premium on iOS, as in-app advertising absent the Anti-Steering Provisions is considered one of the most effective means of communication with iOS users, given that the user gets price information at a convenient time when the user is engaged with the service and most likely to consider an upgrade.³³⁹ Outside of the app marketing strategies (i.e., offline communications, such as billboards and print advertisements, and other online communications, such as search or even e-mails) do often not provide the information when and where it is actually relevant for the user. [...].³⁴⁰
- (207) Fourth, regarding Apple’s claim that iOS users can get and compare prices outside of the app through desktop research on various devices and price comparisons available on consumer reports, Apple’s argument presupposes that iOS users would take extra steps and research outside of the app on how to subscribe through alternative subscription channels, or browse through obscure price comparison websites or blogpost.³⁴¹ On the contrary, evidence in the file supports the fact that apps are the

Figures 5, 7, 8 and 11 of Annex 5 of Apple’s Response (ID 2805) include examples of Spotify’s in-app premium pop-ups displayed to users within the first 33 days of a free subscription. These examples were also reiterated in Apple’s Response to the Letter of Facts, ID 3330, Figures 7 and 8, and Annex 8 of such response, ID 3323, Figures 2, 4, 6, 7, 10 and 12. The price of such premium service or how to subscribe to them is not indicated in any pop-up nor premium tab. The examples provided by Apple of premium tabs and pop-ups of other music streaming service providers (notably, SoundCloud, Deezer and Amazon Music) either do not include information on prices or how to subscribe to these services (Figure 8 of Apple’s Response to the Letter of Facts, ID 3330), or only contain information of the price and subscription possibility through IAP, but not about subscription possibilities outside of the app (Figures 13 to 16 and Figure 20 of Annex 5 to Apple’s Response to the Letter of Facts, ID 3320). The examples of in-streaming advertisement provided in of Apple’s Response to the Letter of Facts, ID 3330, paragraphs 27 and 28, also do not contain information on prices.

³³⁸ See Section 9.3.2.1.1 [...] Deezer’s Amazon’s, Napster’s and SoundCloud’s responses to question 9 of the Commission’s request for information (2019/048643) also confirmed this findings, IDs 1377, 1336, 1345 and 1369. [...].

³³⁹ See Spotify’s response to Commission’s request for information (2020/050944), entitled “Apple’s anti-competitive restrictions raise Spotify’s costs”, paragraphs 16 and 26, ID 1434-3. As Spotify explains: “[confidential quote].” In the same vein, see statements from Spotify’s representative at the oral hearing (recording of the oral hearing in Case AT.40437, at 05:46:30, ID 3131). See also statements from BEUC’s representative at the oral hearing (recording of the oral hearing in Case AT.40437, as of 06:22:15, ID 3131): “Apple argues that consumers can find pricing info elsewhere, for example by searching on the web, from emails or from other marketing activities of music streaming services providers. But none of this equivalent to clear price information at the moment it is most relevant, meaning when users are engaging with a MS provider in the app via their iOS devices and considering subscribing to a paid MS service or changing its existing subscriptions. This is because Email and marketing activities might come at times when they are of limited use and therefore not provide information at the right moment.”

³⁴⁰ See Table 8 – “Spotify – Proportion of users by conversion channel”.

³⁴¹ See statements from BEUC’s representative at the oral hearing (recording of the oral hearing in Case AT.40437, as of 06:22:15, ID 3131) “A reality is that reliable information on the internet is not always easy to find for consumers (...) Although Apple states that there is a large number of price comparison websites allowing customers to identify any price difference from [Music Streaming Service]

primary means for consumer engagement with music streaming services;³⁴² In addition, according to evidence in the file the price information available on consumer surveys is generally only accessible under payment, and other online information is not often reliable or too overwhelming.³⁴³

- (208) Fifth, with respect to Apple’s claim that the Anti-Steering Provisions should not be looked at in isolation but put into context and in relation to the reader and multi-platform rules, the Commission notes that the Anti-Steering Provisions actually largely offset the benefits that iOS users could draw from the reader and multiplatform rules. In the Commission’s view, Apple contradicts itself by arguing that the reader and multiplatform rules limit the effect of its conduct while defending the legitimacy of the Anti-Steering Provisions, which in fact hide the possibility of making use of the reader and multi-platform rules.
- (209) Sixth, the External Link Account Entitlement program introduced in in March 2022 constitutes a limited change to Apple’s Anti-Steering Provisions. The possibility to include a link to the developer’s website comes with significant limitations in order to participate in the program, as only reader apps are eligible, and applications to participate in the program shall be approved by Apple. More importantly, as explained in recitals (181)-(182), language accompanying the link cannot include information about price and the link can only redirect users to “account creation and management” and not to a purchasing web view or information on prices.³⁴⁴ In fact, to the Commission’s knowledge, no music streaming service provider has benefited so far from this program.
- (210) In light of this, the Commission considers that the limitations for music streaming service providers which are set out in recitals (184)-(186) have been, in essence, in place throughout the period of infringement as outlined in Section 11. [...].³⁴⁵ While Apple has relaxed the Anti-Steering Provisions with respect to such outside communication through the change of the Guidelines on 7 June 2021, [...] ³⁴⁶ [...].³⁴⁷

7.5. Impact of the Anti-Steering Provisions in the music streaming services market

- (211) Spotify launched its iOS native mobile app in September 2009. Initially, between the launch of the Spotify app for the iPhone in 2009 and the introduction of IAP in February 2011, the Spotify app was free to download, but could only be used by Spotify Premium subscribers, i.e., only users with Premium account credentials were allowed to log in the app (therefore, there was no need for Spotify to advertise Premium features in-app as its iOS users were already Spotify Premium users).³⁴⁸ In

subscriptions through IAP, I wonder how many consumers will find the too obscure price comparison websites, blogposts or articles that Apples points to in its reply”.

³⁴² See in this respect Section 9.3.2.2.1.1.

³⁴³ See statements from BEUC’s representative at the oral hearing (recording of the oral hearing in Case AT.40437, as of 06:22:15, ID 3131), explaining that the sources Apple cites in Annex 4 of its response are not reliable, even if those were presumably the best example Apple could find of online price comparisons for MS services and that “*BEUC’s member publications are generally behind paywalls*”. BEUC’s representative also pointed at the risk of information overload online.

³⁴⁴ See recital (179).

³⁴⁵ See recitals (189) et seq.

³⁴⁶ [...].

³⁴⁷ See Apple’s Response to the Statement of Objections of 28 February 2023, Annex 5, ID 2879, Figure 4 on page 6.

³⁴⁸ See Spotify’s response to question 3 of the Commission’s request for information (2020/147746), ID 1447.

February 2011, when Apple introduced the possibility of offering subscriptions to digital content in the app through IAP and the Anti-Steering Provisions, Spotify initially decided not to offer in-app subscriptions through IAP because of the 30 % commission fee, which would have either forced Spotify to charge a higher price for subscriptions in the iOS app or to take “a 30 % hit on its already constrained margins”.³⁴⁹ Therefore, users of Spotify’s iOS app could at the time only access Premium features if they had purchased a Premium subscription outside of the app, e.g., on the Spotify website. The ability of users to consume content purchased outside the app was as of February 2011 specifically mentioned in the reader rule.³⁵⁰

(212) [...] ³⁵¹ [...] ³⁵² [...].³⁵³

(213) In view of the Anti-Steering Provisions and the inability to inform its users about alternative subscription possibilities through its iOS app, Spotify decided to offer in-app subscriptions through IAP as of 30 June 2014 and to increase the price for its Premium service for in-app subscriptions in order to cover for its additional costs stemming from the commission fee.³⁵⁴ Spotify observed that if it had “*absorbed the 30 % surcharge, the remaining revenue would not have been sufficient to cover its other costs*”, namely VAT and royalty payments to record companies and music publishers which altogether indicatively amounted to around 70 % (or EUR 7) of the pre-IAP price.³⁵⁵

(214) Spotify thus increased the regular Premium monthly subscription price for in-app subscriptions through IAP on iOS (while not changing prices on other channels) in the various EEA countries,³⁵⁶ typically from EUR 9.99 to 12.99 (corresponding to a pass-through rate of 90 % to 95 % of the IAP commission, depending on the applicable VAT rate in each country).³⁵⁷

(215) One year later in June 2015, Apple launched its competing music streaming service, Apple Music, at a monthly subscription price of EUR 9.99.³⁵⁸ Unlike other music

³⁴⁹ Spotify’s Complaint, paragraph 57, ID 1457.

³⁵⁰ In 2011, the reader rule was set out in Section 11.14 of the Guidelines and had the following wording: “*Apps can read or play approved content (specifically magazines, newspapers, books, audio, music, and video) that is subscribed to or purchased outside of the app, as long as there is no button or external link in the app to purchase the approved content. Apple will not receive any portion of the revenues for approved content that is subscribed to or purchased outside of the app*”.

³⁵¹ See Spotify’s response to question 30 of the Commission’s request for information (2020/002646), ID 1431-2 [...].

³⁵² Exhibit A.3.1 to Spotify’s Complaint, ID 245-27.

³⁵³ [...].

³⁵⁴ Spotify’s Complaint, paragraphs 29, 59 and 60 and 61, ID 1457. Spotify observed that if it had “*absorbed the 30 % surcharge, the remaining revenue would not have been sufficient to cover its other costs*”, namely VAT and royalty payments to record companies and music publishers which altogether indicatively amounted to around 70 % of the pre-IAP price (or EUR 7).

³⁵⁵ Spotify’s Complaint, paragraphs 29 and 61, ID 1457.

³⁵⁶ In particular, the price of Spotify premium subscription increased from EUR 9.99 to EUR 12.99 in Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, Netherlands and Spain.

³⁵⁷ The IAP commission is 30 % of revenue net of VAT. VAT rates range from 17 % (Luxembourg) to 24 % (Finland, Iceland) among the countries named above. For Luxembourg, revenue net of VAT is EUR 12.99/1.17 = EUR 11.10, of which Spotify pays 30 % = EUR 3.33 as commission to Apple. Of this commission, Spotify passed on EUR 12.99 – 9.99 = EUR 3.00 to consumers, amounting to 90 % of the total IAP commission of EUR 3.33. Performing the same calculations for a VAT rate of 24 % (the upper bound) yields a pass-through rate of 95 %. For all VAT rates between 17 % and 24 %, the pass-through rate therefore ranges from 90 % to 95 %.

³⁵⁸ Apple Music also became available on Android and Windows later that year.

streaming apps, Apple Music is pre-installed on all iPhones and iPads and is neither subject to the Guidelines nor to any of the restrictions contained therein. Spotify could not match Apple's price and thus was forced to maintain the price of the Spotify Premium subscription in its iOS app at EUR 12.99.

- (216) Less than a year after the launch of Apple Music, in May 2016, Spotify decided to disable IAP and turn off the in-app subscription possibility on iOS for a combination of reasons. According to Spotify, this step was taken because the unavoidable increase of its consumer price to EUR 12.99 rendered Spotify uncompetitive vis-à-vis Apple Music and because IAP acted as a barrier between Spotify and its subscribers, allowing Apple to take over part of the customer relationship from Spotify and providing Apple with certain insights it may use for its own competing service.³⁵⁹
- (217) While iOS users can therefore still download the Spotify app via the App Store and use the free/basic version, they can – since May 2016 – no longer subscribe in-app to the paid Premium offer of Spotify's music streaming services.
- (218) Currently, new Spotify paid users will therefore need to activate and pay for their Premium subscription outside of the app, in particular via Spotify's web site and then log into the iOS app with their Premium account.³⁶⁰ However, based on the Anti-Steering Provisions, Spotify is prevented from informing users – within its iOS app and to certain extent also outside of the app- about the possibility to subscribe to the Premium music streaming service on its website or from mentioning the price of premium subscriptions. Until 22 October 2021, Apple's Anti-Steering Provisions also prohibited Spotify from informing users that have created their account in the iOS through e-mails about such subscription possibilities. As of that day, Spotify could be authorised to send e-mails to iOS users that have created their account in the Spotify iOS app, but only to the extent that such e-mails are not triggered by an in-app activity of the respective user [...].³⁶¹ Users of Spotify Premium that subscribed to the Premium service via IAP during the period when Spotify had adopted IAP for in-app subscriptions were able to continue to use the Premium subscription subjected to the higher subscription price of EUR 12.99 per month.³⁶² The Anti-Steering Provisions prevented Spotify from informing these legacy subscribers in the app about the possibility of obtaining a cheaper subscription directly on Spotify's website. In July 2023, Spotify announced that those premium users who subscribed through IAP between June 2014 and May 2016 would be automatically moved to a free account after the end of the last billing period. If those legacy subscribers wished to keep their premium subscriptions, they would not be able to use IAP anymore and

³⁵⁹ Spotify's response to question 26 of the Commission's request for information (2020/002646), ID 1431-2.

³⁶⁰ Spotify has indicated that users can also purchase the Premium subscription through Spotify's partners (such as mobile network operators and hardware providers) or via Spotify gift cards available at retailers, see Spotify's response to question 17 of the Commission's request for information (2020/002646), ID 1431-2.

³⁶¹ See recital (178).

³⁶² The number of Spotify subscribers that are still subject to this higher price has decreased over time and constituted less than [...] subscribers in May 2019; see Apple's comments on Spotify's initial complaint, paragraph 5, ID 330.

would be required to subscribe through alternative purchasing mechanisms, including credit cards and PayPal, to start the new subscription.³⁶³

- (219) Most other providers of music streaming services decided to offer in-app subscriptions through Apple’s IAP mechanism, with the exception of Google Play Music which is meanwhile no longer available.³⁶⁴ The Commission notes that similar to Spotify during the period when it signed up to IAP, other music streaming service providers that use IAP also increased their subscription fees on iOS compared to the price they charge in other channels.³⁶⁵ This is the case for Deezer³⁶⁶, SoundCloud³⁶⁷, Napster³⁶⁸, YouTube Music³⁶⁹ and Tidal³⁷⁰. All these music streaming service providers raised their subscription prices through IAP (typically from EUR 9.99 to EUR 12.99 for individual subscriptions). Amazon Music, charged a price through IAP of EUR 10.99 for its basic premium service.³⁷¹
- (220) In view of the low margins in the music streaming business, these providers had to pass-on the 30 % commission fee to their iOS customers – rather than absorbing that fee. As a result, their subscription charges on iOS are higher than the ones they charge on their websites. Apple was fully aware of the difficulties of music streaming service providers to offer subscriptions in their iOS app at the same price level as for subscriptions out of the app. [...] ³⁷² [...].³⁷³
- (221) Due to inflation and the increase of music licensing costs,³⁷⁴ the majority of major music streaming service providers raised their prices in 2022 and/or 2023 in various EEA countries. Only SoundCloud maintains the EUR 9.99 website price and EUR 12.99 for in-app subscriptions through IAP.³⁷⁵

³⁶³ See <https://variety.com/2023/digital/news/spotify-cuts-off-apple-in-app-purchase-app-store-1235662082/>, accessed on 10 October 2023, ID 3194.

³⁶⁴ Other music streaming service providers implemented IAP at the following dates: Deezer: July 2013; Napster: April 2013; YouTube Music: November 2015; Amazon Music: January 2018, SoundCloud: March 2016; Qobuz: June 2017. See Apple’s response to question 5 of the Commission’s request for information (2019/050361), ID 268-1.

³⁶⁵ See Amazon’s response to question 4 of the Commission’s request for information (2019/048673), ID 1336; SoundCloud’s response to question 4 of the Commission’s request for information (2019/048728), ID 1369; Deezer’s response to question 4 of the Commission’s request for information (2019/048643), ID 1377; Napster’s response to question 28 of the Commission’s request for information (2019/048724), ID 1345, YouTube Music’s response to question 4 of the Commission’s request for information (2019/048689), ID 1356. In addition, the price of “Tidal Premium” in the iOS app is EUR 12.99, ID 1294.

³⁶⁶ Deezer’s response to question 23 of the Commission’s request for information (2019/048643), ID 1377.
³⁶⁷ SoundCloud’s response to question 22 of the Commission’s request for information (2019/048728), ID 1369.

³⁶⁸ Napster’s response to question 28 of the Commission’s request for information (2019/048724), ID 1345.

³⁶⁹ YouTube Music’s response to question 4 of the Commission’s request for information (2019/048689), ID 1356.

³⁷⁰ Screenshots from Tidal App and mobile browser on 12 February 2021, ID 1294.

³⁷¹ Amazon’s response to question 4 of the Commission’s request for information (2019/048673), ID 1336.
³⁷² [...].

³⁷³ Annex 8 to Apple’s response to question 11 of the Commission’s request for information (2019/050361), Slide 25, ID 268-291.

³⁷⁴ See <https://www.ft.com/content/16a97b9a-ee96-4ec0-a14f-7b0c7200af81>, accessed on 10 October 2023, ID 3130; and <https://midiareserach.com/blog/the-cost-of-music-streaming-just-went-up-here-is-what-must-come-next>, accessed on 10 October 2023, ID 3148.

³⁷⁵ See <https://checkout.soundcloud.com/go?ref=t1033>, ID 3169, accessed on 10 October 2023.

- (222) The core price increase on music streaming service provider’s basic paid subscriptions on their websites has been generally 1 EUR, i.e., from EUR 9.99 to EUR 10.99. This trend has also been followed by Apple Music, which increased the price of paid subscriptions both in-app and outside of its app from EUR 9.99 to EUR 10.99 in October 2022.³⁷⁶ Deezer, however, has increased its price by 2 EUR between 2022 and 2023.
- (223) Following these general price increases, prices on the IAP channel for paid music streaming subscriptions were adjusted to pass-on the 30 % commission fee, or at least a substantial part of it. As a result, music streaming services prices remain higher in the IAP channel, with iOS users paying from 1 to 3 EUR more for paid subscriptions in-app.
- (224) The price increases referred above in the IAP channel and outside of the iOS app (e.g., on the music streaming service providers’ websites) in various EEA countries are the following:
- The current IAP price of Deezer’s premium subscription is EUR 13.99,³⁷⁷ while outside of the iOS app it amounts to EUR 10.99 as of early 2022.³⁷⁸ Deezer implemented a new price increase in September 2023 affecting some territories including France, Spain, Italy and The Netherlands, where a paid subscription now costs EUR 11.99 on Deezer’s website.³⁷⁹
 - The current IAP price of YouTube Music is EUR 12.99 and EUR 15.99 for Premium subscription.³⁸⁰ On the website, the respective prices of these subscriptions amount to EUR 9.99 and EUR 11.99 respectively.³⁸¹
 - The current IAP price of Napster premium subscription is EUR 13.99,³⁸² while on its website subscriptions can be bought at EUR 10.99 after its price increase.³⁸³
 - The current IAP price of Tidal is EUR 13.99,³⁸⁴ while on its website the price amounts to EUR 10.99 since July 2023.³⁸⁵
 - The current IAP price of Amazon Music Unlimited is EUR 11.99,³⁸⁶ while price on Amazon’s website amounts to EUR 10.99 (for non-Prime customers) since January 2023.³⁸⁷

³⁷⁶ Apple’s response to question 8 of the Commission’s request for information of 3 August 2023, ID 2987.

³⁷⁷ See <https://apps.apple.com/be/app/deezer-music-podcast-player/id292738169>, accessed on 10 October 2023, ID 3164.

³⁷⁸ See <https://www.ft.com/content/16a97b9a-ee96-4ec0-a14f-7b0c7200af81>, accessed on 10 October 2023, ID 3130.

³⁷⁹ See <https://www.deezer-investors.com/newsroom/>, accessed on 10 October 2023, ID 3205.

³⁸⁰ See <https://apps.apple.com/be/app/youtube-music/id1017492454>, accessed on 10 October 2023, ID 3167.

³⁸¹ See <https://www.youtube.com/musicpremium>, accessed on 5 December 2023, ID 3215.

³⁸² See <https://www.youtube.com/premium>, accessed on 5 December 2023, ID 3216.

³⁸³ See <https://www.napster.com/fr/plans/>, accessed on 10 October 2023, ID 3175.

³⁸⁴ See <https://apps.apple.com/be/app/tidal-music-hifi-ad-free/id913943275>, accessed on 10 October 2023, ID 3171.

³⁸⁵ See <https://www.techradar.com/streaming/tidal-joins-the-music-streaming-price-hike-party-and-spotify-could-be-next>, accessed on 14 December 2023, ID 3278.

³⁸⁶ See <https://apps.apple.com/fr/app/amazon-music-songs-podcasts/id510855668>, accessed on 10 October 2023, ID 3172.

- (225) Currently, Deezer’s premium iOS users which decide to subscribe through IAP pay each month EUR 2 more for their subscription compared with the price for subscriptions on Deezer’s website. Tidal and Napster’s iOS users pay EUR 3 more on IAP compared with the price for subscriptions on those providers’ website. Amazon Music’s iOS users and Youtube Music paid subscribers pay EUR 1 compared with the price for subscriptions on those providers’ website, while Youtube Music premium subscribers pay EUR 3 compared with the price for subscriptions on this provider’s website.
- (226) Spotify, who disabled IAP in May 2016, also increased prices of premium individual subscriptions in July 2023 from EUR 9.99 to EUR 10.99.³⁸⁸
- (227) Because of the Anti-Steering Provisions, music streaming service providers are prevented from informing within the app both the users of their free/basic service as well as those users which are subscribing through IAP at an elevated subscription price about the ability to subscribe at a cheaper price outside the iOS app or from offering in the apps external links to their website, including in the form of a web-based checkout to facilitate transactions directly from the music streaming service provider at a lower price.

7.6. Summary of the scope and content of the Anti-Steering Provisions

- (228) Apple’s Anti-Steering Provisions as interpreted by Apple
- prohibit buy buttons or direct links³⁸⁹ by music streaming service providers within their iOS app to purchasing possibilities outside of the app (such as on their website);
 - prohibit such developers from informing iOS users within their iOS apps about the prices of subscription offers outside of that app, the price differences between in-app subscriptions (through IAP) and those available elsewhere, the existence of specific purchase possibilities outside the app (including the mentioning of the developer’s website as a location where subscriptions can be bought) as well as from providing any explanations or instructions on how to purchase a subscription to the premium service outside of the app environment;³⁹⁰ and they
 - limit the possibility of developers to send outside e-mails to iOS users following an in-app activity of that user. For example, developers cannot allow iOS users to actively request in their app additional information about outside subscription possibilities directly from the developer, for example by requesting an e-mail with specific information, offers or promotions or any instructions on where and how to subscribe outside the iOS app. In addition, music streaming service providers are prevented

³⁸⁷ See <https://www.theverge.com/2023/1/20/23563686/amazon-music-unlimited-price-increase-uk-usa>, accessed on 10 October 2023, ID 3182.

³⁸⁸ See <https://newsroom.spotify.com/2023-07-24/adjusting-our-spotify-premium-prices/>, accessed on 10 October 2023, ID 3180.

³⁸⁹ With the exception of links under the External Link Account Entitlement program based on an entitlement granted by Apple under the new rule 3.1.3 (a) which is conditional on the developer complying with the conditions as set out by Apple and which cannot encourage users to purchase digital content or services outside the iOS app, ID 3011 – see recital (179).

³⁹⁰ Response by Apple to question 25 of the Commission’s request for information (2022/004722), ID 2232.

- from sending outside promotional emails to newly acquired iOS users in the 10 days following account creation.
- limit effective in-app advertising campaigns by music streaming service providers, which cannot mention in such in-app ads the price and the way to subscribe outside of the app to premium services.
- (229) As the Anti-Steering-Provisions prohibit buy buttons or links to alternative purchasing mechanisms other than IAP, they particularly prohibit web-based checkout solutions that redirect the user to the website of the music streaming service provider as an alternative to the in-app payment mechanism of the platform provider. Such web-based checkout mechanisms are a particularly suitable alternative for recurring payments such as those required for music streaming subscriptions which require the user to provide its payment credentials only once at the beginning of the subscription.
- (230) In the absence of such web-based checkouts, music streaming service providers have no choice but to either offer their music streaming subscriptions in-app through Apple’s IAP at an elevated price or offer an app that contains no information on where and how and at what conditions subscriptions to music streaming services can be bought. Apple consistently rejects apps or app updates submitted to the App Store which do not comply with the Anti-Steering Provisions as set out in the Guidelines. Music streaming service providers have therefore no choice but to abide by the Anti-Steering Provisions in case they want to continue offering their apps to users with iOS devices.³⁹¹
- (231) The above limitations contained in the Anti-Steering Provisions on the ability of developers to inform users about alternative purchasing options and allow them to effectively choose among the options available to them have been in place since at least 30 June 2015. As explained in recitals (189) et seq., based on the evidence in the file, Apple had initially not objected to certain forms of e-mail communication by music streaming service providers and only started objecting such emails by music streaming service providers in June 2016. Since 7 June 2021, Apple only objects to such e-mails to the extent that they follow a “call to action” within the developer’s iOS app (in other words, whenever Apple considers that the iOS app itself contains any “call to action” to use alternative purchasing mechanisms outside the app, within the meaning of Section 3.1.1 of the Guidelines.

8. ESTABLISHING THE DOMINANT POSITION

8.1. The relevant market

8.1.1. Principles

- (232) In the context of the application of Article 102 of the Treaty, the definition of the relevant product and geographic market is useful in assessing whether the undertaking concerned has a dominant position and whether this enables it to prevent effective competition from being maintained on the relevant market by giving it the

³⁹¹ Rejections of the Spotify app described in Spotify’s complaint, pages 18 et seq., ID 1457 or rejection of updates of the Deezer iOS app in ID 1303. See also CCB news “*Apple removes Fortnite developer Epic from App Store*”, 28 August 2020, <https://www.bbc.com/news/world-us-canada-53955183>, accessed on 17 December 2020, ID 1067.

power to behave to an appreciable extent independently of its competitors, its customers and, ultimately, consumers.

- (233) The concept of the relevant market implies that there can be effective competition between the products or services which form part of it and this presupposes that there is a sufficient degree of interchangeability between all the products or services forming part of the same market in so far as a specific use of such products or services is concerned.
- (234) An examination to that end cannot be limited solely to the objective characteristics of the relevant products and services, but the competitive conditions and the structure of supply and demand on the market must also be taken into consideration.
- (235) The identification of relevant product markets by the Commission derives from the existence of competitive constraints. Undertakings are subject to three main sources of competitive constraints: demand-side substitution, supply-side substitution and potential competition. From an economic point of view, for the definition of the relevant market, demand-side substitution constitutes the most immediate and effective disciplinary force on the suppliers of a given product.
- (236) The distinctness of products or services for the purposes of defining the relevant market has to be assessed by reference to customer demand. Factors to be taken into account include the nature and technical features of the products or services concerned; the facts observed on the market; the history of the development of the products or services concerned; and also, the undertaking's commercial practice. The fact that there are on the market independent companies offering a product or service constitutes "serious evidence" of the existence of a separate market for that product or service.
- (237) Supply-side substitution may also be taken into account when defining markets in those situations in which its effects are equivalent to those of demand-side substitution in terms of effectiveness and immediacy. There is supply-side substitution when suppliers are able to switch production to the relevant products or services and market them in the short term without incurring significant additional costs or risks in response to small and permanent changes in relative prices. When these conditions are met, the additional production that is put on the market is expected to have a disciplinary effect on the competitive behaviour of the companies involved.
- (238) Supply-side substitution is, however, not taken into account at the stage of defining the relevant market when it would entail each time the need to adjust significantly existing tangible and intangible assets, additional investments, strategic decisions or time delays.
- (239) The relevant geographic market comprises an area in which the undertakings concerned are involved in the supply and demand of the relevant products or services, in which area the conditions of competition are similar or sufficiently homogeneous and which can be distinguished from neighbouring areas in which the prevailing conditions of competition are appreciably different.
- (240) The definition of the geographic market does not require the conditions of competition between traders or providers of services to be perfectly homogeneous. It is sufficient that they are similar or sufficiently homogeneous and, accordingly, only those areas in which the conditions of competition are "heterogeneous" may not be considered to constitute a uniform market.

8.1.2. *Application to this case*

- (241) The Commission concludes that the product markets that are relevant for the purpose of this Decision are:
- The market for smart mobile devices (in which Apple competes against OEMs offering smart mobile devices to end consumers);
 - The market for the provision to developers of platforms for the distribution of music streaming apps to iOS users (i.e., the developer facing side of the two-sided App Store platform);
 - The market for the provision of music streaming services.
- (242) In reaching this conclusion, the Commission has assessed the scope of the relevant product markets from both the demand and supply side perspective.
- (243) The market for the provision to developers of platforms for the distribution of music streaming apps to iOS users concerns the developer facing side of Apple’s App Store platform, where Apple provides developers with a service that allows them to distribute their apps to users of iOS devices. This market is a different market from the consumer facing side of the platform in which Apple provides users of iOS devices with the ability to download and purchase apps. The consumer-facing side of the App Store is only relevant to the extent it poses potential constraints on the market power of Apple vis-à-vis developers of music streaming apps. In theory, the consumer side of the platform could discipline Apple’s market power over the provider of music streaming services in the market for the provision to developers of platforms for the distribution of music streaming apps to iOS users. Such potential constraints are therefore analysed in Section 8.2.2.5.

8.1.3. *Market for smart mobile devices*

- (244) This Decision concerns certain restrictions imposed by Apple on developers of music streaming apps, which run on Apple’s smart mobile devices.
- (245) Thus, the definition of the relevant product market at the device level is relevant to the extent that there may be a link between competition at the device level and at the app distribution level. The closer the link between these two markets is and the more intensive competition is at the device level, the more likely it is that it may have a disciplinary effect on activities at the app distribution level.
- (246) Smart mobile devices are mobile devices with advanced internet browsing, multimedia and app capabilities. Smart mobile devices are available in a variety of designs, and with a range of different features and hardware components. There are, broadly speaking, two types of smart mobile devices: smartphones and tablets.³⁹²
- (247) Smartphones are wireless telephones with advanced internet browsing and app capabilities. Smartphones incorporate hardware and software features that enable them to fulfil many of the functions traditionally associated with state of the art computing.³⁹³ There is no industry standard definition of a smartphone, but rather a spectrum of functionalities.³⁹⁴ Smartphones vary in terms of size, weight, durability,

³⁹² Commission decision of 13 February 2012 in Case M.6381 – *Google/Motorola Mobility*, footnote 13.

³⁹³ Commission decision of 26 June 2014 in Case M.7202 – *Lenovo/Motorola Mobility*, paragraph 14.

³⁹⁴ Commission decision of 18 July 2018 in Case AT.40099 – *Google Android*, footnote 25: “For example, in addition to mobile voice and text message communication, the latest smartphones include advanced hardware (e.g. touch-screen interfaces, flash storage, GPS navigation, WI-FI) and software (rich web

screen size, audio quality, camera size/zoom, web speed, computer processing power, memory, ease-of-use, optical quality, casing quality/design, and additional multimedia offerings.³⁹⁵

- (248) Tablets are mobile devices in the spectrum between a smartphone and a personal computer (“PC”). Tablets are generally operated using a touch screen. Tablets are based on similar hardware to advanced touchscreen-based smartphones and provide a rich multimedia experience along with many of the functions of a PC.³⁹⁶ The distinction between smartphones and tablets is not necessarily clear-cut.³⁹⁷
- (249) Smart mobile devices run on an operating system that controls the basic functions of the devices and enable users to make use of the device and run software on it. Apple and other producers of smart mobile devices (original equipment manufacturers or “OEMs”), such as Samsung, Xiaomi or Huawei, pre-install smart mobile operating system on their smart mobile devices before selling them on to consumers. The main smart mobile OSs are Apple’s iOS³⁹⁸ and Google’s “Android” OS. Other smart mobile OSs have gradually disappeared (like Blackberry, Microsoft Windows phone or Symbian)³⁹⁹ or no longer play any relevant role, as their combined share is less than 1 % (like Linux).⁴⁰⁰ While Android is licensed by Google to OEMs such as Samsung, Xiaomi or OPPO, iOS has been developed by Apple for captive use in its own devices and is therefore not available to any third-party OEM.⁴⁰¹

8.1.3.1. The relevant product market

- (250) In the past, the Commission has on several occasions looked into the product market definition for smart mobile devices. In these decisions, the Commission considered that basic and feature phones⁴⁰² do not belong to the same product market as smart mobile devices whereas it was left open whether smart mobile phones and tablets belong to the same product market.⁴⁰³

browsers, full-featured e-mail accounts, a sophisticated user interface etc.), and a range of other functions (including music and video streaming; downloading; playback; video calling; cameras and camcorders; GPS; radio receiver; personal digital assistant functions; USB, Bluetooth etc.)”

³⁹⁵ Commission decision of 26 June 2014 in Case M.7202 – *Lenovo/Motorola Mobility*, paragraph 14.

³⁹⁶ Commission decision of 26 June 2014 in Case M.7202 – *Lenovo/Motorola Mobility*, paragraph 15.

³⁹⁷ See Commission decision of 18 July 2018 in Case AT.40099 – *Google Android*, paragraph 77.

³⁹⁸ As explained in footnote 4, this includes for the purposes of this Decision iPadOS which was introduced in 2019 as a derivation of iOS for Apple’s iPads.

³⁹⁹ Blackberry stopped supporting mobile devices using its operating system as of 4 January 2022 (see <https://www.blackberry.com/us/en/support/devices/end-of-life>, accessed on 29 April 2022, ID 2344). Windows ended support to its last mobile operating system (Windows 10 Mobile) on 10 December 2019 (see <https://support.microsoft.com/en-us/windows/windows-10-mobile-end-of-support-faq-8c2dd1cf-a571-00f0-0881-bb83926d05c5>, accessed on 29 April 2022, ID 2345). Nokia announced in 2011 that it would stop using Symbian as its mobile operating system in favour of Windows Phone (see <https://www.zdnet.com/article/android-before-android-the-long-strange-history-of-symbian-and-why-it-matters-for-nokias-future/>, accessed on 29 April 2022, ID 2346).

⁴⁰⁰ See <https://gs.statcounter.com/os-market-share/mobile-tablet/worldwide/#monthly-201501-202201>, accessed on 24 January 2022, ID 2309.

⁴⁰¹ See Commission decision of 18 July 2018 in Case AT.40099 – *Google Android*, paragraph 83.

⁴⁰² Basic phone is a category of mobile phone only capable of voice calling and text messaging. Feature phone is a category of mobile phones that adds minimal smartphone features to those of a basic phone, such as rudimentary web browsing capabilities.

⁴⁰³ In particular Commission decision of 13 February 2012 in Case M.6381 – *Google/Motorola Mobility* and Commission decision of 4 December 2013 in Case M.7047 – *Microsoft/Nokia*.

8.1.3.1.1. Demand side substitution

- (251) In Case M.7047 – *Microsoft/Nokia*, the Commission took the view that basic and feature phones, on the one hand, and smart mobile devices, on the other hand, belong to separate product markets.⁴⁰⁴ In the course of the investigation of that case, market participants had indicated that they do not consider these products as substitutable from a demand-side perspective, because, among other reasons, when compared to smart mobile devices, basic and feature phones have less advanced hardware components and connectivity services, and offer a limited choice of downloadable applications. Similarly, in Case AT.40099 – *Google Android*, the Commission found that from a technical perspective, feature phones and smart mobile devices use different, incompatible operating systems. Basic and feature phone OSs cannot be installed on smart mobile devices because of their reduced functionalities. For instance, feature phones do not allow the installation of applications, which is a defining characteristic of smartphones.⁴⁰⁵
- (252) With respect to a potential differentiation between smart mobile phones and tablets, the Commission left open whether there is a single market for smart mobile devices or whether there are separate markets for smartphones and tablets.⁴⁰⁶ From a demand-side perspective they may not be fully interchangeable as smartphones offer certain functionalities such as the ability to make phone calls that are not available for tablets, while tablets may be used more for other purposes such as watching videos. On the other hand, smartphones and tablets typically run on the same mobile operating system providing a lot of similar functionalities, despite some differences in use cases.⁴⁰⁷ As the same apps, including a variety of pre-installed apps, are typically available for both smartphones and tablets, a lot of the potential use cases for the two types of devices are the same.
- (253) In Case M.7047 – *Microsoft/Nokia* the Commission considered that apps for tablets are comparable in terms of features, functionality and price with those for smartphones and most apps are developed for both types of devices, while some of them are customised or configured differently because of the size of the device (smartphone or tablet). According to the decision, app developers create apps, which are designed to operate both on smartphones and tablets in case they run the same OS.
- (254) Music streaming service providers have indicated that they typically develop the same app for iPhones as for iPads (with only minor differences in functionalities between the apps) and that the apps for both devices are reviewed as one by the App Store Review Team.⁴⁰⁸ The relevant rules for third-party developers which are subject to the investigation are the same for iPhones and iPads.⁴⁰⁹ None of the music streaming service providers which provided information during the investigation indicated a need to differentiate between smartphones and tablets. Neither did Apple in its Response to the Statement of Objections of 28 February 2023 or its Response to the Letter of Facts.

⁴⁰⁴ Commission decision of 4 December 2013 in Case M.7047 – *Microsoft/Nokia*, paragraphs 15 and 18.

⁴⁰⁵ Commission decision of 18 July 2018 in Case AT.40099 – *Google Android*, paragraph 228.

⁴⁰⁶ Commission decision of 4 December 2013 in Case M.7047 – *Microsoft/Nokia*, paragraph 16.

⁴⁰⁷ Commission decision of 18 July 2018 in Case AT.40099 – *Google Android*, paragraph 232.

⁴⁰⁸ Spotify's response to question 1 of the Commission's request for information (2020/147746), ID 1447.

⁴⁰⁹ Apple's response to question 1 of the Commission's request for information (2020/146914), ID 1194.

8.1.3.1.2. Supply side substitution

- (255) From a supply side perspective, basic and feature phones have also been considered to belong to different product markets in the past. In Case AT.40099 – *Google Android*, the Commission considered that the differences in functionalities between these types of devices means that the development of a smart mobile operating system requires significant time and resources, regardless of whether the developer had already developed a basic or a feature phone OS.⁴¹⁰
- (256) Smartphones and tablets, however, were in past decisions considered by many market players as comparable to one another in terms of technical characteristics (OS, hardware requirements) and for certain functionalities (web browsing, email access, watching videos, games, maps, etc.).⁴¹¹ In Case AT.40099 – *Google Android*, which looked at the market from the perspective of OEMs, the Commission found that all main operating system developers either used the same operating system to power smartphones and tablets, or easily adjusted a smartphone operating system to allow it to run on a tablet.⁴¹²
- (257) These considerations are still valid. Apple’s App Store provides access to both users of iPhones and users of iPads and these devices were for a long time running on the same mobile operating system (iOS)⁴¹³ and only recently a slightly modified operating system was introduced for the iPad (iPadOS).⁴¹⁴

8.1.3.2. The geographic scope of the market

- (258) In previous decisions, the Commission considered that the relevant geographic market for smart mobile devices was at least EEA-wide, if not worldwide, in scope.⁴¹⁵ The investigation in the present case did not provide any indication that would justify deviating from this analysis.⁴¹⁶

8.1.3.3. Conclusion on the relevant market

- (259) The Commission therefore takes the view that for the purposes of this Decision, which concerns potential market power vis-à-vis app developers, there is no need to consider separate product markets for different types of smart mobile devices (i.e., smartphones and tablets) and that the relevant geographic market is at least EEA-wide.

⁴¹⁰ Commission decision of 18 July 2018 in Case AT.40099 – *Google Android*, paragraph 229.

⁴¹¹ Commission decision of 4 December 2013 in Case M.7047 – *Microsoft/Nokia*, paragraphs 16 and 19.

⁴¹² Commission decision of 18 July 2018 in Case AT.40099 – *Google Android*, paragraph 233.

⁴¹³ Indeed, in Commission decision of 18 July 2018 in Case AT.40099 – *Google Android*, Apple had confirmed that “*Apple had developed and implemented a single operating system for both its iPhone and its iPad products. There are no significant differences from Apple’s perspective.*” Commission decision of 18 July 2018 in Case AT.40099 – *Google Android*, paragraph 233.

⁴¹⁴ The iPadOS was first announced at Apple’s 2019 Worldwide Developer Conference (WWDC) as a derivation from iOS. Already prior to such announcement, iPhones and iPads were running on two separate versions of iOS. The iPad version of iOS was optimised taking into account the use of Apple Pencil, the bigger screen size, the more frequent use of keyboards, etc. As those differences were growing in significance, the iPad version of iOS was rebranded as iPadOS as of 2019. See Apple’s response to question 1, letter e) of the Commission’s request for information (2020/146914), ID 1194.

⁴¹⁵ Commission decision of 4 December 2013 in Case M.7047 – *Microsoft/Nokia*, paragraph 72; Commission decision of 13 February 2012 in Case M.6381 – *Google/Motorola* Mobility, paragraphs 43 to 47; and Commission decision of 2 July 2008 in Case M.4942 – *Nokia/Navteq*, paragraph 140.

⁴¹⁶ Apple operates the same mobile OSs (iOS and since 2019 iPadOS) throughout the EEA and music streaming service providers did not indicate a reason to differentiate in this respect between different contracting parties to the EEA agreement.

8.1.4. *Market for the provision to developers of platforms for the distribution of music streaming apps to iOS users*

(260) The Commission considers that the relevant product market is the market for the provision to developers of platforms for the distribution of music streaming apps to iOS users.

8.1.4.1. The relevant product market

8.1.4.1.1. The Commission's position

(261) App distribution platforms or “app stores” such as Apple’s App Store for iOS devices are digital distribution platforms that serve as gateways for developers that wish to distribute their apps to users of the smart mobile device. Similarly, through app stores, users are enabled to download, install and manage a wide range of diverse apps from typically a single point in the interface of the smartphone.⁴¹⁷ App stores are two-sided platforms that intermediate transactions between two distinct groups of users: (i) developers that use the app store as a platform to distribute their apps to consumers and (ii) consumers that search for apps in order to download them, potentially against the payment of a price, on their smart mobile devices. The app store provides the infrastructure that facilitates transactions between the two user groups. It exhibits indirect network effects as developers benefit from an increase in the number of consumers and consumers benefit the more developers distribute their apps in the respective app store. The providers of app stores determine the criteria for accepting apps to the app stores, which include the conditions under which developers can sell digital content or services within their apps, as well as all aspects of the operation of the app stores, including the ranking of apps, the app review process and the advertising services provided to app developers.

(262) In Case AT.40099 – *Google Android*, the Commission concluded that other apps do not belong to the same product market as app stores, that app stores for the Android mobile operating system constitute a separate relevant product market and that app stores for non-licensable smart mobile operating systems (such as iOS) do not belong to the same product market as app stores for Android devices.⁴¹⁸ That Commission decision looked at the market from the perspective of OEMs of smart mobile devices which need to license smart mobile operating system for their devices. It did not focus in its analysis of the market on the perspective of developers that want to distribute apps to users of smart mobile devices.

(263) The Commission considers that the relevant product market in this case is the market in which Apple offers developers of music streaming apps a platform for the distribution of their apps to iOS users, i.e., the developer facing side of the App Store.

(264) The consumer facing side of the App Store is another separate, although interlinked, market. The services offered, the prices to be paid and the terms and conditions differ considerably between the two sides of the platform.

⁴¹⁷ Commission decision of 18 July 2018 in Case AT.40099 – *Google Android*, paragraph 86.

⁴¹⁸ Commission decision of 18 July 2018 in Case AT.40099 – *Google Android*, paragraph 268 et seq. This definition has been confirmed by the General Court in Case T-604/18 *Google Android*, EU:T:2022:541, see e.g., paragraphs 161 and 222.

- (265) Developers that wish to distribute their apps through the App Store must enrol in the Apple Developer Program and pay an annual fee of USD 99⁴¹⁹. They must agree to Apple’s standard, non-negotiable License Agreement and the Guidelines. The License Agreement sets out the terms under which Apple grants developers a limited license to use the Apple software and services to develop and test their applications and use specific Apple software (e.g., its Software Development Kits or SDKs). Apps meeting Apple’s documentation and program requirements (as set out under the License Agreement) may be submitted to Apple to be reviewed and for beta-testing.
- (266) The License agreement also contains details regarding the use of Apple’s Application Programming interfaces (APIs), including the so-called In-app Purchase API.⁴²⁰ It specifies that all use of Apple’s “In-App Purchase API” must be in accordance with the License Agreement.⁴²¹ Section 3.3.3 provides: “*Without Apple’s prior written approval or as permitted under Section 3.3.25 (In-App Purchase API), an Application may not provide, unlock or enable additional features or functionality through distribution mechanisms other than the App Store, Custom App Distribution or TestFlight.*” Schedule 2 to the License Agreement contains additional rules, which apply to apps offering paid digital content or functionality. According to these rules, the In-App Purchase API may only be used to enable end-users to access or receive content, functionality, or services made available for use within an app (e.g., digital books, additional game levels, access to a turn-by-turn map service). It may not be used to offer goods or services to be used outside of the app.
- (267) App developers must submit to Apple for review and approval all content, functionality, or services that app developers plan to provide through the use of the In-App Purchase API and they are prevented from using Apple’s in-app purchase system to enable an end-user to set up a pre-paid account to be used for subsequent purchases of content, functionality, or services, or otherwise create balances or credits that end-users can redeem or use to make purchases at a later time.
- (268) The Guidelines define detailed conditions that apps must meet to be eligible for inclusion in the App Store. Distribution of free apps (with free content) is subject to the standard License Agreement only, whereas apps which are offered for a fee or which offer fee-based content (through the use of the In-App Purchase API) are additionally subject to a separate agreement with Apple called Schedule 2.⁴²² Schedule 2 requires developers to appoint Apple Distribution International Limited as a commissionaire for the distribution of apps (and digital content sold within those apps), the sale⁴²³ of which entitles Apple to a commission of 30 % of the price paid by end users (in the case of auto-renewing subscriptions this fee is reduced to 15 % after one year of paid subscription).⁴²⁴
- (269) Consumers that use Apple’s App Store are covered by different contracts, notably the Apple Media Services Terms and Conditions as well as Apple’s end user license

⁴¹⁹ Unless Apple waives the fee for the developer in question.

⁴²⁰ According to the License Agreement, this means the documented API, which enables additional content, functionality or services to be delivered or made available for use within an application with or without an additional fee, see License Agreement, ID 3015.

⁴²¹ Section 3.3.25 of the License Agreement, ID 3015.

⁴²² Schedule 2 to the License Agreement, ID 3028.

⁴²³ Technically, the end user obtains a license to use the respective app.

⁴²⁴ Sections 1.1 and 3.4 (a) of Schedule 2 to the License Agreement, ID 3028.

agreement (EULA).⁴²⁵ According to Section 4.1 of Schedule 2 to the License Agreement, Apple does not obtain any ownership in the apps and consumers typically obtain end user licenses directly from the developers unless the developer decides not to furnish its own end user license agreement (see Section 4.2 of Schedule 2).

- (270) There are thus two different user groups on the two sides of the platform - developers and end users - to which different services at different prices are provided based on different contractual relationships with Apple. A developer cannot use the service offered by Apple under its end user agreements and an end user cannot use the services of Apple under the License Agreement.
- (271) Moreover, demand considerations on the two sides of the App Store differ. Whereas end users typically use either an Android or an Apple smart mobile device, with a corresponding app store pre-installed and therefore single-home, developers that wish to offer their apps to the users of the two relevant smart mobile OS, which together represent close to 100 % of active smart mobile device users, need to multi-home, and offer their apps on both iOS and Android.⁴²⁶ While a consumer can in principle – and subject to monetary and non-monetary switching costs – consider switching away to a smart mobile device with a different app store,⁴²⁷ delisting an app from the App Store is not a credible option for a developer of a music streaming app as it would mean losing access to more than [...] ⁴²⁸ users of smartphones and more than [...] ⁴²⁹ users of tablets in the EEA.
- (272) The Commission therefore concludes that the two sides of the platform constitute separate markets where the developer facing side is distinct from the consumer facing side. The prices and conditions Apple applies, the competitive constraints and the substitution patterns differ between these two sides of the App Store. The

⁴²⁵ Apple’s response to question 14 of the Commission’s request for information (2019/050361), ID 268-1. This contract applies to all media products accessed through Apple’s services and is thus not limited to the App Store. The Terms and Conditions vary slightly by country based on local law and can be found at <https://www.apple.com/legal/internet-services/itunes/>, accessed on 11 December 2020, ID 1061. For the EULA see <https://www.apple.com/legal/internet-services/itunes/dev/stdeula/>, accessed on 12 January 2022, ID 2209.

⁴²⁶ See further in Section 8.1.4.1.3 on the substitutability of iOS and Android from the perspective of music streaming app providers as well as for example the “Mobile ecosystems market study final report” of the Competition and Markets Authority (CMA), pages 121 et seq., ID 2431, accessed on 14 June 2022. While in general app developers, and in particular large and successful app developers, strive to be present on both smart mobile ecosystems, there are differences in the range and prices of apps on Android and iOS. In particular, there is a share of apps that is available in one smart mobile operating system only. This can be seen in the number of total apps available in the Google Play Store (which offers more than 3 million apps) and the App Store (which offers more than 2 million apps), ID2415, accessed on 10 December 2021. Also, certain Apple proprietary apps such as the Safari browser or FaceTime are not available on Android. See also <https://www.pcmag.com/news/the-best-ios-only-apps>, accessed on 29 April 2022, ID 2343, listing 14 third-party iOS apps not available on Android. Finally, app prices and in-app purchase conditions may differ for the same app on iOS and Android.

⁴²⁷ On the difficulties of switching by consumers, see Section 8.2.2.5.2.1.

⁴²⁸ The figure is based on forecasted figures provided by Apple for the installed iOS smartphone base in the EEA in 2022, ID 2992. It excludes the installed base for the UK which is estimated to be more than 26 million users as well as Republic of Cyprus, Iceland, Liechtenstein, and Malta for which Apple claimed to have no data.

⁴²⁹ Figure based on forecasted figures provided by Apple for the installed iOS tablet base in the EEA in 2022 (excluding not only UK with an installed base of more than [...] users, but also Bulgaria, Croatia, Republic of Cyprus, Estonia, Iceland, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Romania, Slovakia, Slovenia, for which Apple claimed to have no data), ID 2993.

question whether developers have viable alternatives to the App Store requires a different analysis than the question whether consumers have alternatives.

- (273) This case concerns the Anti-Steering Provisions that Apple applies vis-à-vis developers, which offer their music streaming apps to iOS users. It is precisely on this side of the two-sided platform where Apple holds significant market power. The Commission therefore analysed demand and supply side substitutability from the perspective of developers of music streaming apps. Potential constraints from the consumer facing side of the platform on Apple's market power vis-à-vis developers have been taken into account in Section 8.2.2.5.
- (274) Moreover, as this Decision concerns the conditions for the distribution of music streaming apps, it focuses on a subset of apps available for iOS devices. At present, there are 1.8 million apps available worldwide for download in the App Store.⁴³⁰ Apple can and does apply different App Store conditions to different categories of apps. For example, Apple does not charge any fee beyond the Apple Developer Program fee of USD 99 to developers of apps that finance themselves through advertising, such as Facebook, or which relate to the sale of goods or services that are consumed outside of the app, such as eBay or Deliveroo, whereas it charges a 30 % / 15 % commission fee for all apps that sell digital content or services to be consumed within the app. As this Decision analyses Apple's practices related to the distribution of music streaming apps, the analysis of the relevant market is conducted from the perspective of developers of music streaming apps, although the underlying considerations may not necessarily differ depending on the type of apps, given that the App Store is the only conduit through which native apps can be distributed to iOS users and that all developers that wish to sell native apps to iOS users have to do so through Apple's App Store.

8.1.4.1.2. Assessment of Apple's arguments

- (275) In its Responses to the Statement of Objections of 28 February 2023 and to the Letter of Facts, Apple submits that the Commission wrongly focuses on app distribution and fails to identify the relevant market for assessing Apple's conduct. According to Apple, the relevant market would be the market for the sale of music streaming subscription, which would include the purchases of subscriptions not only via IAP but also outside of the apps.⁴³¹
- (276) The Commission disagrees with this view and considers that the relevant market in this case is the market for the provision to developers of platforms for the distribution of music streaming apps to iOS users.
- (277) In its Responses to the Statement of Objections of 28 February 2023 and to the Letter of Facts, Apple has not addressed the issue of substitutability of other channels from a music streaming service provider perspective. As explained in Section 8.1.4.1.3, there is a separate demand of music streaming service providers to distribute their apps on the App Store from that of selling music streaming subscriptions. Music streaming service providers need to offer a native app to users irrespective of where

⁴³⁰ See <https://www.apple.com/app-store/>, accessed on 16 November 2023, ID 3201.

⁴³¹ Apple's Response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 124 to 129, and Apple's Response to the Letter of Facts, ID 3330, paragraphs 173 to 178. Apple had brought similar arguments in its Response to the Statement of Objections of 30 April 2021, ID 2165, which it still considers applicable (see Apple's Response to the Statement of Objections of 28 February 2023, ID 2800, footnote 160).

those users have purchased the subscription and irrespective of whether they offer premium subscriptions in their app or not, as smart mobile devices constitute by far the most important means of consumption of music streaming services. Moreover, as explained below, music streaming service providers must also distribute their app on each of the two main operating systems for smart mobile devices and there are no alternative channels to Apple’s App Store to distribute their music streaming apps to iOS users. Therefore, alternative channels for the sale of subscriptions cannot substitute the distribution of native apps to iOS users from the music streaming service providers’ perspective.

8.1.4.1.3. Demand side substitution

- (278) The market investigation showed that it is not commercially viable for providers of music streaming services to offer their services without having a native app which users can download and install on their smart mobile devices.
- (279) While consumers can stream music on a number of different devices ranging from desktops to certain hardware such as smart speakers, smart watches, smart TVs, cars, etc., smart mobile devices and in particular smartphones constitute by far the most important device for the consumption of streamed music. Spotify estimated that the percentage of its global monthly active users (“MAUs”) accessing its music streaming services with at least one stream on the corresponding platform was as follows: [80-90] % via mobile; [10-20] % via desktop; [10-20] % via tablet; [0-10] % via speakers and [0-10] % via other channels.⁴³² SoundCloud explains: “*Users of smart mobile devices account for approximately 85 % of our logged-in users*”⁴³³ and 88 % of total listening activity of SoundCloud users measured across all territories in which it is active took place in native apps for iOS and Android.⁴³⁴ 94 % of the activity of the users of Napster’s music streaming service is related to its mobile app, whereas only 6 % of activity takes place through other channels such as smart speakers, Smart TVs or PCs.⁴³⁵ For Apple Music, in 2022 [...] of music streaming activity took place via smart mobile devices compared to [...] in desktop products and [...] in other channels (including voice assistants, connected TVs, cars, connected sound systems wearables and other devices).⁴³⁶ The only provider of music streaming services for whom smart mobile devices were not the most important channel of music consumption (but still a very important channel) was Amazon, as the majority of consumption of its music streaming offer takes place via other channels than mobile or desktop, which can be explained by the popularity of Amazon’s proprietary products such as its Echo smart speakers and Fire TV.⁴³⁷
- (280) Music streaming consumption on smart mobile devices takes place almost entirely in native apps. The mobile browser or browser-based streaming solutions such as web-based apps do not play any relevant role for the consumption of music streaming on

⁴³² [...].

⁴³³ SoundCloud’s response to question 6 of the Commission’s request for information (2019/048728), ID 1369.

⁴³⁴ SoundCloud’s response to question 7 of the Commission’s request for information (2019/048728), ID 1369.

⁴³⁵ Napster’s response to question 7 of the Commission’s request for information (2019/048724), ID 1345.

⁴³⁶ Apple’s response to question 11 of the Commission’s request for information of 3 August 2023, ID 3007.

⁴³⁷ Amazon’s response to question 7 of the Commission’s request for information (2019/048673), ID 1336.

mobile devices. Web-based apps⁴³⁸ are programs that communicate with the user via http (hypertext transfer protocol) without accessing the mobile OS. HTTP is the protocol typically used by web servers and browsers to communicate. Web-based apps are accessible through the browser like a regular webpage, but typically offer more opportunities for interaction with the device's functionalities and a better mobile experience than an ordinary website.⁴³⁹ They are typically only usable with an active internet connection. For a number of technical reasons web-based apps are inferior to native apps. They have fewer options for unique functions (e.g., cannot access the hardware of a device such as a camera), are not saved on the device and in the case of iOS cannot be accessed offline.⁴⁴⁰ Web-based apps are also lacking a central distribution point where consumers could find apps and access them.⁴⁴¹

- (281) The Commission's investigation showed that web-based apps or other browser-based solutions are not an alternative for providers of music streaming services that could replace a native app. Native apps are considered to be faster and more responsive than web-based apps, allowing also offline audio streaming functionalities which are typically a key feature of premium (paid) music streaming services.⁴⁴²
- (282) For Apple Music which offers browser-based streaming of its service on iOS devices since 2019, only less than [...] of users in the EEA have elected to make use of this possibility.⁴⁴³
- (283) Information provided by Spotify showed that its browser-based mobile web player which was introduced in 2018 only plays a minimal role [0-10] % for the consumption of music on smart mobile devices whereas the large majority takes place in Spotify's native smartphone app [80-90] %.⁴⁴⁴
- (284) As Amazon explains, "*web-based app have a number of limitations including that they are slower, less interactive and less intuitive than native apps at this time. For example, it would not be possible today for customers to download music for offline use from a web-based app.*"⁴⁴⁵ Accordingly, Amazon does not offer its music streaming services via a mobile browser due to the poor functionality.⁴⁴⁶
- (285) Deezer who is one of the music streaming service providers which offers a web-based app in addition to its native app explains that "*the volume of our web-based mobile app users is negligible compared to the app one in EEA. Usage is*

⁴³⁸ More advanced web-based apps which offer some additional functionalities compared to traditional web apps are also referred to as "Progressive web apps".

⁴³⁹ See ACM "Market study into mobile app stores", accessed on 12 November 2020, ID 886, page 43/109.

⁴⁴⁰ See ACM "Market study into mobile app stores", accessed on 12 November 2020, ID 886, page 42-43/109.

⁴⁴¹ See ACM "Market study into mobile app stores", accessed on 12 November 2020, ID 886, page 42-43/109.

⁴⁴² See Spotify's response to question 11 of the Commission's request for information (2020/002646), ID 1431-2; SoundCloud's response to question 8 of the Commission's request for information (2020/029332), ID 1370; Napster's response to question 19 of the Commission's request for information (2019/048724), ID 1345.

⁴⁴³ See response by Apple to question 28 of the Commission's request for information (2022/004722), ID 2232.

⁴⁴⁴ Spotify response to question 2 of Commission's request for information of 25 September 2023, ID 3097, for the 30-day period until 31 December 2022.

⁴⁴⁵ See Amazon's response to question 19 of the Commission's request for information (2019/048673), ID 1336.

⁴⁴⁶ Amazon's response to question 19 of the Commission's request for information (2019/048673), ID 1336.

*concentrated on the App Store. According to us, a distribution of a web-based app is not an alternative.*⁴⁴⁷ Between 2015 and 2018 consistently more than 99 % of Deezer’s subscribers (free and premium) using streaming services via mobile devices (incl. tablet) did so via the (native) mobile app and less than 1 % via the mobile browser.⁴⁴⁸

- (286) Napster does not offer a browser-based streaming solution and all mobile streaming takes place through native apps.⁴⁴⁹ Napster explains in its response that *“Users are accustomed to using apps to access subscription services. We would be at an impossible competitive disadvantage if we did not offer an iOS app. Over 90 % of use of the Napster service is through apps. If we stopped offering the iOS app, a web-browser solution would not be an adequate substitute. If Napster did not offer an iOS app, it would also impact our ability to seek and maintain distribution partnerships with Telco operators (e.g. SFR and Telefonica), and to win new business for our services division.”*⁴⁵⁰
- (287) SoundCloud indicated that it does not offer a logged-in browser-based solution for listening to its services on mobile devices⁴⁵¹, so that all mobile consumption by its subscribers is through the native app.
- (288) Web-based apps are typically also inferior to native apps beyond the specific segment of music streaming apps because of their more limited functionalities. Indeed, Apple itself does not consider an app offering functionality similar to that of a webpage as worthy of getting accepted to the App Store; see 4.2 of the Guidelines: *“Your app should include features, content, and UI that elevate it beyond a repackaged website. If your app is not particularly useful, unique, or “app-like”, it doesn’t belong on the App Store”*.
- (289) Providers of music streaming services cannot use alternative channels to Apple’s App Store to distribute their music streaming apps to iOS users.
- (290) Apple’s App Store is the only app store on iOS devices. Apple does not allow native apps to be downloaded for iOS devices via alternative app stores than the App Store which music streaming service providers could turn to in order to distribute their apps to iOS users. According to Section 3.2.2. of the Guidelines, it is prohibited to create *“an interface for displaying third-party apps, extensions, or plug-ins similar to the App Store or as a general-interest collection”*.⁴⁵²
- (291) Apps which have been developed for Google’s Android mobile operating system do not work on iOS devices, as they have been developed for use on Android with the ability to use device-specific hardware and software.⁴⁵³

⁴⁴⁷ Deezer’s response to question 6 and 19 of the Commission’s request for information (2019/048643), ID 1377.

⁴⁴⁸ Deezer’s response to question 6 and 19 of the Commission’s request for information (2019/048643), ID 1377.

⁴⁴⁹ Napster’s response to question 6 of the Commission’s request for information (2019/048724), ID 1345.

⁴⁵⁰ Napster’s response to question 19 of the Commission’s request for information (2019/048724), ID 1345.

⁴⁵¹ SoundCloud’s response to question 6 of the Commission’s request for information (2019/048728), ID 1369.

⁴⁵² See Section 3.2.2. of the current Guidelines in ID 3011. See also ACM “Market study into mobile app stores”, accessed on 12 November 2020, ID 886, page 21/109.

⁴⁵³ See <https://www.macworld.co.uk/how-to/android-apps-iphone-3671745/>, accessed on 3 February 2021, ID 1226.

- (292) Sideloaded apps is not a viable alternative for iOS users to the App Store. Sideloaded refers to the practice of downloading software on a smart mobile device without using the official distribution channel. For iOS devices, it requires “jailbreaking” the mobile operating system which is only possible for somebody with sophisticated hacking skills.⁴⁵⁴ Apple strongly advises against it and considers it a violation of the iOS end-user software license agreement and denies service for an iPhone or iPad that has installed any unauthorised software by way of jailbreaking.⁴⁵⁵ Sideloaded is therefore not an option for developers to distribute their apps at a meaningful scale to iOS users.
- (293) Also, pre-installation is not a viable alternative for developers to reach iOS users, as Apple restricts pre-installation to its own apps and does not pre-install third-party apps.
- (294) The Commission also preliminarily considers that the distribution of apps via app stores on other smart mobile OS, in particular on the Google Play Store as the major app store available for Android, is not a substitute from the perspective of developers of music streaming apps and therefore does not form part of the relevant product market.
- (295) As smart mobile device users tend to use only one single device and the use of multiple smart mobile devices running on different smart mobile operating system to access music streaming services by end-users is rare, music streaming service providers have no choice but to multi-home and offer their apps on both relevant mobile OS, i.e., iOS and Android. These findings are confirmed by the following evidence.
- (296) First, [...].⁴⁵⁶ [...].
- (297) Second, Amazon provided internal data showing that only [≤ 10 %] of the users of its music services tend to use both an iOS and Android device to access the service within a month. The vast majority of users ([70-80 %]) use a single operating system to access the service.⁴⁵⁷ Amazon added that “*Not being present in the Apple App Store would limit the options Amazon has to serve customers and potential customers who only use iOS...Not having an iOS app would make Amazon less competitive as some customers would not accept a service without one.*”⁴⁵⁸ This shows that the large majority of Amazon’s users do not use both iOS and Android based devices. In the same vein, Napster indicated that in the EEA, 86 % of their users access the Napster service on a single device, while only 14 % of its users used two or more devices.⁴⁵⁹

⁴⁵⁴ Lorenzo Franceschi-Bicchierai and Brian Merchant, “The Life, Death, and Legacy of iPhone Jailbreaking”, Vice, 28 June 2017, available at https://www.vice.com/en_us/article/8xa4ka/iphone-jailbreak-life-death-legacy, accessed on 15 January 2021, ID 1128.

⁴⁵⁵ See <https://support.apple.com/en-us/HT201954>, accessed on 16 December 2020, ID 1079.

⁴⁵⁶ [...].

⁴⁵⁷ Amazon’s response to question 15 of the Commission’s request for information (2019/048673), ID 1336.

⁴⁵⁸ Amazon’s response to question 11 of the Commission’s request for information (2019/048673), ID 1336.

⁴⁵⁹ Napster’s response to question 5 of the Commission’s request for information (2020/029321), ID 1344 and to question 15 of the Commission’s request for information (2019/048724), ID 1345.

- (298) Third, the most popular apps (except the majority of Apple’s proprietary apps) are typically available on both Android and iOS.⁴⁶⁰ Since smart mobile device users single-home, developers need to multi-home on both smart mobile OS. They cannot simply delist apps on the App Store (or the Google Play Store) to divert business to the other because this would lead to the loss of access to the entire user group of the smart mobile OS. It also means that they would not stop offering an app on one of the two main smart mobile operating system (iOS and Android) simply because it becomes relatively less successful.
- (299) Fourth, the CMA found in its Mobile ecosystems market study final report of June 2022 that users generally do not have both an iOS and an Android device and for the UK, “80 % of users appear to only use one smartphone and evidence suggests that even when users are purchasing an additional smartphone rather than replacing their existing one, it is normally one using the same operating system” and that ownership across smart mobile operating system when considering smartphones and tablet appears to be still very low.⁴⁶¹
- (300) As only few customers multi-home at the smart mobile operating system level, and as the App Store is the only available app store for iOS devices, it has become the access point to iOS users. App stores available for Android devices cannot be considered as alternative means of accessing the same market.⁴⁶² Whilst the two main app store operators may compete to some extent with one another for consumers at the level of smart mobile devices, developers must be present in both app stores or be limited to a subsection of the market. The App Store therefore allows – from a developers perspective – access to an entirely different customer group than the Google Play Store. Any switch of a developer to an alternative smart mobile operating system would involve losing access to iOS users.
- (301) It is noteworthy that despite having faced an additional 30 % costs (during the first year of subscription) for in-app subscriptions distributed to iOS users compared to Play Store users on Android devices (which for a long time tolerated web-based checkout mechanism), none of the music streaming service providers in the EEA decided to limit the availability of their music streaming apps to Android users only.⁴⁶³ This shows in itself that developers of music streaming apps could not react

⁴⁶⁰ See in particular “Mobile ecosystems market study final report” of the Competition and Markets Authority (CMA), accessed on 14 June 2022, ID 2431, page 121: “we have estimated that 85% of the top 5,000 apps on the App Store also list on the Play Store and vice-versa” and “Apple told us that popular and successful app developers almost universally choose to multi-home, that is, make their apps available on both Android and Apple devices”. See also Commission decision of 18 July 2018 in Case AT.40099 – Google Android, paragraph 303 according to which “app developer generally multi-home between the Play Store and the App Store and do not need to switch away from Google Android” and paragraph 555.

⁴⁶¹ See with further evidence “Mobile ecosystems market study final report” of the Competition and Markets Authority (CMA), accessed on 14 June 2022, ID 2431, page 41.

⁴⁶² As the Netherlands Authority for Consumers & Markets puts it in the ACM “Market study into mobile app stores”, accessed on 12 November 2020, ID 886, page 52/109: “Multi-homing is important for most app providers, because the app provider can reach over 99 % of all smartphone users when their app is submitted in both the Play Store and the App Store. If they offer their app only for a single app-ecosystem, they miss out on a very important part of their potential audience. In fact, they miss out on a whole market since Android users are different from iOS users, they could be viewed as separate markets.”

⁴⁶³ Only Spotify and Google Play Music decided to disable in-app purchase via IAP and to rely on the possibility of iOS users to subscribe elsewhere than in the iOS app. This shows that at most, developers can decide to disable in-app subscriptions, for example if they have a strong brand name or if they have

to significant price differences simply by switching app distribution to Android devices.

- (302) The investigation carried out in the present case has indicated that it is not an option for music streaming service providers – all of which offer native apps for both iOS devices as well as for Android devices – to delist their apps from the App Store and offer an app for Android devices only as it is of primary commercial importance for them to be present on both iOS and Android OS.⁴⁶⁴ As Napster puts it: *“Yes, the Napster service is necessarily available on both the iOS and Android platforms. Availability on both platforms is an absolute requirement for the service, because all other services are available on both platforms. Our users are split 40/60 in favour of Android, but we could risk losing at least the 40 % of customers if we could not offer the iOS app.”*⁴⁶⁵ Deezer explains: *“Deezer streaming services are mostly used via an app for mobile device. Therefore, we must allow our users to access the services via an app for mobile device regardless of the type of OS run by their mobile device. The mobile market being significantly shared between iOS and Android, we have no choice but to offer music streaming apps on both iOS and Android. Both iOS and Android are the main gateways to access to the consumers.”*⁴⁶⁶ In the same vein, Qobuz explains: *“We offer our service on both iOS and Android. Given the dominance of these 2 systems, it is not possible not to be present on either iOS neither Android.”*⁴⁶⁷
- (303) Spotify explains the necessity for a provider of music streaming services to multi-home on both mobile OSs in the following way: *“the primary mode of audio streaming consumption is through mobile devices (both Android and iOS). Maximising access to users on their mobile devices is therefore critical for audio/music streaming providers. In addition, for the reasons listed below, it is vital for music streaming services to be present on both iOS and Android in order to gain scale. In Spotify’s experience, iOS and Android users are distinct groups of users who can only be reached on the iOS and the Android platform respectively, for the following reasons:*
- (a) First, as Spotify has noted previously, users typically use a single mobile platform (single homing).
 - (b) Second, users show a significant degree of loyalty towards their existing smart mobile OS. In Case AT.40099 – *Google Android*, the Commission cited

privileged access to customers through their own platform, but they cannot avoid having an app for iOS devices.

⁴⁶⁴ See Spotify’s response to questions 14 and 15 of the Commission’s request for information (2020/002646), ID 1431-2; SoundCloud’s response to question 11 of the Commission’s request for information (2019/048728), ID 1369; Napster’s response to question 11 of the Commission’s request for information (2019/048724), ID 1345; Deezer’s response to question 11 of the Commission’s request for information (2019/048643), ID 1377; Amazon’s response to question 11 of the Commission’s request for information (2019/048673), ID 1336; Google’s responses (for Google Play Music and YouTube Music to question 11 of the Commission’s request for information (2019/048734) and request for information (2019/048689), IDs 1357 and 1356; Qobuz’s response to question 11 of the Commission’s request for information (2019/110473), ID 497.

For Tidal, who has not provided information to the Commission in the course of the investigation, see <https://offer.tidal.com/download?lang=de>, accessed on 16 December 2020, ID 1030.

⁴⁶⁵ Napster’s response to question 11 of the Commission’s request for information (2019/048724), ID 1345.

⁴⁶⁶ Deezer’s response to question 11 of the Commission’s request for information (2019/048643), ID 1377.

⁴⁶⁷ Qobuz’s response to question 11 the Commission’s request for information (2019/110473), ID 497.

research estimating that in 2015, 82 % of Google Android smartphone users purchasing a new smartphone decided to purchase a Google Android device. The equivalent figure for iOS users was 78 %.

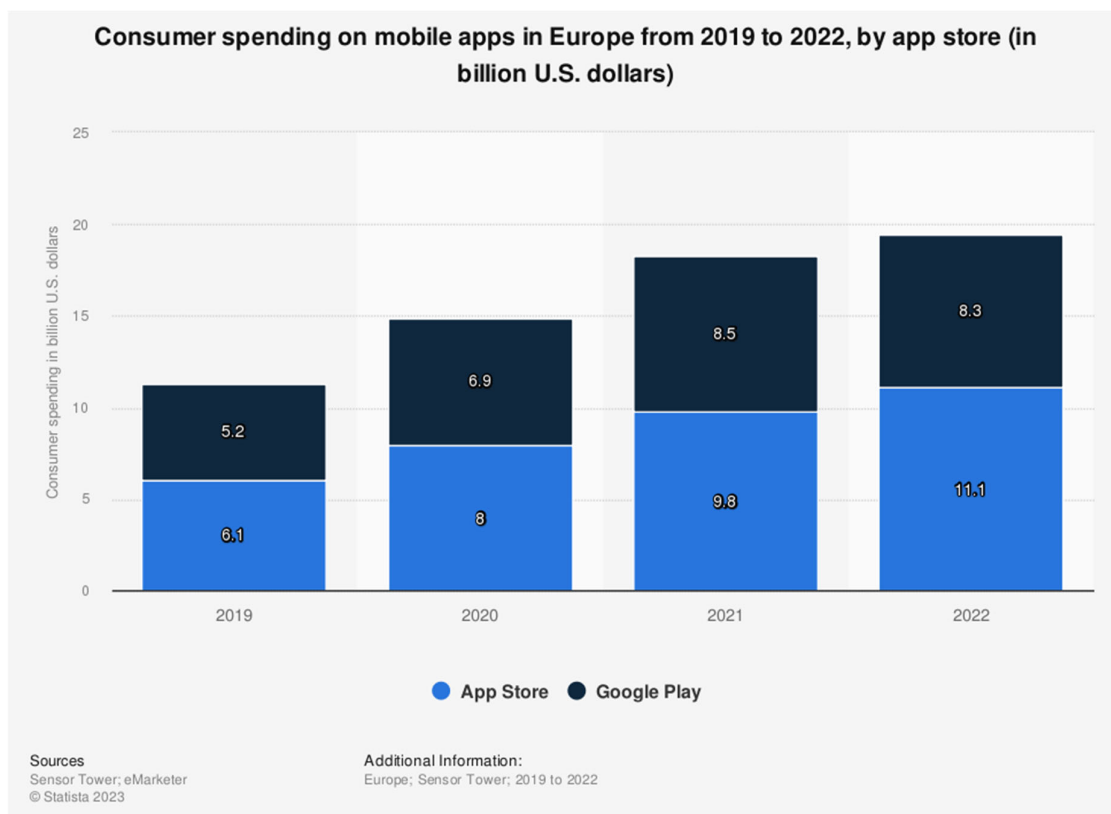
- (c) Finally, iOS users and Android users exhibit different spending behaviour, with the average iOS user spending more on apps than the average Android user.⁴⁶⁸
- (304) All providers of music streaming services have therefore developed apps for both iOS and Android and offer their apps on both OS. Apple and Google have captured such a large proportion and volume of smart mobile device users that access to both smart mobile operating system is a necessity for music streaming app providers. Offering their app on Android only would significantly reduce their customer reach as access to iOS users would be cut off. In the EU, this would not only mean that access to more than 30 % of European smartphone users and more than 50 % of tablet users would be lost.⁴⁶⁹ It would also frustrate iOS users which have acquired a music streaming subscription outside the iOS app and which expect to be able to consume music on the smart mobile device of their choice. Not offering an iOS app would also significantly impact the revenues of music streaming app providers in view of the fact that iOS users tend to spend much more money for apps (and for paid functionalities within the apps) than Android users, as can be seen from Figure 13.⁴⁷⁰

⁴⁶⁸ Spotify's response to question 15 of the Commission's request for information (2020/002646), ID 1431-2.

⁴⁶⁹ See Section 8.2.2.5.2.1.

⁴⁷⁰ See also Matt Asay, "Why developers focus on 'loser' iOS over 'winner' Android", Inforworld, 1 March 2018, available at <https://www.inforworld.com/article/3257933/why-developers-focus-on-loser-ios-over-winner-android.html>, explaining that the average mobile app makes four times more revenue on iOS than Android and the App Store generates twice as much revenue for developers, despite having half as many downloads as the Google Play Store, accessed on 16 December 2020, ID 1094.

Figure 13 – Consumer spending on mobile apps in Europe from 2019 to 2022⁴⁷¹



- (305) From the perspective of developers of music streaming apps, offering an Android app is therefore not a substitute for offering an iOS app.
- (306) Other mobile operating system are equally not a substitute to iOS. The commercial relevance of these smart mobile operating system is limited as they only provide access to an insignificant group of customers. These alternative smart mobile operating system are gradually disappearing (like Blackberry, Microsoft Windows phone or Symbian)⁴⁷² or no longer have any meaningful relevance for providers of music streaming services as they represent less than 1 % of smart mobile operating system in the EEA.⁴⁷³
- (307) Lastly, while music streaming service providers are allowed to grant their users access through their iOS app to content previously purchased outside that app,⁴⁷⁴ this

⁴⁷¹ See Statista ‘Consumer spending on mobile apps in Europe from 2019 to 2022, by app store (in billion U.S. dollars)’, <https://www.statista.com/statistics/1284273/mobile-app-annual-consumer-spending-europe-by-platform/>, accessed on 13 September 2023, ID 3179.

⁴⁷² Blackberry stopped supporting mobile devices using its operating system as of 4 January 2022 (see <https://www.blackberry.com/us/en/support/devices/end-of-life>, accessed on 29 April 2022, ID 2344). Windows ended support to its last mobile operating system (Windows 10 Mobile) on 10 December 2019 (see <https://support.microsoft.com/en-us/windows/windows-10-mobile-end-of-support-faq-8c2dd1cf-a571-00f0-0881-bb83926d05c5>, accessed on 29 April 2022, ID 2345). Nokia announced in 2011 that it would stop using Symbian as its mobile operating system in favour of Windows Phone (see <https://www.zdnet.com/article/android-before-android-the-long-strange-history-of-symbian-and-why-it-matters-for-nokias-future/>, accessed on 29 April 2022, ID 2346).

⁴⁷³ See Section 8.2.2.5.2.1.

⁴⁷⁴ This ability existed already before 2011 and has since then been “codified” by Apple in the Guidelines through the “reader rule” and, since 2018, the “multiplatform rule”.

possibility does not provide a substitute for developers of music streaming services to use Apple's App Store for the distribution of their apps to iOS users, as developers need to offer an app to a user irrespective of where that user has purchased a subscription to its paid music streaming service. The operation of the App Store as the sole distribution platform for native apps for iOS devices provides Apple with full control over the terms of access between consumers and developers of such native apps. In order for Apple to accept their apps to the App Store, music streaming service providers have to abide by all the rules that Apple imposes on developers in the License Agreement and the Guidelines, including with respect to the conditions of sales of digital content or services within their apps.

- (308) The Commission therefore concludes that there are no other alternatives to Apple's App Store available that could serve as substitutes for music streaming service providers to the distribution of native apps via Apple's App Store. Distributing apps via the Google Play Store or other app stores to Android users is not a viable alternative for developers of music streaming apps as they would forego access to an important separate customer group (the iOS users) which typically spends more money on apps and in-app purchases than Android users.

8.1.4.1.4. Supply side substitution

- (309) There are no alternative suppliers of app distribution platforms that could provide a similar distribution platform to developers like the App Store in the short term and without incurring significant costs. Apple has a tight control over its ecosystem and prevents any other company from offering an alternative iOS-compatible app store. Section 3.2.2. (i) of the Guidelines (entitled "Unacceptable") prohibits: "*Creating an interface for displaying third-party apps, extensions, or plug-ins similar to the App Store or as a general-interest collection.*"⁴⁷⁵ It is therefore fully in Apple's discretion to allow competition by alternative suppliers of app distribution platforms or services to iOS users. The relevant product market can therefore not be broadened based on supply side considerations.

8.1.4.2. The geographic scope of the market

- (310) The Commission considers that the market vis-à-vis developers for the provision of distribution platforms for music streaming apps to iOS users is EEA-wide. Apple's license agreements with developers as well as the Guidelines which explicitly prohibit alternative app stores for iOS devices are the same throughout the EEA. The market investigation indicated that the conditions set by Apple for access to the App Store for music streaming app providers do not differ in a meaningful way between Member States. Apple's market position as the sole provider of an app store available for developers that wish to distribute their apps to iOS users is the same throughout the EEA. While developers can choose to offer their apps in multiple App Store "storefronts" and thus in multiple countries, evidence in the file indicates that Apple does typically not review apps or app updates on a country-by-country basis. Rather it frequently requests that developers confirm that the apps submitted for review look and behave identically in all languages and across all devices.

⁴⁷⁵ Any third-party app acting as an app store for native apps for iOS devices will be rejected by Apple on this basis, see 3.2.2. of the current Guidelines in ID 3011.

8.1.4.3. Conclusion on the relevant market

(311) The Commission concludes that the relevant product market is the market for the provision to developers of platforms for the distribution of music streaming apps to iOS users (i.e., the developer facing side of the two-sided App Store platform) and that from a geographic perspective that market is EEA-wide.

8.1.5. Market for music streaming services

8.1.5.1. The relevant product market

(312) Music can either be distributed via the sale of a tangible medium embodying the sound recording (such as a physical CD or a vinyl record) or digitally online. Within the latter category, the two main modes of digital music distribution are download (which typically constitute “à la carte” purchases) and the provision of streaming services. Music download services involve the purchase and storage of a digital copy of the sound recording on an electronic device,⁴⁷⁶ while streaming services involve the delivery of small data packets over the internet with playback commencing as soon as this streaming has started.⁴⁷⁷

(313) In its previous decisional practice, the Commission has – in the context of merger cases – multiple times dealt with music distribution in general, and with digital music distribution in particular. In the past it considered physical sales of music to be in a separate market compared to digital sales of music.⁴⁷⁸ With respect to a potential segmentation of digital music distribution services into separate product markets for downloading services and music streaming services, the Commission has in past cases left the ultimate market definition open, while pointing to some evidence that boundaries between downloading and streaming services were becoming blurred.⁴⁷⁹ That said, in *Apple/Shazam*, the market investigation results indicated that some music streaming service providers would not consider themselves to be in a position to start offering digital music downloading services in the short term or without incurring significant investments.⁴⁸⁰

8.1.5.1.1. Demand side substitution

(314) The Commission’s investigation confirmed that music streaming services are from a demand-side perspective only to a very limited extent substitutable with physical distribution of music. Compared to physical distribution, music streaming services have much less capacity constraints and can also offer access to less popular/known artists.⁴⁸¹ Consumers can therefore use music streaming services to get access to songs which they will not find in most physical retail shops due to manufacturing and storage capacity constraints. Subscribers to music streaming services frequently access the services via their mobile devices, which indicates that access on demand

⁴⁷⁶ Commission decision of 21 September 2012 in Case M.6458 – *Universal Music Group/EMI Music*, paragraph 58; Commission decision of 25 July 2014 in Case M.7290 – *Apple/Beats*, paragraph 17.

⁴⁷⁷ Commission decision of 21 September 2012 in Case No COMP/M.6458 – *Universal Music Group/EMI Music*, paragraph 59; Commission decision of 25 July 2014 in Case M.7290 – *Apple/Beats*, paragraph 17.

⁴⁷⁸ See Commission decision of 3 October 2007 in Case M.3333 – *Sony/BMG*, paragraph 27.

⁴⁷⁹ See Commission decision of 25 July 2014 in Case M.7290 – *Apple/Beats*, paragraph 18; Commission decision of 6 September 2018 in Case M.8788 – *Apple/Shazam*, paragraph 94.

⁴⁸⁰ Commission decision of 6 September 2018 in Case M.8788 – *Apple/Shazam*, paragraph 95.

⁴⁸¹ See Deezer’s response to question 16 of the Commission’s request for information(2020/029315), ID 1379.

and portability of music are important features for them, both of which are not available to the same extent for physically distributed music.⁴⁸² The difference of digital distribution of music to physical distribution is much more pronounced for music streaming services where users do not obtain “ownership” of individual albums or songs, but “access” to a large music catalogue. The user experience and the value proposition for consumers is therefore fundamentally different.⁴⁸³ A music streaming subscription provides instant access to a catalogue of millions of songs without a need to pay for each recording, but at the end of the subscription terms, the customer does not “own” anything. Conversely, physical distribution provides ownership of the music and an indefinite possibility to listen to a song or album, once purchased, besides the possibility to make private copies (within the limits allowed by the law). In this respect, the underlying economics of an end user are very different between physical distribution on the one hand and music streaming on the other hand.

- (315) The Commission’s investigation has shown that the majority of providers of music streaming services⁴⁸⁴ consider physical distribution to be different from a consumer perspective in terms of price and in terms of offering from music streaming services.
- (316) With respect to the question whether music downloading services and music streaming services are substitutable from a demand side perspective, it is correct that most providers of music streaming services offer a download/offline listening functionality which allows subscribers to listen to downloaded songs or to songs included in playlists while also being offline. However, such options are only accessible for the term of duration of a valid subscription, and they do not require any additional payment per track downloaded (album or single). They are therefore an additional feature of a music streaming subscription to enhance the user experience and allow offline consumption. The value proposition to consumers and the user experience is very different between downloading and streaming. As Deezer puts it: *“the user experience is completely different. By paying a time limited subscription, users of streaming services have access in one click, anytime, anywhere, to a massive catalogue. There is no need to pay for each recording, but at the end of the subscription term, customers do not own anything. With respect to music download services, music files are owned by consumers and can be used/listened indefinitely without any additional payment. [...] we believe that it is not appropriate to compare a one-time definitive purchase with a monthly subscription, since the offerings are extremely different. Music download services*

⁴⁸² SoundCloud’s response to question 23 of the Commission’s request for information (2020/029332), ID 1370.

⁴⁸³ Deezer’s response to question 16 of the Commission’s request for information (2020/029315), ID 1379.

⁴⁸⁴ SoundCloud’s response to questions 23 and 24 of the Commission’s request for information (2020/029332), ID 1370; Deezer’s response to questions 16 and 17 of the Commission’s request for information (2020/029315), ID 1379; Qobuz’s response to question 10 of the Commission’s request for information (2020/029326), ID 594; Napster’s response to question 23 of the Commission’s request for information (2020/029321), ID 1344. Only Amazon, which has started as a physical distributor of music before offering music downloads in 2008 and music streaming in Europe in 2015, and Google argue that physical and digital forms of distribution (including both downloads and music streaming services) do not differ significantly as the intended use and the audio quality is comparable across the different formats, see Amazon’s response to questions 11 and 12 of the Commission’s request for information (2020/029308), ID 1342; Alphabet’s response to question 12 of the Commission’s request for information (2020/034718), ID 1358.

*are much more comparable to physical distribution of music.*⁴⁸⁵ While theoretically the price of an album of e.g., 10 songs may therefore be comparable to a monthly subscription fee of EUR 10, the value proposition and the underlying economics for end consumers differ significantly as one is an access-based business model relying on subscription payments (or ad-based monetisation) while the other is an ownership-based business model relying on the payment of a one-time purchase price.⁴⁸⁶

- (317) Qobuz explains that: *“There is a relation since they offer the possibility to buy/listen to the same content, but streaming is attractive to end users who want to listen to a massive catalogue of titles when download offers them the possibility to own their favourite content while they can listen to it permanently. It is part of the new trend of consumption, subscription to services versus full ownership.”*⁴⁸⁷
- (318) Napster does not consider music streaming and music download *“comparable in terms of price”* and considers that consumers typically do not switch from *“music streaming services to purchasing downloads, especially since most streaming services allow the user to download tracks for offline playback”*.⁴⁸⁸ This observation is in line with a long-term trend in the music distribution industry towards music streaming services and away from ownership-based models, including from downloads.⁴⁸⁹
- (319) The market investigation supported such a long-term trend in the music distribution industry towards music streaming services and away from ownership based models of physical distribution and – more recently – also away from music downloading services.⁴⁹⁰ [...] ⁴⁹¹

8.1.5.1.2. Supply side substitution

- (320) From a supply side perspective, the market investigation has shown that the distribution of sound recordings on physical media such as CDs or vinyl records, music downloading services and music streaming services are very different businesses.
- (321) Music streaming services can typically not be provided by physical distributors or providers of music downloading services in the short term without incurring significant costs and risks. Deezer explains that: *“Physical distribution of music is a completely different business, which would need to be built from scratch. Transforming Deezer into an on-line distributor of records would require to change a large part of Deezer's staff which is not adapted to physical distribution and has not the required skills. We would need to negotiate distribution agreements with all*

⁴⁸⁵ Deezer's response to questions 21 and 22 of the Commission's request for information (2020/029315), ID 1379.

⁴⁸⁶ SoundCloud's response to question 28 of the Commission's request for information (2020/029332), ID 1370.

⁴⁸⁷ Qobuz's response to question 16 of the Commission's request for information (2020/029326), ID 594.

⁴⁸⁸ Napster's response to question 28 and 29 of the Commission's request for information (2020/029321), ID 1344.

⁴⁸⁹ See Commission decision of 6 September 2018 in Case M.8788 – *Apple/Shazam*, paragraph 27 et seq.

⁴⁹⁰ See Section 5.1 and SoundCloud's response to question 25 of the Commission's request for information (2020/029332), ID 1370; Deezer's response to question 23 of the Commission's request for information (2020/029315), ID 1379; Qobuz's response to question 16 of the Commission's request for information (2020/029326), ID 594.

⁴⁹¹ ID 1613.

physical distributors (which are not the same than the digital distributors). We would need to build a brand new supply chain and warehouses in some regions over the world."⁴⁹² Napster explains that switching from music streaming services to offering physical distribution would *"involve additional time, money and resources. It would require a platform to list the physical products, a network to connect sellers and/or distributors to consumers, and a massive shipment team and physical location to deliver and store the product. It would also involve negotiating new license agreements with all of the labels and rightsholders."*⁴⁹³

- (322) Music streaming services also differ from a supply side perspective to a considerable extent from services offering downloads of digital music. Deezer explains that: *"We believe that a music download service is much more simple to launch and manage than a music streaming service which is offered with multiple features. [...] Switching from a music download to a music streaming service would require substantial changes and technical developments. On the technical side, it is much more complicated than a download service due to the multiple features offered as a standard to users (compatibility/integration within third party devices, algorithmic recommendation, offline listening, lyrics display, social media sharing, etc). Distribution agreements would need to be negotiated with all content providers and with all relevant publishers and author societies in all countries where the music streaming service is available. All of this would require the hiring of many developers, licensing/legal managers. Moreover, a music streaming service offering a free tier would require an ad sales team or at least a deal with an advertising sales agency. For those reasons, it would be very difficult to switch from a music download to a music streaming service in a short period of time, without incurring significant costs."*⁴⁹⁴ SoundCloud explains that music streaming and music downloading services *"differ in terms of the underlying technology and also the technical requirements of the required equipment, e.g. storage, connectivity and file format, as well as the licenses that the service would need to have in place with copyright holders."*⁴⁹⁵ Napster confirms that there are considerable differences between the supply of a music streaming service and the supply of a download service as follows: *"switching would involve more time, money and resources. We would need to negotiate new license agreements with hundreds of record labels and publishers and build out a new portion of our app to sell downloads, as well as build a new supply chain to ingest the downloads."*⁴⁹⁶
- (323) While some providers of music downloading services such as Apple and Amazon with considerable financial resources have succeeded in entering music streaming services and establishing their own service, such a step constituted either a

⁴⁹² Deezer's response to question 19 of the Commission's request for information (2020/029315), ID 1379; see also SoundCloud's response to question 26 of the Commission's request for information (2020/029332), ID 1370; *"Switching our core operations to physical music is not at all a strategic option we would entertain. It would not be an acceptable offer for our user base nor does this match to our company's internal capabilities."*

⁴⁹³ Napster's response to question 25 of the Commission's request for information (2020/029321), ID 1344.

⁴⁹⁴ Deezer's response to questions 24 and 25 of the Commission's request for information (2020/029315), ID 1379.

⁴⁹⁵ SoundCloud's response to question 28 of the Commission's request for information (2020/029332), ID 1370.

⁴⁹⁶ Napster's response to question 30 of the Commission's request for information (2020/029321), ID 1344.

fundamental change to their business model (in the case of Apple) or was a significant investment into their own ecosystem (in the case of Amazon). Apple, which was⁴⁹⁷ the market leader for music downloading services, decided to acquire Beats Music, an existing streaming service provider, for an estimated purchase price of more than USD 400 000 000⁴⁹⁸, in order to facilitate its entry into the music streaming market. Amazon entered the music streaming market in Europe in 2015 with Prime Music in order to increase the attractiveness of its Prime program as part of the services made available to the Prime program. Amazon's catalogue for its Prime Music offering is more limited (approximately 2 million tracks). Only at the end of 2016, Amazon launched the stand-alone subscription service AMU.⁴⁹⁹

8.1.5.2. The geographic scope of the market

- (324) The Commission has in its decisional practice left open whether the geographic market for digital music distribution services should be considered as national or EEA-wide.⁵⁰⁰ While it observed indications that retail markets for digital recorded music were national in scope, it also considered that the geographic market could become larger than national in the future.⁵⁰¹
- (325) Competitive conditions continue to differ to some extent across the EEA and different subscription prices are offered for different Member States. Local music tastes continue to differ to some extent across the EEA and it remains important for a music streaming service provider to offer local music which represents a significant share of the music streamed.⁵⁰²
- (326) However, the market investigation provided several indications that speak for the geographic scope of the market for music streaming services to be EEA wide. The same international music streaming service providers are competing across the EEA with little differences in the services and features offered in a given country.⁵⁰³ Licensing deals are often concluded on a global basis rather than on a country-by-

⁴⁹⁷ See for example Credit Suisse Equity research report on Apple Inc. of 24 June 2014, estimating a worldwide market share of Apple for downloads of 75 %, ID 1632. See also <https://perma.cc/C52D-Y7LD>, accessed on 11 December 2020, ID 1120. See also SoundCloud's response to question 27 of the Commission's request for information (2020/029332), ID 1370.

⁴⁹⁸ See <https://www.apple.com/newsroom/2014/05/28Apple-to-Acquire-Beats-Music-Beats-Electronics/>, accessed on 31 March 2021, ID 1474.

⁴⁹⁹ See Amazon's response to question 1 of the Commission's request for information (2019/048673), ID 1336.

⁵⁰⁰ Commission decision of 21 September 2012 in Case M.6458 – *Universal Music Group/EMI Music*, paragraph 235; most recently Commission decision of 6 September 2018 in Case M.8788 – *Apple/Shazam*, paragraph 104 et seq.

⁵⁰¹ Commission decision of 21 September 2012 in Case M.6458 – *Universal Music Group/EMI Music*, paragraph 234; Commission decision of 3 October 2007 in Case M.3333 – *Sony/BMG*, paragraph 38.

⁵⁰² Deezer's response to question 29 of the Commission's request for information (2020/029315), ID 1379; SoundCloud's response to question 35 of the Commission's request for information (2020/029332), ID 1370.

⁵⁰³ Deezer's response to question 27 of the Commission's request for information (2020/029315), ID 1379. Alphabet's response to question 24 of the Commission's request for information (2020/034718), ID 1358.

country basis.⁵⁰⁴ Moreover, the majority of the catalogue of the major music streaming service providers appears to be the same across the EEA.⁵⁰⁵

- (327) In view of these findings, the Commission considers that for the purposes of this Decision the geographic scope of the market for music streaming services should be considered as EEA-wide.

8.1.5.3. Conclusion on the relevant market

- (328) The Commission's market investigation showed that the provision of music streaming services differs to a significant extent from physical distribution of music and to some extent from music downloading services both from a demand-side perspective as well as a supply-side perspective. For the purposes of this Decision, the Commission therefore examined the unfairness of the Anti-Steering Provisions vis-à-vis users of music streaming services and will exclude from this analysis physical sales of music and music downloading services. Moreover, the Commission considers the market for music streaming services to be EEA-wide, despite some differences in prices and music tastes across the EEA. Apple has not contested this market definition in its Response to the Statement of Objections of 28 February 2023 or its Response to the Letter of Facts.

8.2. The dominant position of the addressee

8.2.1. Principles

- (329) The dominant position referred to in Article 102 of the Treaty relates to a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, its customers and ultimately of its consumers.⁵⁰⁶
- (330) A finding of dominance does not require that an undertaking has eliminated all opportunity for competition in the market.⁵⁰⁷ A finding of dominance is also not precluded by the existence of competition on a particular market, provided that an undertaking is able to act without having to take account of such competition in its market strategy and without, for that reason, suffering detrimental effects from such behaviour.⁵⁰⁸
- (331) The existence of a dominant position derives in general from a combination of several factors which, taken separately, are not necessarily determinative.⁵⁰⁹ One important factor is the existence of very large market shares, which are in themselves, save in exceptional circumstances, evidence of the existence of a

⁵⁰⁴ Alphabet's response to question 24 of the Commission's request for information (2020/034718), ID 1358.

⁵⁰⁵ Alphabet's response to question 25 of the Commission's request for information (2020/034718), ID 1358; Deezer's response to question 29 of the Commission's request for information (2020/029315), ID 1379.

⁵⁰⁶ Case 27/76 *United Brands v Commission*, EU:C:1978:22, paragraph 65; Case 85/76 *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 38; and Case T-201/04 *Microsoft v Commission*, EU:T:2007:289, paragraph 229.

⁵⁰⁷ Case 27/76 *United Brands v Commission*, EU:C:1978:22, paragraph 113.

⁵⁰⁸ Case 85/76 *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 70; and Case T-340/03 *France Télécom SA v Commission*, EU: T:2007:22, paragraph 101.

⁵⁰⁹ Case 27/76 *United Brands v Commission*, EU:C:1978:22, paragraph 66.

dominant position.⁵¹⁰ That is the case where a company has a market share of 50 % or above.⁵¹¹ Likewise, a share of between 70 % and 80 % is, in itself, a clear indication of the existence of a dominant position in a relevant market.⁵¹² An undertaking which holds a very large market share for some time, without smaller competitors being able to meet rapidly the demand from those who would like to break away from that undertaking, is by virtue of that share in a position of strength which makes it an unavoidable trading partner and which, already because of this, secures for it, at the very least during relatively long periods, that freedom of action which is the special feature of a dominant position.⁵¹³

- (332) While in recent and fast-growing sectors characterised by short innovation cycles, large market shares may sometimes turn out to be ephemeral and not necessarily indicative of a dominant position,⁵¹⁴ the fact that an undertaking may enjoy high market shares in a fast-growing market cannot preclude application of the competition rules, in particular Article 102 of the Treaty, especially if a fast-growing market does not show signs of marked instability during the period at issue and, on the contrary, a rather stable hierarchy is established.⁵¹⁵
- (333) The fact that a service is offered free of charge is also a relevant factor to take into account in assessing dominance. Another relevant factor is whether there are technical or economic constraints that might prevent users from switching providers.⁵¹⁶
- (334) Other important factors when assessing dominance are the existence of countervailing buyer power and barriers to entry or expansion, preventing either potential competitors from having access to the market or actual ones from expanding their activities on the market.⁵¹⁷ Such barriers may result from a number of factors, including exceptionally large capital investments that competitors would have to match, network externalities that would entail additional cost for attracting new customers, economies of scale from which newcomers to the market cannot derive any immediate benefit and the actual costs of entry incurred in penetrating the market.⁵¹⁸ Switching costs are therefore only one possible type of barrier to entry and expansion.

⁵¹⁰ Case 85/76 *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 41; and Case T-65/98 *Van den Bergh Foods v Commission*, EU:T:2003:281, paragraph 154.

⁵¹¹ Case C-62/86 *Akzo v Commission*, EU:C:1991:286, paragraph 60; Case T-340/03 *France Télécom SA v Commission*, EU:T:2007:22, paragraph 100; and Case T-336/07 *Telefónica SA v Commission*, EU: T:2012:172, paragraph 150.

⁵¹² Case T-30/89 *Hilti v Commission*, EU:T:1991:70, paragraph 92; Joined Cases T-191/98, T-212/98 to T-214/98 *Atlantic Container Line and Others v Commission*, EU:T:2003:245, paragraph 907; Case T-66/01 *Imperial Chemical Industries v Commission*, EU: T:2010:255, paragraph 257; and Case T-336/07 *Telefónica SA v Commission*, EU:T:2012:172, paragraph 150.

⁵¹³ Case 85/76 *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 41; Case T-139/98 *AAMS v Commission*, EU: T:2001:272, paragraph 51; Case T-65/98 *Van den Bergh Foods v Commission*, EU:T:2003:281, paragraph 154; and Case T-336/07 *Telefónica SA v Commission*, EU: T:2012:172, paragraph 149.

⁵¹⁴ Case T-79/12 *Cisco Systems, Inc. and Messagenet SpA v Commission*, EU: T:2013:635, paragraph 69.

⁵¹⁵ Case T-340/03 *France Telecom SA v Commission*, EU: T:2007:22, paragraphs 107-108.

⁵¹⁶ Case T-79/12 *Cisco Systems, Inc. and Messagenet SpA v Commission*, EU: T:2013:635, paragraph 73.

⁵¹⁷ Case 27/76 *United Brands v Commission*, EU:C:1978:22, paragraph 122; and Case 85/76 *Hoffmann-La Roche v Commission*, EU: C:1979:36, paragraph 48.

⁵¹⁸ Case 27/76 *United Brands v Commission*, EU:C:1978:22, paragraphs 91 and 122.

- (335) In the context of a multi-sided platform, with two different, although interlinked user groups, constraints on the market power of the platform operator vis-a-vis one side can also come from the user group on the other-side of the platform.
- (336) In the context of markets where users need to separately obtain complementary components to make use of a particular service (e.g., a smart mobile device and an app), it may be relevant to analyse how consumers take the decisions to obtain those components. The framework developed for the analysis of aftermarket includes several elements that may be useful to analyse the relationship between these components, even if the markets at hand show some differences to traditional aftermarkets.
- (337) Aftermarkets are markets for the supply of products or services needed for or in connection with what is typically a relatively long-lasting product or service that has already been acquired. This latter product or service is referred to as the “primary product” (and hence its market is called “primary market”). The complementary products and services used in connection with the primary product are referred to as “secondary products” (and their market is called “secondary market” or “aftermarket”). With respect to aftermarkets, effective competition on the primary market may discipline the market power of the producer of the primary product on the secondary market. A number of criteria have been developed for assessing the link between primary and secondary markets which were applied by the Commission in its *EFIM* decision⁵¹⁹ and subsequently confirmed by the Court in the *EFIM*-judgment.⁵²⁰ In order to come to the conclusion that primary and secondary markets are interdependent and competition on the primary market disciplines the market power on the secondary market (and excludes dominance in the secondary market), four conditions need to be cumulatively met:⁵²¹
- i. Customers can make an informed choice, including lifecycle-pricing, between the various manufacturers in the primary market;
 - ii. Customers are likely to make such an informed choice accordingly;
 - iii. In case of an apparent policy of exploitation⁵²² being pursued in the aftermarket, a sufficient number of customers would adapt their purchasing behaviour at the level of the primary market;
 - iv. Customer’s adaptation of their purchasing behaviour would take place within a reasonable time.

8.2.2. *Application to this case*

- (338) The Commission concludes that Apple holds a dominant position in the EEA on the market for the provision to developers of platforms for the distribution of music

⁵¹⁹ Commission’s decision of 20 May 2009 rejecting the complaint in Case C-3/39.391 – *EFIM*.

⁵²⁰ Case T-296/09 *European Federation of Ink and Ink Cartridge Manufacturers (EFIM) v Commission*, EU:T:2011:693, paragraphs 60, 90 and 91, confirmed in Case C-56/12, EU:C:2013:575, paragraphs 12 and 36 et seq.

⁵²¹ *Ibid.*

⁵²² There is no English translation of the judgment in Case T-296/09. The German version of the judgment refers to “*im Falle überhöhter Preise auf den Sekundärmärkten*”, while the French version refers to “*en cas de prix excessifs sur les marchés secondaires*”. The term “*apparent policy of exploitation*” was used in the Commission’s decision of 22 September 1995 rejecting the complaint in Case No IV/34.330 – *Pelikan/Kyocera* as well as in the original English text of the Commission’s decision of 20 May 2009 rejecting the complaint in Case C-3/39.391 – *EFIM*, paragraph 16.

streaming apps to iOS users since at least 2015. This analysis is based on the market position and the market shares of Apple in this market, the extremely high barriers to entry and expansion that Apple created for the distribution of native music streaming apps to iOS users, significant (indirect) network effects of app distribution platforms and the lack of countervailing buyer power.

- (339) Moreover, this dominant position vis-à-vis developers of music streaming apps is neither constrained by the consumer side of the App Store, including by a disciplinary effect from competition in the market for smart mobile devices, nor by alternative mechanisms to subscribe to music streaming services outside the iOS app.

8.2.2.1. Market position and market shares of Apple

- (340) Apple is the only provider of a distribution platform for native apps to iOS users. Therefore, since the launch of the App Store in 2008 and until today Apple enjoys a stable 100 % market share on the market for the provision to developers of platforms for the distribution of music streaming apps to iOS users at the EEA level. This in itself provides a strong indication of the existence of a dominant position.

8.2.2.2. Barriers to entry and expansion

- (341) Section 3.2.2. of the Guidelines prohibits other companies to create third-party app stores.⁵²³ As Apple does not allow for alternative app stores on iOS devices that would allow the purchase and the download of native apps, it was and continues to be impossible for third parties to enter the market and challenge Apple's market position, unless Apple allows such competition by changing its rules and allowing for the distribution of native apps by alternative app stores or through "sideloading" of apps from the websites of developers.
- (342) All apps distributed to iOS users are subject to the Guidelines and Apple's individual approval. Apple has thus created and maintained insurmountable barriers to entry for third-party app stores for iOS devices or for the distribution of native apps to iOS users by developers (e.g., through their websites).
- (343) Apple has no incentive to allow alternative distribution methods of native apps that are not fully controlled by Apple and that would remove the "exclusive" position Apple holds as an intermediary between developers and consumers with respect to the distribution of native apps to iOS users and digital content or services within those apps.⁵²⁴ Therefore, unless forced through litigation or regulation,⁵²⁵ Apple is unlikely to voluntarily allow third-party app stores or sideloading on iOS devices.

⁵²³ Section 3.2.2. (i) of the Guidelines explicitly prohibits: "*Creating an interface for displaying third-party apps, extensions, or plug-ins similar to the App Store or as a general-interest collection.*" in ID 3011. Therefore, any third-party app acting as an app store for native apps for iOS devices will be rejected by Apple on this basis.

⁵²⁴ In the past, Apple's CEO Tim Cook indicated that Apple had no plans to open iOS to alternative app stores in the future, see Investigation of competition in digital markets, Committee on the Judiciary, U.S. House of Representatives, 2020, page 96. See https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf, accessed on 8 October 2020, ID 1140.

⁵²⁵ Apple will have to comply by 7 March 2024 with Article 6(4) of 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. 1–66.

8.2.2.3. Network effects

- (344) With indirect network effects, the value of the service for users on one side of the platform (developers) increases with the number of users on the other side of the platform (i.e., consumers). Even if a third-party were to offer an alternative app store for iOS users, which is currently not possible based on Apple’s policies, it would face the difficulty of attracting simultaneously sufficient users on both sides of the platform to trigger the indirect network effects which the App Store already profits from. In order to attract a large number of iOS users, a competing offer would likely have to offer an attractive range of apps and could not limit its offer to a limited number of music streaming apps. In comparison, the App Store, as the only way to distribute native apps to iOS users, currently offers 1.8 million apps.⁵²⁶ In 2021, consumers downloaded worldwide 33 billion apps from the App Store, compared to 30 billion in 2018.⁵²⁷ Between 25 000 and 40 000 apps have been added monthly on average between 2020 and 2023.⁵²⁸ Based on information from Apple, it billed in 2022 over USD [...] through the App Store of which it retained USD [...].⁵²⁹ Indeed, the failure of other smart mobile operating system like Symbian or Windows Phone can in part be explained by their inability to sufficiently trigger indirect network effects and simultaneously gain a critical mass of users, i.e., developers and smart mobile device users.⁵³⁰
- (345) Therefore, any hypothetical new entrant for an app store on iOS devices that could serve as an alternative distribution platform to music streaming service providers would – even if its market entry were allowed by Apple and if access to necessary APIs and functionalities of iOS devices were granted – have to succeed in simultaneously attracting significant amounts of developers as well as consumers to the platform. Unless Apple approves it, such a new entrant would not be able to pre-install its App Store offer on iOS devices.⁵³¹ These indirect network effects therefore protect and entrench Apple’s market position.

⁵²⁶ See <https://www.apple.com/app-store/>, accessed on 16 November 2023, ID 3201. Not all apps are available to every iOS user. The app developer determines in which App Store “storefront” an app is displayed and can thus limit the availability of the app in certain countries, for example because it targets only specific regions or the app does not comply with certain local regulations.

⁵²⁷ See Statista ‘Mobile app downloads worldwide from 2021 to 2026, by store’, <https://www.statista.com/statistics/1010716/apple-app-store-google-play-app-downloads-forecast/>, accessed on 13 September 2023, ID 3177.

⁵²⁸ See Statista dossier “App stores”, page 20, accessed on 13 September 2023, ID 3178. IDs 3256, 3262, 3263, 3266, 3267, 3271, 3272, 3280, 3287, 3288, accessed on 14 December 2023, contains underlying data of Statista figures.

⁵²⁹ See Annex Q12 to Apple’s response to the Commission’s request for information of 3 August 2023, ID 3001.

⁵³⁰ See ACM “Market study into mobile app stores”, accessed on 12 November 2020, ID 886, page 34: “Opening up the platform to third-party developers by offering SDKs so third parties could develop apps for Android and iOS thus was a very effective way for Google and Apple to activate indirect network effects, and make their products and services more valuable. So Symbian, Windows and the supporting phone manufacturers were not able to activate and benefit from indirect network effects the way Apple and Google did, because they were not able to lower entry barriers enough for third-party developers.” On the existence of network effects in smart mobile OSs and the barriers to entry resulting from them, see also Commission decision of 18 July 2018 in Case AT.40099 – *Google Android*, paragraph 469.

⁵³¹ Apple currently does not pre-install any third-party app on its smart mobile devices. See “Mobile ecosystems market study final report” of the Competition and Markets Authority (CMA), page 198, accessed on 14 June 2022, ID 2431.

8.2.2.4. Limited countervailing buyer power

- (346) Because of the lack of alternatives for the distribution of native apps to iOS users, Apple enjoys extensive market power vis-à-vis developers that wish to offer their apps to iOS users.
- (347) Apple decides unilaterally the rules, which govern access to the App Store by more than 800 000 developers worldwide and any changes to those rules are in Apple's sole discretion.
- (348) Apple's License Agreement with developers provides it with the possibility to disable or limit access to its services at any time without notice and in its sole discretion:⁵³²

*“Apple reserves the right to change, suspend, deprecate, deny, limit, or disable access to the Apple Services⁵³³, or any part thereof, at any time without notice (including but not limited to revoking entitlements or changing any APIs in the Apple Software⁵³⁴ that enable access to the Services or not providing You with an entitlement). In no event will Apple be liable for the removal of or disabling of access to any of the foregoing. Apple may also impose limits and restrictions on the use of or access to the Apple Services, may remove the Apple Services for indefinite time periods, **may revoke Your access to the Apple Services, or may cancel the Apple Services (or any part thereof)** at any time without notice or liability to You and in its sole discretion.”*

- (349) Section 3.2. indicates that Apple has full discretion when granting or refusing an app for its devices:

*“(g) Applications for iOS, iPadOS, tvOS, visionOS and watchOS developed using the Apple Software may be distributed **only if selected by Apple (in its sole discretion)** for distribution via the AppStore, for beta distribution through TestFlight, or through Ad Hoc distribution as contemplated in this Agreement. [...]”*

- (350) Section 6.9 confirms full discretion of Apple to refuse any app, even if it complies with the required documentation:

“6.9 Selection by Apple for Distribution

*You understand and agree that if You submit Your Application to Apple for distribution via the App Store, Custom App Distribution, or TestFlight, Apple may, **in its sole discretion**:*

(a) determine that Your Application does not meet all or any part of the Documentation or Program Requirements then in effect;

⁵³² Section 2.8 of the License Agreement, ID 3015.

⁵³³ Defined in the following way in the License Agreement: “Apple Services” or “Services” means the developer services that Apple may provide or make available through the Apple Software or as part of the Program for use with Your Covered Products or development, including any Updates thereto (if any) that may be provided to You by Apple under the Program.”

⁵³⁴ Defined in the following way in the License Agreement: “Apple Software” means Apple SDKs, iOS, watchOS, tvOS, iPadOS, visionOS and/or macOS, the Provisioning Profiles, FPS SDK, FPS Deployment Package, and any other software that Apple provides to You under the Program, including any Updates thereto (if any) that may be provided to You by Apple under the Program.”

(b) reject Your Application for distribution for any reason, even if Your Application meets the Documentation and Program Requirements; [...]”

- (351) Adherence to the License Agreement and payment of the associated fee do therefore not entitle a developer to distribute its app through the App Store as Apple retains full discretion to approve or reject apps or to cease distribution at a later point in time.
- (352) Apple can and does change the Guidelines which determine access to the App Store frequently. Phillip Shoemaker, who was responsible within Apple throughout the first years after the launch of the App Store for the App Store review process has indicated that [...].”⁵³⁵ Indeed, the Guidelines’ preamble labels the Guidelines as a “*living document*” and that new apps presenting new questions may trigger a review of the Guidelines and new rules at any point in time.
- (353) Developers in general, and music streaming service providers in particular, typically only offer a limited number of apps, which decreases the negotiation power any individual app may have vis-à-vis Apple.
- (354) [...].⁵³⁶
- (355) In particular, developers of music streaming apps have a weak negotiation position vis-à-vis Apple, given the importance of smart mobile devices for the consumption of streamed music.⁵³⁷ [...].⁵³⁸ So, even if some or all of them were to leave the iOS platform (or threaten to do so) in an attempt to create negotiation power, this would unlikely allow them to receive more preferential terms. In such a case, Apple Music would stand ready to subscribe those users that can no longer find alternative apps in the App Store.⁵³⁹ In the absence of a credible alternative to the App Store to which they could switch, even popular apps such as Spotify’s app have little choice but to accept the terms that Apple dictates with respect to app distribution to iOS devices.
- (356) Therefore, developers of apps, and in particular those of music streaming apps, lack countervailing buyer power and are left either with the choice of complying with Apple’s rules or losing access to iOS users.
- 8.2.2.5. Constraints on Apple’s market power vis-à-vis music streaming service providers from the consumer side of the App Store
- (357) Although the relevant product market for the purposes of this Decision is the market for the provision to developers of platforms for the distribution of music streaming apps to iOS users, the Commission assessed the consumer side of the two-sided App Store as this side may – despite being separate from the developer side – constrain the market power of Apple vis-à-vis developers of music streaming app on the developer side of the platform.
- (358) Constraint from the consumer side of the App Store on Apple’s market power *vis-à-vis* music streaming service providers could result from the reaction of consumers to a perceived “degradation” of developers’ apps or services on iOS. Music streaming service providers could pass-on increased fees for app or in-app content distribution

⁵³⁵ See ID 435 and transcript of podcast of 28 May 2019 in ID 637.

⁵³⁶ [...].

⁵³⁷ See recitals (278) et seq.

⁵³⁸ [...]. See also paragraph 118 of Spotify’s Complaint, ID 1457.

⁵³⁹ See paragraph 118 of Spotify’s Complaint, ID 1457.

to consumers or remove the ability of consumers to subscribe to certain services within the app as a reaction to deteriorating conditions for app distribution on iOS devices.⁵⁴⁰ Such changes to the attractiveness of music streaming apps on iOS devices could – at least in theory – render the App Store less attractive in the eyes of consumers and lead to negative reactions by consumers. Since Apple generates profits both from the sale of devices as well as from app developers, losing a large number of device buyers in reaction to a degradation of rival iOS apps may result in lost profits from device sales. If such a reaction by consumers was likely and substantial, the risk of a pass-on of deteriorating conditions by developers to consumers could in theory constrain Apple’s market power vis-à-vis music streaming service providers.

- (359) Constraints from the consumer side could manifest themselves either in a negative consumer reaction at the level of app distribution or at the level of their smart mobile device purchases. If end users had alternative means to access apps, they might switch to those apps instead of the ones affected by the distribution conditions set by Apple (see Section 8.2.2.5.1). In a similar vein, the level of device purchases matters as a possible constraint on Apple’s market power in the market for the provision to developers of platforms for the distribution of music streaming apps to iOS users, because users that are aware of deteriorating conditions for app distribution might decide to refrain from purchasing an iOS device, and/or seek devices that are unaffected by changes to the access conditions set by Apple, such as Android smartphones (see Section 8.2.2.5.2).

8.2.2.5.1. Constraints from the consumer side resulting from alternative app distribution channels on iOS devices

- (360) iOS users are not in a position to react to deteriorating conditions for app distribution on iOS devices, and in particular for music streaming app distribution, by switching to alternative app channels for downloading and installing apps on their iOS devices. Apple strictly excludes any such possibility. Apple neither allows the distribution of native apps via alternative app stores⁵⁴¹ nor through the form of sideloading of apps from the websites of developers. Jailbreaking the mobile operating system – forcing it open to allow installing apps outside the App Store – requires sophisticated hacking skills and constitutes a violation of the iOS end-user software license agreement.⁵⁴² Furthermore, such jailbreaking cannot be a helpful remedy for consumers also because music streaming service providers do not offer versions of their app that could be loaded on a device even if forced open, as they distribute their iOS apps only via the App Store. Consumers have therefore no ability to switch to alternative distribution channels for native apps on iOS devices.

8.2.2.5.2. Constraints from the consumer side resulting from competition on the market for smart mobile devices

- (361) Deteriorated conditions for developers and their pass through to consumers could also have an impact on the sale of smart mobile devices by Apple. If higher prices for

⁵⁴⁰ The investigation has shown that the de-listing of music streaming apps from the App Store is not possible for music streaming service providers who must have their app on the App Store to reach iOS users. See recital (271).

⁵⁴¹ Item 3.2.2. (i) of the Guidelines prohibits: “*Creating an interface for displaying third-party apps, extensions, or plug-ins similar to the App Store or as a general-interest collection*”, see current version of the Guidelines, ID 3011.

⁵⁴² See recital (292).

apps or in-app content or reduced subscription functionalities for music streaming apps would negatively affect Apple's device sales to consumers, then Apple's market power *vis-à-vis* developers in the market for the provision to developers of platforms for the distribution of music streaming apps to iOS users could be disciplined because of the potential negative impact on the sale of smart mobile devices.

- (362) Such a disciplinary effect would not only require that there is effective competition in the market for smart mobile devices, but also that there is a sufficiently strong link between the market for smart mobile devices and app distribution. From the perspective of consumers, the distribution of apps via the App Store has some resemblance to an aftermarket. The App Store is pre-installed when a consumer buys an iOS device, whereas individual downloads, app purchases and in-app purchases on the App Store only take place at a later stage. The "secondary service" of app distribution takes place in connection with the use of the primary product "smart mobile devices" (in this case iOS devices) which are long lasting products and typically have already been acquired by consumers in the past.
- (363) However, there are also some differences between app distribution and traditional aftermarket cases. Notably, smart mobile devices can also be used without music streaming apps and without any third-party applications downloaded from the App Store. Moreover, most music streaming apps are typically offered for free and consumers only pay for in-app purchases which typically relate to subscriptions for the premium service. There are also alternative ways of listening to streamed music outside of the mobile devices, consumers can purchase subscriptions elsewhere and use these subscriptions within their apps, something that Apple has never prohibited.
- (364) The Commission preliminarily concludes that competition on the market for smart mobile devices does not discipline Apple's market power *vis-à-vis* consumers and ultimately developers with respect to the provision of a distribution platform for music streaming apps to iOS users. As will be explained in the following Sections, this preliminary conclusion is based on (i) the limited competition Apple faces in the market for smart mobile devices, in particular in the high-end segment, where it equally has a considerable degree of market power and (ii) the lack of a sufficiently strong link between the market for smart mobile devices and the conditions that Apple sets for music streaming app distribution through the App Store.

8.2.2.5.2.1. The level of competition in the market for smart mobile devices

8.2.2.5.2.1.1. The Commission's position

- (365) The Commission considers that competition in the smart mobile device market is not fully effective and Apple holds market power, in particular in the premium segment of the market. As will be explained in this Section, Apple has been able to differentiate itself in this market from other providers and faces limited price competition. The strong brand loyalty of iOS users and their lock-in in the ecosystem, reinforced by a number of monetary and non-monetary switching costs between iOS and Android devices further reduces the competitive pressure Apple faces in this market.
- (366) Google's Android and Apple's iOS have emerged throughout the last decade as the two main mobile operating system in Europe, with estimated market shares in terms of active smart mobile devices of 65 % and 34 % respectively in 2022, as can be seen

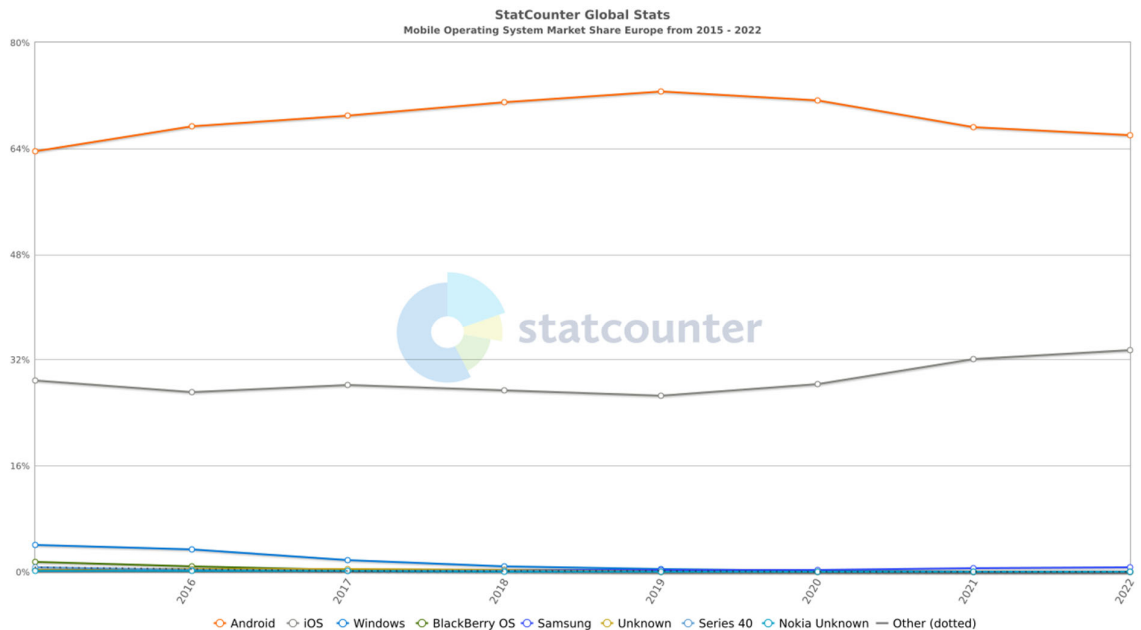
from Figure 14.⁵⁴³ In particular, iOS had a share in Europe of approximately 33 % of mobile operating system for smartphones compared to 66 % for Android,⁵⁴⁴ and of 48 % of mobile operating system for tablets, compared to 52 % for Android.⁵⁴⁵

⁵⁴³ See <https://gs.statcounter.com/os-market-share/mobile-tablet/europe/#yearly-2015-2022>, accessed on 14 December 2023, IDs 3253 and 3257. StatCounter market shares are based on data on website views by different devices. For more information on StatCounter's methodology see <https://gs.statcounter.com/faq#methodology>, accessed on 6 April 2022, ID 2316.

⁵⁴⁴ See <https://gs.statcounter.com/os-market-share/mobile/europe/#yearly-2015-2022>, accessed on 14 December 2023, IDs 3258 and 3259. StatCounter defines a mobile device as a pocket-sized computing device. Tablets are not included. [...]. Calculations of the Commission in ID 3217 based on information provided by Apple in Annexes Q1.1 and Q1.2 to the Commission's request for information of 3 August 2023, IDs 2992 and 2993. Note that the figures of installed base for smartphones for 2022 are forecasted. [...]; see calculations of the Commission in ID 3217 based on Annex to Apple's response to the Commission's request for information of 3 August 2023, ID 2994.

⁵⁴⁵ Which has since 2019 been re-labelled iPadOS for Apple's iPad tablets. See <https://gs.statcounter.com/os-market-share/tablet/europe/#yearly-2015-2022>, accessed on 14 December, IDs 3260 and 3261.

Figure 14 – Evolution of mobile operating systems’ market share in Europe from 2015 to 2022⁵⁴⁶



- (367) Apple is one of the main smart mobile device vendors in Europe. For the period 2015-2022, Apple smart mobile devices accounted for [...] % of the revenue share and [...] % of units sold in the EEA.⁵⁴⁷
- (368) With respect to tablets, Apple was the most successful OEM in Europe in 2022 with a share of 48.1 % in terms of active devices, followed by Samsung (32.8 %), Huawei (5.7 %) and Amazon (4.1 %), all of which are based on Android.⁵⁴⁸ Apple’s leadership is also confirmed by its market shares both in terms of units sold ([...] %) and value of sales ([...] %) in 2022,⁵⁴⁹ as shown in Figures 15 and 16.

⁵⁴⁶ See <https://gs.statcounter.com/os-market-share/mobile/europe/#yearly-2015-2022>, accessed on 14 December, ID 3259.

⁵⁴⁷ Commission calculations in ID 3217 based on data from IDC and Canalis provided by Apple in Annex 10 (revised) to its response to the Commission’s request for information (2022/004722), ID 2302, and Annexes Q13.1 and Q13.2 to its response to the Commission’s request for information of 3 August 2023, IDs 3002 and 3003. For the purposes of comparability of different years and with figures obtained from StatCounter for Europe, the calculations include figures for the EEA and for the UK, although the latter withdrew from the European Union as of 1 February 2020. [...], <https://www.statista.com/statistics/773772/mobile-device-revenue-share-by-vendor-worldwide/>, accessed on 15 January 2021, ID 1135; <https://www.statista.com/statistics/773371/mobile-device-revenue-by-vendor-worldwide/>, accessed on 15 January 2021, ID 1139; <https://www.counterpointresearch.com/apples-revenue-super-cycle/>, accessed on 15 December 2020, ID 1013.

⁵⁴⁸ See <https://gs.statcounter.com/vendor-market-share/tablet/europe/#yearly-2015-2022>, accessed on 27 November 2023, ID 3207. StatCounter market shares are based on data on website views by different devices. For more information on StatCounter’s methodology see <https://gs.statcounter.com/faq#methodology>, accessed on 6 April 2022, ID 2316.

⁵⁴⁹ Commission calculations in ID 3217 based on data from IDC provided by Apple in Annex 10 (revised) to its response to the Commission’s request for information (2022/004722), ID 2302 and data from Canalis provided in Annex Q13.2 to Apple’s response to the Commission’s request for information of 3 August 2023, ID 3003. For the purposes of comparability of different years and with figures obtained

Figure 15 – [...]⁵⁵⁰

[...]

⁵⁵⁰

from StatCounter for Europe, the calculations include figures for the EEA and for the UK, although the latter withdrew from the European Union as of 1 February 2020.

Commission calculations in ID 3217 based on data from IDC provided by Apple in Annex 10 (revised) to its response to the Commission's request for information (2022/004722), ID 2302 and data from Canalys provided in Annex Q13.2 to Apple's response to the Commission's request for information of 3 August 2023, ID 3003. For the purposes of comparability of different years and with figures obtained from StatCounter for Europe, the calculations include figures for the EEA and for the UK, although the latter withdrew from the European Union as of 1 February 2020.

Figure 16 – [...] ⁵⁵¹

[...]

- (369) With respect to smartphones, Apple was the most successful OEM in Europe in terms of active devices, with a 33.3 % share in 2022, followed by Samsung with a 31.6 % share⁵⁵² This leadership is also confirmed by their market shares in terms of volume and value of sales. In particular, Apple and Samsung had a market share in 2022 of [...] % and [...] % respectively in terms of unit sold, and [...] % and [...] % in terms of value of those sales,⁵⁵³ as shown in Figures 17 and 18.

⁵⁵¹ *Ibid.*

⁵⁵² See <https://gs.statcounter.com/vendor-market-share/mobile/europe/#yearly-2015-2022>, accessed on 27 November 2023, ID 3206. StatCounter market shares are based on data on website views by different devices. For more information on StatCounter's methodology see <https://gs.statcounter.com/faq#methodology>, accessed on 6 April 2022, ID 2316.

⁵⁵³ Commission calculations in ID 3217 based on data from IDC provided by Apple in Annex 10 (revised) to its response to the Commission's request for information (2022/004722), ID 2302 and in Q13.1 to its response to the Commission's request for information of 3 August 2023, ID 3002. For the purposes of comparability of different years and with figures obtained from StatCounter for Europe, the calculations include figures for the EEA and for the UK, although the latter withdrew from the European Union as of 1 February 2020.

Figure 17 – [...]⁵⁵⁴

[...]

⁵⁵⁴

Commission calculations in ID 3217 based on data from IDC provided by Apple in Annex 10 (revised) to its response to the Commission’s request for information (2022/004722), ID 2302 and in Q13.1 to its response to the Commission’s request for information of 3 August 2023, ID 3002. For the purposes of comparability of different years and with figures obtained from StatCounter for Europe, the calculations include figures for the EEA and for the UK, although the latter withdrew from the European Union as of 1 February 2020.

Figure 18 – [...]⁵⁵⁵

[...]

- (370) As shown above, Apple’s value shares for both tablets and smartphones exceed its share on unit sales. Apple’s smart mobile devices market (covering both smart phones and tablets) share in terms of units sold in 2021 in the EEA was estimated to be around [30-40] %, with Samsung closely following with [30-40] %. However, in terms of the value of those sales, Apple had a [50-60] % market share, compared to Samsung with a [20-30] %.⁵⁵⁶ This is because the price of Apple devices is typically above average, as Apple positions its smart mobile devices in the high-end segment as premium products. While in 2021 the worldwide average selling price of an Android smartphone was USD 261,⁵⁵⁷ the average iPhone price was USD 977.⁵⁵⁸ In the period 2015-2022, the average selling price of Samsung smartphones in the EEA – the vendor second to Apple in terms of market share – fluctuated between USD 386 and 450, with the average selling price having steadily decreased from USD 450 in 2018 to USD 387 in 2022.⁵⁵⁹ In the period 2015-2022, the iPhone’s average selling price in the EEA grew from USD 728 in 2015 to USD 1,003 in 2022.⁵⁶⁰ Similarly for tablets, while the average selling price in the EEA of Samsung tablet grew from USD 265 in 2015 to 351 in 2022, the average selling price of the iPad grew from USD 508 in 2015 to 585 in 2021, but dropped to around USD 503 in 2022.⁵⁶¹
- (371) [...].⁵⁶² [...].⁵⁶³ According to public estimates, in the period 2007-2020, Apple’s markups on material costs per device were high, estimated between 124% to

⁵⁵⁵ *Ibid.*

⁵⁵⁶ Commission calculations in ID 2607 based on data from IDC provided by Apple in Annex 10 (revised) to its response to the Commission’s request for information (2022/004722), ID 2302. For the purposes of comparability of different years, figures for the UK have also been taken into account for the years 2020 and 2021, although the UK withdrew from the European Union as of 1 February 2020.

⁵⁵⁷ See <https://www.statista.com/statistics/951537/worldwide-average-selling-price-android-smartphones/>, accessed on 9 March 2022, ID 2350.

⁵⁵⁸ Commission calculations in ID 2607 based on data from IDC provided by Apple in Annex 10 (revised) to its response to the Commission’s request for information (2022/004722), ID 2302. On differences of average selling prices between iOS and Android smartphones, see also Commission decision of 18 July 2018 in Case AT.40099 – *Google Android*, paragraph 502 et seq.

⁵⁵⁹ For the years 2020 to 2021, see Commission calculations in ID 2607 based on data from IDC provided by Apple in Annex 10 (revised) to its response to the Commission’s request for information (2022/004722), ID 2302. For the year 2022, see Commission calculations in ID 3217 based on data from IDC provided by Apple in Annex Q13.1 to its response to the Commission’s request for information of 3 August 2023, ID 3002. For the purposes of comparability of different years, figures for the UK have also been taken into account for the years 2020 to 2022, although the UK withdrew from the European Union as of 1 February 2020.

⁵⁶⁰ *Ibid.*

⁵⁶¹ For the years 2020 to 2021, see Commission calculations in ID 2607 based on data from IDC provided by Apple in Annex 10 (revised) to its response to the Commission’s request for information (2022/004722), ID 2302. For the year 2022, see Commission calculations in ID 3217 based on data from IDC provided by Apple in Annex Q13.2 to its response to the Commission’s request for information 3 August 2023, ID 3003. For the purposes of comparability of different years, figures for the UK have also been taken into account for the years 2020 to 2022, although the UK withdrew from the European Union as of 1 February 2020.

⁵⁶² See <https://www.statista.com/statistics/253649/iphone-revenue-as-share-of-apples-total-revenue/>, accessed on 14 December 2023, ID 3254. ID 3264, accessed on 14 December 2023, contains underlying data of Statista figures.

260 %.⁵⁶⁴ In 2016, on some iPhone models such as the iPhone SE and iPhone 6S Plus (both 16 GB), Apple's retail price was estimated to amount to more than 250-300 % of device material and manufacturing costs.⁵⁶⁵ [...].⁵⁶⁶

- (372) Even among smartphones in the highest price segment, Apple's device margins appear high, both in isolation and compared to rivals. The estimated gross margin for Apple's iPhone 13 Pro Max (256 GB) and the iPhone 13 (512 GB), amounts to 63 %.⁵⁶⁷ The particularly high 63 %, device margin indicates a generally weak competition among high-end devices. Apple's 63 % margin on latest models is also higher than the estimated margins of Huawei's Mate40E (49 %), Google's Pixel 5 (55 %) or Samsung's Galaxy Z Fold3 (61 %).⁵⁶⁸

Figure 19 – [...]⁵⁶⁹

[...]

⁵⁶³ Calculations of the Commission in ID 3217 based on information of Apple provided in Annexes 5.1 and 5.2 to its response to request for information (2020/146914), and 12.1 and 12.2 (revised) to its response to request for information (2022/004722), IDs 2297 and 2299, as well as Apple's response to the Commission's request for information 3 August 2023, Annexes Q3.1 and Q3.2., IDs 3002 and 3003. For the purposes of comparability of different years, figures for the UK have also been taken into account for the years 2020 and 2021, although the UK withdrew from the European Union as of 1 February 2020. Calculated as (Sales-Standard costs)/Sales.

⁵⁶⁴ See <https://www.bankmycell.com/blog/how-much-do-iphones-cost-to-make>, accessed on 14 December 2023, ID 3285. Markups calculated as (Retail price-Material costs)/Material costs. These translate into per device margins better comparable to those in Figures 19 and 20 calculated as (Retail price-Material costs)/Retail price of 56-72 %.

⁵⁶⁵ See <https://www.statista.com/chart/4622/iphone-costs-and-retail-prices/>, accessed on 15 January 2021, ID 1133.

⁵⁶⁶ There is no considerable decline in Apple's iPad margins over time (Figure 20).

⁵⁶⁷ Gross margins are calculated as (price-cost)/price based on data from Table "Comparison with other smartphones" at <https://vdata.nikkei.com/en/newsgraphics/iphone-teardown/>, accessed on 9 March 2022, IDs 2388 and 2395.

⁵⁶⁸ The Samsung Galaxy Z Fold3 device stands out with its price of USD 1,800 compared to Apple's prices of USD 1,190 (iPhone 13 Promax 256Gb) and USD 1,099 (iPhone 13 512Gb).

⁵⁶⁹ Calculations of the Commission in ID 3217 based on information of Apple provided in Annexes 5.1 and 5.2 to its response to request for information (2020/146914), and 12.1 and 12.2 (revised) to its response to request for information(2022/004722), IDs 2297 and 2299, as well as Apple's response to the request for information dated 4 September 2023, Annexes Q3.1 and Q3.2., IDs 3002 and 3003. For the purposes of comparability of different years, figures for the UK have also been taken into account for the years 2020 and 2021, although the UK withdrew from the European Union as of 1 February 2020. Calculated as (Sales-Standard costs)/Sales.

Figure 20 – [...] ⁵⁷⁰

[...]

(373) [...] ⁵⁷¹ [...] ⁵⁷² [...] ⁵⁷³ [...] ⁵⁷⁴ [...] ⁵⁷⁵

Figure 21 – [...] ⁵⁷⁶

[...]

(374) Analysts reported in 2020 that “*four out of five best selling models in the premium segment were from Apple,*” and that Apple is leading the premium segment in all regions, with a global share of 57 %. ⁵⁷⁷ In 2022, Apple accounted for 75 % of the global premium smartphone market sales share (devices of +USD 600) compared to 71 % in the previous year. ⁵⁷⁸ [...] ⁵⁷⁹

(375) However, Apple’s devices do not only lead sales in the premium segment. In 2022, Apple captured eight out of the ten top smartphones in 2022 sold worldwide, with the iPhone 13 being the best-selling smartphone overall. The remaining two spots were taken by Samsung’s models. ⁵⁸⁰

Figure 22 – Global Top 10 Best-selling Smartphones Unit Sales Share and Monthly rankings, 2022 ⁵⁸¹

⁵⁷⁰ *Ibid.*

⁵⁷¹ Annex Q14 of Apple’s response to the Commission’s request for information of 3 August 2023, ID 3004.

⁵⁷² Figures reported by Apple in Annex Q11 (revised) to its response to request for information (2022/0019122), ID 2277. The figures provided by Apple show the average selling price per device in 2020 and 2021 for the EEA and the UK separately.

⁵⁷³ See Statista, “*An iPhone for (Almost) Every Wallet*”, accessed on 4 March 2021, ID 1382.

⁵⁷⁴ Annex Q14 of Apple’s response to the Commission’s request for information of 3 August 2023, ID 3004. According to Statista figures (see <https://www.statista.com/statistics/951537/worldwide-average-selling-price-android-smartphones/>, accessed on 21 September 2023, ID 3168), the average selling price of Android smartphones worldwide was USD 265 in 2021 and USD 286 in 2023.

⁵⁷⁵ The iPhone SE 2nd Gen was sold at an average price of USD 407,65 in the EEA and USD 371,61 worldwide.

⁵⁷⁶ Commission calculations in ID 3217 based on data provided by Apple in its response to question 2 of the Commission’s request for information (2020/146914), ID 1194, Annex Q2, ID 1193-57 and Annex Q11 (revised) to its response to request for information (2022/0019122), ID 2277 and Annex Q14 in its response to the Commission’s request for information of 3 August 2023, ID 3004. The figures provided by Apple show the average selling price per device in 2020 to 2022 for the EEA and the UK separately. Thus, the average selling prices for those years do not include the UK prices, while years 2009 to 2019 do. However, the average selling prices in the UK and in the EEA are roughly similar. The impact in the comparability of the average selling prices from 2009 to 2022 is not of great significance.

⁵⁷⁷ See <https://www.counterpointresearch.com/apple-captured-59-premium-smartphone-segment/>, accessed on 11 February 2021, ID 1288.

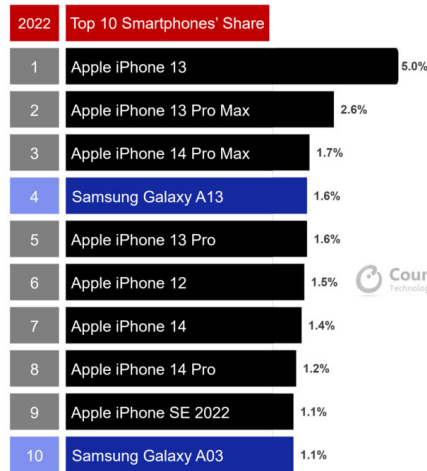
⁵⁷⁸ See <https://www.counterpointresearch.com/insights/premium-market-captures-half-global-smartphone-revenue-2022-first-time/>, accessed on 26 October 2023, ID 3166.

⁵⁷⁹ [...]

⁵⁸⁰ See <https://www.counterpointresearch.com/insights/top-smartphones-global-2022/>, accessed on 20 September 2023, ID 3163.

⁵⁸¹ *Ibid.*

Share of Global Top 10 Best-selling Smartphones, 2022



Monthly Rankings for 2022

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1	1	1	1	1	1	1	1	1	2	4	4	4
2	2	2	2	2	2	2	2	2	7	7	11	15
3									1	1	1	2
4	3	3	4	3	5	5	4	6	9	20	26	28
5			37	7	3	4	3	3	5	5	5	5
6	4	4	3	4	4	3	5	7	11	25	28	31
7									4	3	2	1
8									3	2	3	3
9			14	17	9	7	7	5	6	6	7	8
10			22	6	6	6	6	4	8	8	15	11

Source: Counterpoint's Global Monthly Handset Model Sales (Sell-through) Tracker, Dec 2022

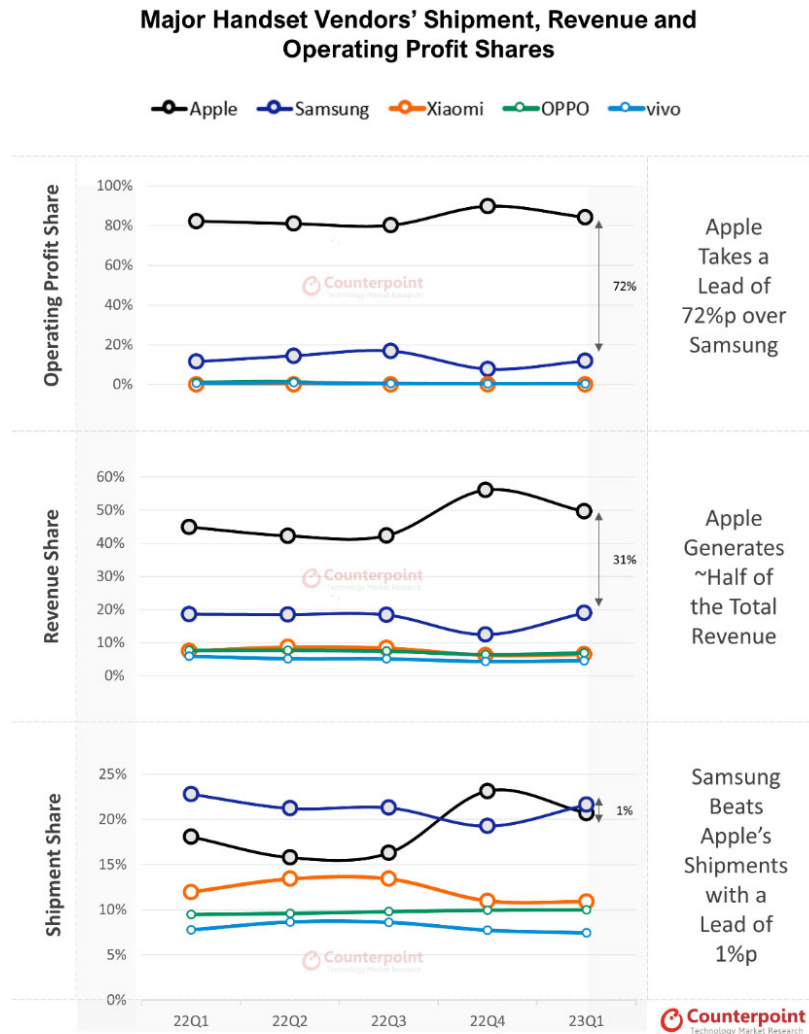
(376) In addition, Apple alone accounts for a large share of worldwide smartphone profits, which provides another indication that Apple may face only limited competition from other smartphone vendors. As can be seen from Figure 23, between the first quarter of 2022 and the first quarter of 2023, Apple's global mobile handset operating profit share stayed around and above 80 %.⁵⁸² In Q1 2023 Apple's share outperformed Samsung's share by a 72 %⁵⁸³ In the same period, Apple was the biggest revenue generator in the smartphone business, capturing nearly half of the global total revenue, despite having shipped around 20 % of the global handset shipments.⁵⁸⁴ No other rival smartphone seller achieved a nearly comparable share of industry operating profits. This shows that Apple is to some extent able to avoid price competition from Android-based smartphone makers, sustain high device prices and margins, while those vendors compete closer on prices and achieve significantly lower margins and profits.

⁵⁸² See <https://www.counterpointresearch.com/insights/global-smartphone-market-declines-14-yoy-q1-2023-apple-records-highest-ever-q1-share/>, accessed on 21 September 2023, ID 3184. See also <https://www.bloomberg.com/news/articles/2023-02-03/iphone-grabs-record-smartphone-profit-share-of-85-for-apple#xj4y7vzkg>, accessed on 22 September 2023, ID 3185.

⁵⁸³ See <https://www.counterpointresearch.com/insights/global-smartphone-market-declines-14-yoy-q1-2023-apple-records-highest-ever-q1-share/>, accessed on 21 September 2023, ID 3184.

⁵⁸⁴ *Ibid.*

Figure 23 – Major Handset Vendor’s Shipments, Revenue and Operating Profit Shares from Q1 2022 to Q1 2023 ⁵⁸⁵



- (377) The evidence cited above shows that Apple has positioned its models in the high-end price range, moving away from potential competition from most Android-based rivals, which offer devices in a wider price range including an extensive budget offering, and try to attract more cost-conscious consumers.⁵⁸⁶
- (378) This is also consistent with the findings in the consumer surveys carried out by Spotify [...] for the purposes of the investigation, which suggest that Apple’s smart mobile device users are less price sensitive, more brand-loyal and put more weight on factors associated with ease of use and connectivity than Android users. According to [...] surveys, 57 % of Android users claimed to have considered the price of the device in their purchase decision. However, only a small minority of

⁵⁸⁵ *Ibid.*

⁵⁸⁶ See recital (370) (on average selling price of iPhones in 2022 vs average selling price of Android phones. See also <https://www.nytimes.com/wirecutter/reviews/best-budget-android-phone/>, accessed on 21 September 2023, ID 3195.

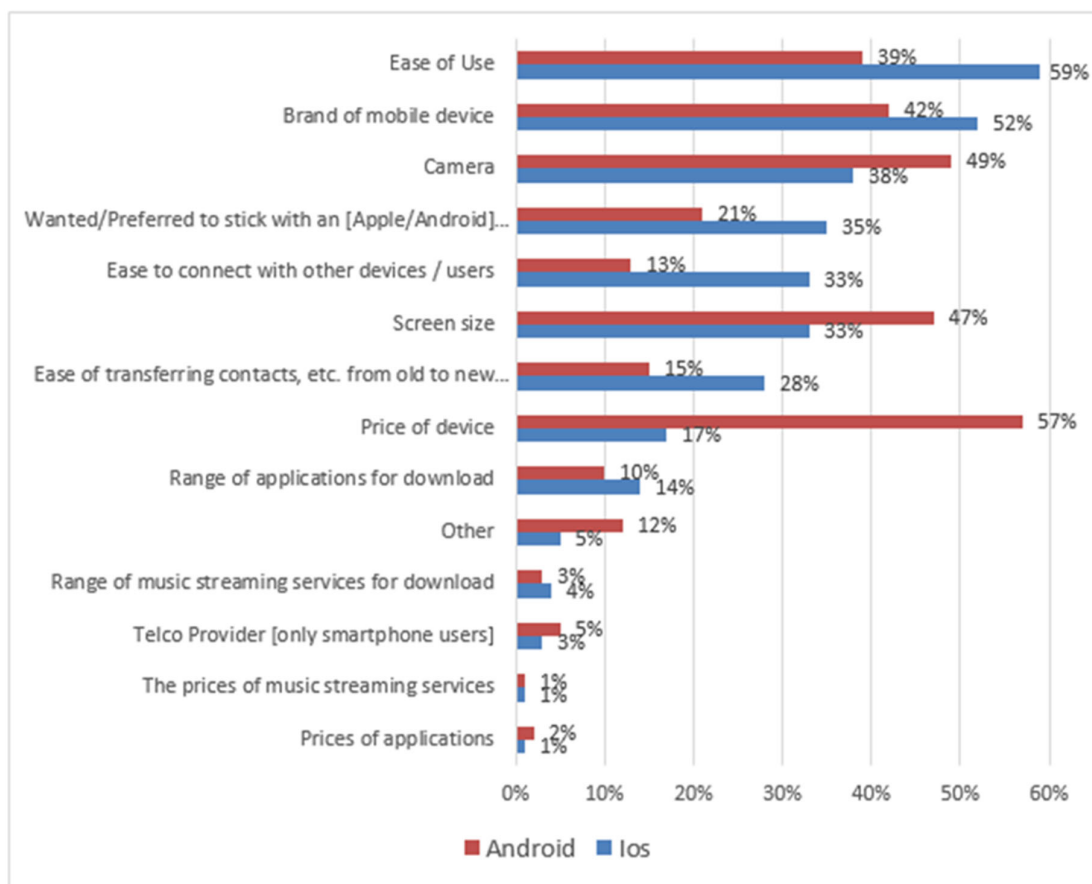
Apple users ([...] 17 % according to the Spotify Survey) mentioned the price of the mobile device as a factor influencing their device choice.

Figure 24 – [...].⁵⁸⁷

[...]

⁵⁸⁷ [...].

Figure 25 – Spotify survey question 7: What factors were important when you chose/purchased your current device? Responses by OS.⁵⁸⁸



- (379) This limited price competition between iOS and Android devices has also been confirmed by the UK Competition and Markets Authority (“CMA”), which emphasised in its report that Apple’s iOS devices dominate sales of high-priced devices, while devices using Android dominate the sales of low-priced devices.⁵⁸⁹
- (380) In sum, the evidence shows Apple has a strong market position in the smart mobile device market, which is even stronger in the premium segment where it holds considerable market power.
- (381) Apple’s position is further reinforced by a lock-in of consumers due to strong brand loyalty and switching costs.
- (382) The switching rates of Apple’s customers remain very limited. The consumer surveys conducted by Spotify [...], show that iOS users exhibit a high degree of brand loyalty and are “locked-in” to a considerable degree. According to the survey conducted by Spotify, 83 % of iOS users indicated that their previous device was of

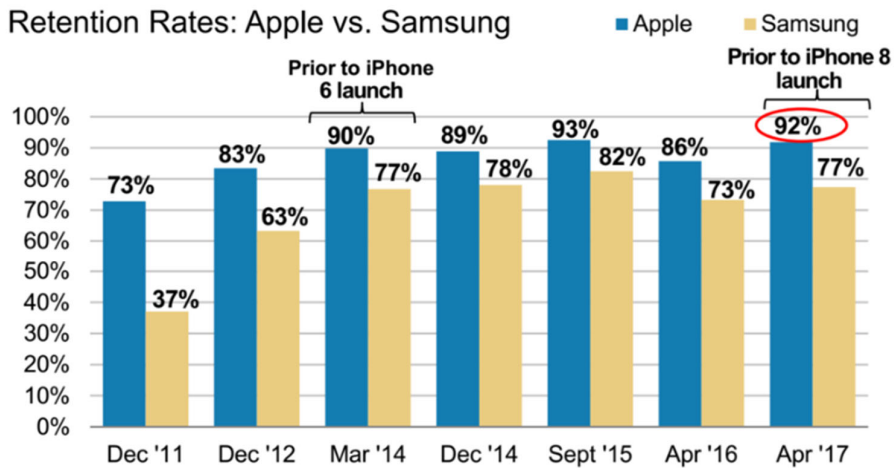
⁵⁸⁸ The results of the Spotify survey are summarised in Compass Lexecon’s document of 22 March 2020 entitled “Is Apple’s dominance in the market for developers’ access to iOS constrained by competition for iPhone sales?”, ID 900. Figure 25 is based on Commission calculations in ID 1584 based on data in Table 3, page 36 et seq. of ID 900. The questionnaire is in ID 500.

⁵⁸⁹ CMA “Mobile ecosystems market study final report”, accessed on 14 June 2022, ID 2431, paragraph 3.47, 3.79 and 7.62.

the same brand as the current one.⁵⁹⁰ [...] ⁵⁹¹ [...]. This is a remarkably low share, considering that Android smartphones are used by more than [...] as many consumers in the EEA than Apple smartphones (see recital (366)). These figures indicate that Apple users are particularly loyal to their device brand and are unlikely to switch to a non-Apple device.

- (383) These results are confirmed by industry surveys on brand loyalty of users of smart mobile devices, which often indicate even higher loyalty rates amongst users of Apple’s smart mobile devices, in particular the iPhone. Research conducted by Morgan Stanley found in 2017 that 92 % of iPhone users who plan to upgrade their phone in the next year are likely to repurchase an iPhone.⁵⁹²

Figure 26 – Retention Rates: Apple vs. Samsung



Source: AlphaWise, Morgan Stanley Research

- (384) Similarly, another study by CIRP⁵⁹³ found the iOS loyalty rate to be above 80 % between September 2015 and December 2017.⁵⁹⁴

⁵⁹⁰ See Table 3, page 39, Q.13, ID 900.

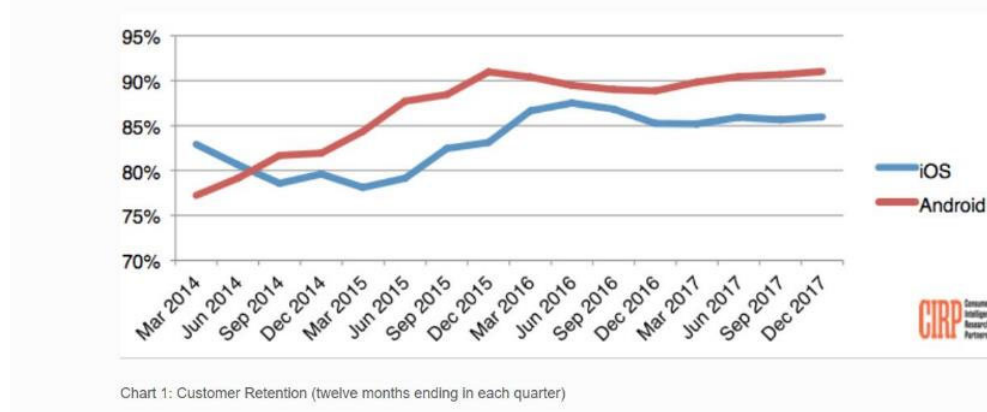
⁵⁹¹ [...].

⁵⁹² See <https://markets.businessinsider.com/news/stocks/apple-stock-price-morgan-stanley-note-2017-5-1002022779-1002022779>, accessed on 16 December 2020, ID 1043 and <https://www.businessinsider.com/apple-iphone-more-loyal-android-chart-2017-5?r=US&IR=T>, accessed on 16 December 2020, ID 1095, referring to research conducted by Morgan Stanley in (2017) “Retention Rate on the Rise as Supercycle Approaches”.

⁵⁹³ Consumer Intelligence Research Partners (CIRP) provides research data and insights about various companies and markets, including Apple. See <https://www.cirpllc.com/>.

⁵⁹⁴ See <https://www.cirpllc.com/blog/2018/3/21/mobile-operating-system-loyalty-high-and-steady>, accessed on 16 December 2020, ID 1046.

Figure 27 – Customer Retention - CIRP



- (385) In comments on the study, a CIRP partner explained that: *“Loyalty is also as high as we’ve ever seen, really from 85-90 % at any given point. With only two mobile operating systems at this point, it appears users now pick one, learn it, invest in-apps and storage, and stick with it. Now, Apple and Google need to figure out how to sell products and services to these loyal customer bases.”*⁵⁹⁵ [...].⁵⁹⁶
- (386) A more recent CIRP study in the US market reported very strong brand loyalty among iPhone users, as for more than 90 % of customers purchasing a new iPhone, their previous smartphone was also an iPhone.⁵⁹⁷

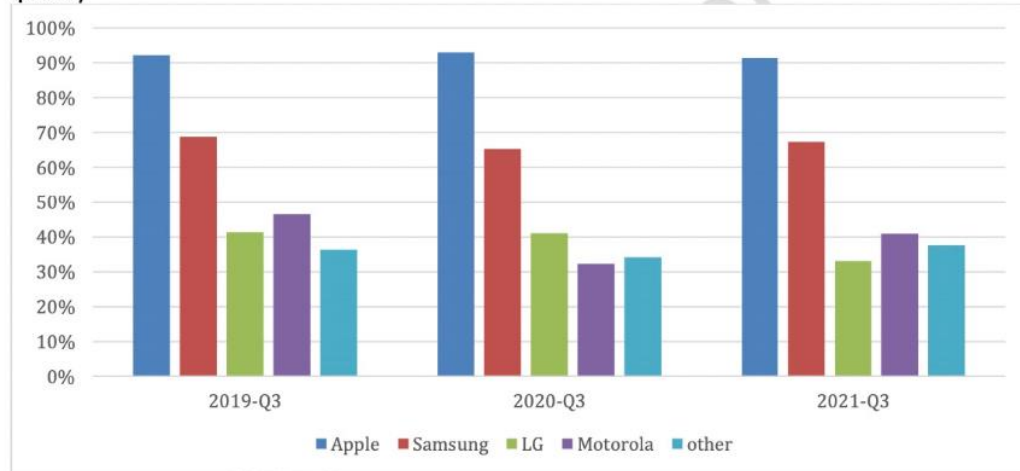
⁵⁹⁵ See ID 1630.

⁵⁹⁶ [...].

⁵⁹⁷ See <https://9to5mac.com/2021/10/28/iphone-loyalty-rate-data-switchers/>, accessed on 5 April 2022, ID 2347.

Figure 28 – Mobile phone brand loyalty in the United States from 2019 to 2021⁵⁹⁸

Chart 2: Customers purchasing new brand same as previous brand (twelve months ended each indicated quarter)



- (387) Moreover, a survey conducted by the CMA in April 2022 for the UK found that 8 % of users who purchased an iPhone as their current smartphone had switched from an Android smartphone and only 5 % of users who purchased an Android smartphone as their current smartphone switched from an iOS smartphone.⁵⁹⁹
- (388) The evidence gathered by the Commission shows that users face various monetary and non-monetary switching costs between Apple’s smart mobile devices and Android devices.
- (389) On the one hand, monetary switching costs include the investment required, not only in purchasing a mobile device, but also different accessories linked to it that need to be changed in case of switching.⁶⁰⁰ Certain complementary devices, such as the Apple Watch for the iPhone or Apple’s HomePod, may no longer be compatible when switching to another ecosystem. Users would lose the investment made on this device (which can be equivalent or even higher than the cost of certain smart mobile devices)⁶⁰¹ and may need to repurchase a compatible device. As explained above, users might also need to repurchase certain apps or content in case of switching devices and OS, such as e-books or audiobooks.⁶⁰² Moreover, users may have

⁵⁹⁸ See footnote 597.

⁵⁹⁹ CMA “Mobile ecosystems market study final report”, paragraph 3.43, accessed on 14 June 2022, ID 2431.

⁶⁰⁰ In the US *Epic* judgment, the judge recognised that “*It is further apparent that one may need to repurchase phone accessories*” (Epic Games, Inc. v. Apple Inc., Rule 52 Order after Trial on the Merits, Case No. 4:20-cv-05640-YGR, 10 September 2021, page 50), <https://cand.uscourts.gov/wp-content/uploads/cases-of-interest/epic-games-v-apple/Epic-v.-Apple-20-cv-05640-YGR-Dkt-812-Order.pdf>, accessed on 2 May 2022, ID 2378.

⁶⁰¹ For instance, the starting price of an Apple Watch is EUR 279 for the cheapest Apple Watch SE and EUR 899 for the newest Apple Watch Ultra 2 (see <https://www.apple.com/befr/watch/>, accessed on 5 October 2023, ID 3196).

⁶⁰² These have been recognised as relevant switching costs when switching devices with different OS in case T-604/18 *Google Android*, EU:T:2022:541, paragraph 203, where the General Court considered that “*even if users spent little on apps compared to the cost of a mobile device, it must be noted that there would nevertheless be an additional cost for users wishing to switch to another OS*”. The Court

purchased their smartphone on a plan with their telecom providers, subject to a fixed term of contract, linked to early termination fees and any outstanding phone repayments.

- (390) On the other hand, there are a number of non-monetary switching costs involved as people have invested in becoming used to a certain mobile operating system and its functions. Users that intend to switch to a device running on a different mobile operating system have to acquire technical knowledge and invest time and effort to at least transfer part of the content to the new device.⁶⁰³ Paid apps and content may have to be re-purchased again, and even if this is not the case, they will have to be re-downloaded and re-installed. Similarly importantly, user have become familiar with the iOS user interface and its features.⁶⁰⁴ Switching to an alternative mobile operating system such as Android would require them to invest time to get familiar with a new user interface, new functionalities and change their routines.⁶⁰⁵ After years of using a device with a certain operating system, users have downloaded and purchased apps for their smart mobile device, obtained cloud storage services, introduced contact details and become familiarised with the user interface of the device, among other factors.
- (391) Regarding the transfer of data and apps that can be transferred between devices, although this process may have improved, it is still not completely seamless, and consumers are concerned about this.⁶⁰⁶
- (392) First, regarding the transfer of apps and in-app content, even if many apps can be downloaded for free on both Android and iOS devices, certain apps and in-app content may not be easily transferred in case of switching to a devices running on a

further noted that, “[h]owever small that additional cost was, it could not be avoided and it did constitute a barrier to users switching”.

⁶⁰³ See Commission decision of 18 July 2018 in Case AT.40099 – *Google Android*, paragraph 524.

⁶⁰⁴ See ACM “Market study into mobile app stores”, accessed on 12 November 2020, ID 886, page 55: “*Learning costs also play their part in switching behaviour. This means that consumers need to get accustomed to and grow familiar with other interfaces.*”

See also iPhone vs. Android – Cell Phone Brand Loyalty Survey 2019 by sellcell of 19 August 2019 finding: “*21 % of iPhone users might be tempted to switch if they weren’t too tied into the Apple Ecosystem or it wasn’t so much hassle changing operating system from iOS to Android*”; <https://www.sellcell.com/blog/iphone-vs-android-cell-phone-brand-loyalty-survey-2019/>, accessed on 16 December 2020 ID 1027. See also Commission decision of 18 July 2018 in Case AT.40099 – *Google Android*, paragraphs 522 et seq.

⁶⁰⁵ This has been acknowledged in Case T-604/18 *Google Android*, EU:T:2022:541, paragraph 204, where the Court endorsed the Commission’s claim that “*switching requires users to familiarise themselves with a new interface, making it necessarily more complex and uncertain*”). Similarly, the United States Northern District Court of California noted in the *Epic* judgment that “*The Court can agree that it takes time to find and reinstall apps or find substitute apps; to learn a new operating system; and to reconfigure app settings*” (*Epic Games, Inc. v. Apple Inc.*, Rule 52 Order after Trial on the Merits, Case No. 4:20-cv-05640-YGR, 10 September 2021, page 50), <https://cand.uscourts.gov/wp-content/uploads/cases-of-interest/epic-games-v-apple/Epic-v.-Apple-20-cv-05640-YGR-Dkt-812-Order.pdf>, accessed on 2 May 2022, ID 2378.

Learning costs have also been identified as a relevant perceived barrier to switching by the CMA (CMA “*Mobile ecosystems market study final report*”, accessed on 14 June 2022, ID 2431, paragraphs 3.89-3.90 and 3.93-3.96.

⁶⁰⁶ See for instance, the CMA “*Mobile ecosystems market study final report*”, accessed on 14 June 2022, ID 2431, paragraphs 3.90, 3.94, 3.99-3.102. According to the CMA’s consumer survey, a significant number of users are concerned that it may be difficult or impossible to transfer data and apps to a new device. See also Annex 32 to the observations by BEUC on the Statement of Objections of 30 April 2021, ID 2015.

different operating system and may need to be purchased again.⁶⁰⁷ In particular, for in-app subscriptions made through IAP, users that no longer want to be billed by Apple need to repurchase or re-subscribe with respect to all subscriptions made through IAP after switching to a non-iOS device. Moreover, Apple appears to prevent developers from requiring users to link their developer accounts to their Apple ID.⁶⁰⁸ In case users choose not to do that, they will not be able to subsequently use their (IAP) subscription on other non-iOS devices, including Android devices. This is also the case for music streaming subscriptions purchased through IAP. In this case, users need to cancel their existing subscriptions on iOS before switching and then re-subscribing to the service on the new non-iOS device or via the website of the provider.

- (393) Second, regarding transfer of data, although this process may have improved with the availability of apps that help users switch and transfer data from one operating system to the other,⁶⁰⁹ the process is still not seamless. As pointed out in the CMA final report on mobile ecosystems, while some users may feel confident with the switching process, others may not and may feel this process does not transfer all their data reliably. This may in itself discourage switching or increase the time and effort required for it, as reflected in consumer surveys.⁶¹⁰
- (394) Moreover, even once switching is completed, the synchronisation of certain data and devices may no longer be possible. Users may have more than one Apple device synchronised together with their smartphone or with Apple services not available on Android. For instance, automatic synchronisations and access through different devices to iCloud would no longer be possible when switching to Android.⁶¹¹
- (395) In addition, some of these features and services are non-portable between devices with different operating systems. Users of Apple’s smart mobile devices may in particular have other Apple devices and use different Apple services and features which are not compatible with an Android device, thereby increasing the switching barriers from iOS to Android.⁶¹² Most of Apple’s proprietary apps, services and

⁶⁰⁷ According to the CMA “Mobile ecosystems market study final report”, accessed on 14 June 2022, ID 2431, paragraphs 3.99-3.102, the extent to which data can be transferred may vary, with more limitations and perceived barriers to transferring data for switching from iOS to Android. According to the CMA’s consumer survey, a significant number of users are concerned that it may be difficult or impossible to transfer data and apps to a new device.

See also Annex 32 to the observations by BEUC on the Statement of Objections of 30 April 2021, ID 2025, on apps that facilitate the transfer of data and content to a new device: “*Schwieriger wird es beim Systemwechsel: dem Sprung von Android zu iOS oder umgekehrt. Zwar gelingt allen Apps der Transfer von Fotos und Videos. Auch Kontakte, SMS und Musik finden meist den Weg aufs neue Handy. Bezahl-Apps aber gehen verloren, der Nutzer muss sie auf dem Neugerät nochmals kaufen. Wer vom iPhone auf ein Huawei- oder Sony-Modell umzieht, muss selbst Gratis-Apps manuell herunterladen – das kostet viel Zeit.*”

⁶⁰⁸ CMA “Mobile ecosystems market study interim report”, accessed on 12 January 2022, ID 2208, paragraph 3.117.

⁶⁰⁹ Apple’s Response to the Statement of Objections of 28 February 2023, Annex 7, ID 2807, paragraph 29.

⁶¹⁰ CMA “Mobile ecosystems market study final report”, accessed on 14 June 2022, ID 2431, paragraphs 3.90, 3.94 and 3.101-3.102.

⁶¹¹ Although iCloud is accessible from Android through the browser, there is no iCloud app for Android and automatic backup of data and synchronisation with other Apple devices through iCloud is not possible.

⁶¹² See ACM “Market study into mobile app stores”, accessed on 12 November 2020, ID 886, page 55; and the CMA “Mobile ecosystems market study final report”, accessed on 14 June 2022, ID 2431,

features (such as, *inter alia*, iMessages, Safari, Apple Pay, Apple Books, Apple Podcasts, Facetime or AirDrop) are not available on Android devices, and compatibility between Android devices and other Apple devices may not be possible (e.g., the Apple Watch) or restricted for certain features (e.g., AirPods). This might lead to certain monetary switching costs (see recital (389)), but also non-monetary switching costs in terms of the loss of convenience and ease of use of the devices. The survey results from [...] the Spotify survey (see Figures 24 and 25) confirm that iOS users care in particular about the ease of use of their devices (59 % in the Spotify survey [...]), the ability to connect to other devices (30 % in the Spotify survey [...]) and to transfer contact details (28 % in the Spotify survey [...]) and other information from their old device to their new one. Many of them simply want to stay with an Apple device (36 % in the Spotify survey [...]). There are indications that it may be harder and more expensive to switch from iOS to Android than the other way around.⁶¹³ Consumers are incentivised to commit to the entire platform-ecosystem rather than maintaining free choice in mixing complements from different ecosystems.⁶¹⁴ In particular, iOS users who in addition purchase other Apple devices can benefit from continuity features - universal control, auto unlock, handoff, AirDrop or universal clipboard-, as well as Apple first-party apps and services.⁶¹⁵ This tight integration of Apple ecosystem makes it harder and more expensive to switch from iOS to Android, than from Android to iOS.⁶¹⁶

(396) [...] ⁶¹⁷ [...].⁶¹⁸

(397) A Credit Suisse equity invest report on Apple Inc. of June 2014 also argued that: “whether it is the customer lock-in and essential headache of leaving iOS ecosystem

paragraphs 3.108 to 3.117. According to a recent study by CIRP in the US, almost 50 % of iPhone buyers own an Apple Watch and more than 60 % also own an iPad. A significant percentage of iPhone users also own other Apple devices, such as a Mac Computer (almost 40 %), AirPods (about 20 %), Apple TV (over 30 %) or a Home Pod (about 10 %). See: <https://9to5mac.com/2021/08/25/cirp-iphone-draws-buyers-to-ipad-and-apple-watch-but-not-apple-tv-or-homepod/>, accessed on 5 April 2022, ID 2366. The consumer survey carried out by the CMA found that 52 % of iOS ‘Non Considerers’ (users that do not switch/consider switching when purchasing a new device) and 44 % of iOS ‘Marginal Users’ (users that thought about switching when purchasing a new smartphone, but ultimately did not) stated, as a reason for not switching, ‘because I have other devices linked to my phone/operating system (iOS)’, and this was actually the most frequently quoted reason for not switching (see paragraph 3.112 of the CMA ‘Mobile ecosystems market study final report’, ID 2431, cited above).

⁶¹³ In the ACM ‘Market study into mobile app stores’ the Netherlands Authority for Consumers & Markets concluded: “*It is harder and more expensive to switch from iOS to Android than the other way around. The higher cost of switching from iOS may be due to the fact that iPhone users may have other devices from Apple, which are incompatible with other brands, that Apple offers a tool for transferring data from Android to iOS (but not the other way around), and because of the tight integration of the Apple ecosystem.* [...]”, accessed on 12 November 2020, ID 886, page 55.

The CMA has also indicated that the barriers to switching, especially the perceived ones by users, are higher among iOS users than Android ones. See, CMA ‘Mobile ecosystems market study final report’, paragraphs 3.90 to 3.121, accessed on 14 June 2022, ID 2431.

⁶¹⁴ ACM ‘Market study into mobile app Stores’, accessed on 12 November 2020, ID 886, page 36.

⁶¹⁵ See <https://www.apple.com/macOS/continuity/>, accessed on 2 May 2022, ID 2360.

⁶¹⁶ ACM ‘Market study into mobile app Stores’, accessed on 12 November 2020, ID 886, page 55; and CMA ‘Mobile ecosystems market study final report’, paragraphs 3.90 to 3.121, accessed on 14 June 2022, ID 2431.

⁶¹⁷ [...].

⁶¹⁸ [...].

or the loyalty, the output is the same, meaning that once an individual or family is part of the Apple ecosystem, they will very rarely leave it.”⁶¹⁹ [...] ⁶²⁰

- (398) It is also important to note that only very few users are first time buyers of smart mobile devices and are thus unaffected by any lock-in or loyalty to a specific mobile ecosystem. [...] ⁶²¹ The vast majority of users have already an existing smartphone or tablet when they decide to purchase a new one. ⁶²² For these users, barriers to switching and consumers loyalty to their existing mobile ecosystem play a significant role in their smart device purchase decision and, thus, in the conditions of competition between OEMs of smart mobile devices.
- (399) Thus, as described above, although there is some competition in the market for smart mobile devices, Apple has a significant market position and holds market power, especially in the premium segment. The evidence shows that Apple has been able to differentiate itself in that market. It has been able to sustain high margins and faces only limited price competition. The low switching levels described above, due to the strong brand loyalty and lock-in of users, reinforced by monetary and non-monetary switching costs, further suggest that competitive constraints on Apple from rival suppliers of mobile devices are limited and that competition in the market for smart mobile devices is not fully effective.

8.2.2.5.2.1.2. Assessment of Apple’s arguments

- (400) Apple claims it is constrained by significant device-level competition, as reflected by its modest volume market share in the EU. ⁶²³ However, as shown in recitals (366) to (370), Apple has significant market shares in the market of smart mobile devices in the EEA, both in terms of volume ([...] %) and value ([...] %). Apple’s value shares for both tablets and smartphones actually exceed its share on unit sales, which also shows Apple’s leading positions in the high-end segment of smart mobile devices.
- (401) In any event, Apple’s competitive constraints in that market have to be analysed in light of several factors, as analysed in this Section. In addition to its market position in terms of market shares, other factors such as price competition, Apple’s high profit margins, Apple’s share of worldwide profits, survey evidence and reports from other authorities, as well as the lock in of consumers due to strong brand loyalty and switching costs are relevant elements that inform this analysis. As shown above, the analysis of all these elements leads the Commission to conclude that Apple faces limited competitive constraints from rival suppliers of smart mobile devices and that Apple has a significant market position and holds market power in the market for smart mobile devices, especially in the premium segment.
- (402) With regards to the comparison of average prices of smart mobile devices, Apple argues that this comparison is not informative for assessing competitive constraints. According to Apple, the price gap in average selling prices is driven by the fact that Apple has historically focused on higher end devices, while OEMs selling devices running on Android typically offer broader range of devices. The comparison of average selling prices ignores that there are significant differences between Android

⁶¹⁹ ID 1632.

⁶²⁰ ID 1616.

⁶²¹ [...].

⁶²² This has also been confirmed by the CMA “Mobile ecosystems market study final report”, paragraph 3.37, accessed on 14 June 2022, ID 2431.

⁶²³ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 164.

devices in terms of price and quality. Android OEMs also offer high end devices that are comparable to Apple devices and constrain Apple.⁶²⁴ According to Apple, rising smartphone prices are not unique to Apple⁶²⁵ and there is no evidence that Apple has been increasingly moving away from competition.⁶²⁶ Apple further claims that the Commission ignores the role of quality in competition, which is reflected in continuous improvements in device performance and innovation.⁶²⁷

- (403) First, the Commission does acknowledge that OEMs selling Android-based devices offer devices in a wider price range, including an extensive budget offering (see recitals (370) to (377)). Nevertheless, the comparison of average prices of Apple and Android smart mobile devices does indicate that Apple is able to differentiate itself from other vendors and that it faces limited price competition from these OEMs. This is also supported by the high margins and high operating profits it has been able to sustain, as explained in recitals (371) to (376). Apple accounts for a large share of worldwide smartphone operating profits (consistently above 80 % between the first quarter of 2022 and the first quarter of 2023),⁶²⁸ which no other rival smartphone seller has managed to achieve. All of this shows that Apple is to some extent able to avoid price competition from other OEMs and sustain high device prices and margins, while those vendors compete closer on prices and achieve significantly lower margins and profits.
- (404) In any event, the Commission has also compared Apple's position among high end devices. As shown in recital (372), even among smartphones in the highest price segment, Apple's device margins appear high, both in isolation and compared to rivals. The evidence shows that Apple has positioned its models in the high-end price range and leads this segment of the market, with a global sales share of 75 % in 2022.⁶²⁹ Although Apple offers a range of phones where the top-of-the-line most expensive models co-exist with older models at a reduced price, even the cheapest model offered by Apple in 2022 (the iPhone SE 2nd Gen), was sold at a higher price than the average selling price of Android smartphones (see recital (373)). Apple also captured eight out of the ten top smartphones sold worldwide in 2022.⁶³⁰
- (405) These findings are also consistent with those of the consumer surveys carried out by Spotify [...] for the purposes of the investigation, which suggest that Apple's smart

⁶²⁴ Apple's Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 165, and Annex 7, ID 2807, paragraphs 8 and 9 and Figure 1. See also Apple's Response to the Letter of Facts, Annex 10, ID 3325, paragraphs 9 to 11.

⁶²⁵ Apple's Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 165, and Annex 7, ID 2807, paragraphs 19 to 20. See also Apple's Response to the Letter of Facts, Annex 10, ID 3325, paragraphs 22 to 23.

⁶²⁶ Apple's Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 165, and Annex 7, ID 2807, paragraphs 18 to 28. See also Apple's Response to the Letter of Facts, Annex 10, ID 3325, paragraph 21.

⁶²⁷ Apple's Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 165, and Annex 7, ID 2807, paragraphs 6 to 17. See also Apple's Response to the Letter of Facts, Annex 10, ID 3325, paragraphs 14 to 20.

⁶²⁸ See <https://www.counterpointresearch.com/insights/global-smartphone-market-declines-14-yoy-q1-2023-apple-records-highest-ever-q1-share/>, accessed on 21 September 2023, ID 3184.

⁶²⁹ See <https://www.counterpointresearch.com/insights/premium-market-captures-half-global-smartphone-revenue-2022-first-time/>, accessed on 20 September 2023, ID 3166.

⁶³⁰ See <https://www.counterpointresearch.com/insights/top-smartphones-global-2022/>, accessed on 20 September 2023, ID 3163.

mobile device users are less price sensitive, more brand-loyal and put more weight on factors associated with ease of use and connectivity than Android users.

- (406) Regarding the Commission’s findings on switching cost, Apple argues that the Commission has failed to substantiate or quantify switching costs in this case.⁶³¹ Apple argues that the Commission’s findings are inconsistent with consumer survey evidence⁶³² and market data. According to Apple, survey evidence and market data suggest that consumers do not consider switching costs to be important.⁶³³ According to Apple, there are no real barriers to switching arising from data and apps portability and this is hardly a relevant switching cost for most consumers.⁶³⁴ Apple also argues that learning costs and investment into accessories are not relevant switching costs.⁶³⁵
- (407) The evidence gathered by the Commission suggests otherwise. Contrary to Apple’s claims, consumers are indeed concerned about the transfer of data and apps across devices. This is in fact confirmed by consumer survey data and other public sources, including consumer associations.⁶³⁶ The evidence in the file shows that although certain data and apps may be transferred from a device running on one smart mobile operating system to another and the transfer of data and interoperability may have improved over time, this process is still not completely seamless, as claimed by Apple. As explained in recitals (391) to (393), certain apps or the content offered in the app may not be easily transferred across devices in case of switching operating system and may need to be purchased again. Even if some apps and data may be transferred, others cannot be easily transferred or are even not available in case of switching to a different smart mobile operating system, as detailed in recital (395). Although, as Apple claims, Apple’s first-party apps may be a sign of competitive differentiation and some consumers may find workarounds for these apps when switching;⁶³⁷ however this does not alter the fact that they also create switching costs and lock in for users.
- (408) In any event, data and apps portability, learning costs and investment into accessories are only some of the various elements creating switching costs and reinforcing the lock-in of consumers, as detailed in recitals (388) to (395).
- (409) Finally, Apple also argues that its strong brand loyalty and low switching between its devices and those running on Android is due to high customer satisfaction rather than

⁶³¹ Apple’s Response to the Statement of Objections of 28 February 2023, Annex 7, ID 2807, paragraph 29. See also Apple’s Response to the Letter of Facts, Annex 10, ID 3325, paragraph 31.

⁶³² Apple’s Response to the Statement of Objections of 28 February 2023, Annex 7.1, ID 2808. See also Apple’s Response to the Letter of Facts, Annex 10, ID 3325, paragraph 31.

⁶³³ Apple’s Response to the Statement of Objections of 28 February 2023, Annex 7, ID 2807, paragraph 28. See also Apple’s Response to the Letter of Facts, Annex 10, ID 3325, paragraph 31.

⁶³⁴ Apple’s Response to the Statement of Objections of 28 February 2023, Annex 7, ID 2807, paragraph 29-36. See also Apple’s Response to the Letter of Facts, Annex 10, ID 3325, paragraphs 32 to 39.

⁶³⁵ Apple’s Response to the Statement of Objections of 28 February 2023, Annex 7, ID 2807, paragraphs 37 to 41. See also Apple’s Response to the Letter of Facts, Annex 10, ID 3325, paragraphs 40 to 44.

⁶³⁶ See for instance, the CMA “Mobile ecosystems market study final report”, accessed on 14 June 2022, ID 2431, paragraphs 3.90, 3.94, 3.99-3.102. According to the CMA’s consumer survey, a significant number of users are concerned that it may be difficult or impossible to transfer data and apps to a new device.

See also Annex 32 to the observations by BEUC on the Statement of Objections of 30 April 2021, ID 2025.

⁶³⁷ Apple’s Response to the Statement of Objections of 28 February 2023, Annex 7, ID 2807, paragraphs 42 and 43. See also Apple’s Response to the Letter of Facts, Annex 10, ID 3325, paragraphs 45 and 46.

lock-in and that it makes a decisive difference whether consumers do not switch because they are satisfied or because they are locked in.⁶³⁸

- (410) The Commission acknowledges that consumer satisfaction may indeed be one of the factors for Apple’s strong brand loyalty. However, even if Apple device users may be satisfied by certain Apple features, services or apps, that does not preclude that these features, services or apps also lock users in the Apple ecosystem.⁶³⁹ Evidence shows that factors such as familiarity with the user interface and switching costs reinforce the level of brand loyalty.⁶⁴⁰
- (411) In any event, regardless of whether brand loyalty is due to customer satisfaction or lock in, iOS users typically stick to the ecosystem and are unlikely to switch away from it.⁶⁴¹ In the consumer surveys conducted by Spotify [...], the five most important factors influencing device choice amongst users of iOS devices were “*ease of use*” (considered as an important factor by 59 % respondents in the Spotify survey [...]), “*brand of mobile device*” (52 % in the Spotify survey [...]), “*wanted/preferred to stick to same Apple device*” (35 % in the Spotify survey [...]), and “*ease to connect with other devices*” (33 %).⁶⁴² Other consumer surveys have confirmed that the brand of a device is one of the key parameters for users’ decision-making and one on which Apple users tend to put more emphasis than Android users.⁶⁴³
- (412) App developers, OEMs and mobile network operators had also pointed out in Case AT.40099 – *Google Android* that consumers were highly loyal to both iOS and Android.⁶⁴⁴ They confirmed that once a consumer gets used to an ecosystem it is unlikely they would switch to another one.⁶⁴⁵ The costs of switching to an alternative mobile operating system were cited as the main reason for this loyalty, rather than mere consumer satisfaction.⁶⁴⁶

⁶³⁸ Apple’s Response to the Statement of Objections of 28 February 2023, Annex 7, ID 2807, paragraphs 44 to 49, Annex 7.1, ID 2808, pages 25 to 32, and Annex 7.2, ID 2809. See also Apple’s Response to the Letter of Facts, Annex 10, ID 3325, paragraphs 47 to 53.

⁶³⁹ [...] In Case T-604/18 *Google Android*, EU:T:2022:541, paragraph 185, the Court considered with respect to the Android smart mobile operating system that “*Ensuring users’ satisfaction was also a way of strengthening their loyalty to Android.*”

⁶⁴⁰ See, in particular, recitals (381) and (386) and the evidence referenced.

⁶⁴¹ A Credit Suisse equity investment report on Apple Inc. of June 2014 also argued that: “*whether it is the customer lock-in and essential headache of leaving iOS ecosystem or the loyalty, the output is the same, meaning that once an individual or family is part of the Apple ecosystem, they will very rarely leave it.*” (ID 1616). Similarly, the General Court concluded in Case T-604/18 *Google Android*, EU:T:2022:541, paragraph 186, that the fact that a high percentage of users of Android devices remained loyal when making a new purchase indicated that, “*at the very least, the high degree of user loyalty towards Android made it unlikely, on the face of it that users would switch to another OS.*”

⁶⁴² Responses to question 7 of the Spotify survey: “*What factors were important when you chose/purchased your current [smartphone/tablet]? Select up to 5 factors.*” – see Table 3, pages 36 et seq., ID 900.

⁶⁴³ CMA “*Mobile ecosystems market study final report*”, accessed on 14 June 2022, ID 2431, paragraph 3.61.

⁶⁴⁴ See Commission decision of 18 July 2018 in Case AT.40099 – *Google Android*, paragraphs 533-535. This evidence was also deemed relevant by the General Court in Case T-604/18 *Google Android*, EU:T:2022:541, paragraphs 184 et seq., to conclude that the Commission was entitled to rely on user loyalty to their operating system when assessing the competitive constraints exerted by Apple on Android.

⁶⁴⁵ See Commission decision of 18 July 2018 in Case AT.40099 – *Google Android*, paragraph 534.

⁶⁴⁶ See, *inter alia*, Telefonica’s statement in paragraph 534 of Commission decision of 18 July 2018 in Case AT.40099 – *Google Android*: “*Once any customer has been using an ecosystem and has*

(413) Therefore, Apple’s arguments do not invalidate the Commission’s finding that Apple has a significant market position and holds market power, particularly in the premium segment. The evidence in the file shows that competitive constraints on Apple from rival suppliers of smart mobile devices are limited and that competition in the market for smart mobile devices is not fully effective.

8.2.2.5.2.2. The link between the market for smart mobile devices and the provision of a platform for music streaming app distribution

8.2.2.5.2.2.1. The Commission’s position

(414) As described above, although the present case exhibits some differences to traditional aftermarket cases, the Commission considers the elements in the framework provided by the Court in aftermarket cases, including in the *EFIM* case,⁶⁴⁷ as useful and informative in the present case to assess whether competition at the level of smart mobile devices may potentially limit Apple’s ability to behave independently at the level of music streaming app distribution and to set the conditions under which such apps are accepted to the App Store. In this context, it must be taken into account that music streaming service providers do not charge consumers for the app as such, which can be downloaded for free, but only for paid subscriptions purchased within those apps. A worsening of the commercial terms offered by Apple to developers of music streaming apps on the developer side of the platform could reach users pre-dominantly in the form of an increase of the subscription price paid by users of Apple’s smart mobile devices, in case the rise of the commission fee by Apple for in-app sales of digital content or services within the app is passed on by developers to users.⁶⁴⁸ In the analysis below, the rise of the subscription fee charged to consumers can therefore be understood as a proxy for an increased price or lower attractiveness of the app.

(415) For the following reasons the Commission considers that the link between smart mobile devices and app distribution, and in particular music streaming app distribution is not sufficiently strong to discipline Apple at the level of app distribution, and in particular of music streaming app distribution.

(416) First, if significantly higher in-app subscription fees on iOS devices for music streaming services or the inability for iOS users to subscribe to certain music streaming offers within the app of the respective providers were to negatively impact device sales by Apple, then Apple would already have adapted its policies at the app distribution level to avoid the significant price differences in its iOS app compared to other channels⁶⁴⁹, and in particular compared to apps on Android devices. However, Apple has so far refrained from relaxing its app store terms in way that would

purchased several apps for it, it is very unlikely that the specific customer would jump to another ecosystem unless it had a bad experience with it or because of aggressive counter offers from the different devices manufacturers. Most of them, keep loyal to the ecosystem after 1 year of use. The main reason for that loyalty is that there are costs of switching to alternative platforms for end users.”

⁶⁴⁷ Case T-296/09 *European Federation of Ink and Ink Cartridge Manufacturers (EFIM) v Commission*, EU: T:2011:693, paragraphs 60, 90 and 91, confirmed in Case C-56/12 *European Federation of Ink and Ink Cartridge Manufacturers (EFIM) v Commission*, EU:C:2013:575, paragraphs 12 and 36 et seq.

⁶⁴⁸ A de-listing of their app from the App Store is clearly not a viable option for music streaming service providers - see Section 8.1.4.1.3.

⁶⁴⁹ See Section 7.5 on difference of prices of in-app music streaming subscriptions on iOS compared to the subscription prices available elsewhere.

facilitate lower in-app prices of third-party music streaming subscriptions or would incentivise those third-party music streaming service providers that have disabled in-app purchases to offer subscriptions directly in the app.⁶⁵⁰ To the contrary, Apple has on 19 September 2022 announced a (unilateral) price increase for apps and in-app purchases across all apps covering many countries in the EEA, including those that use the euro currency. This price increase has been achieved by updating the respective price tiers developers can choose from when setting their prices. For example, tier one will be rising from EUR 0.99 to EUR 1.19 (i.e., by 20 %), while the maximum tier is set to increase from EUR 999 to EUR 1 199. While, this does not exclude that some developers may reduce the price of their apps or in-app purchases by adjusting to a price tier with a lower price subsequently, the fact that Apple unilaterally and on short notice announces such a price increase directly affecting consumers does not support the argument that increases of app and in-app prices could lead to less device sales making such a price increase unprofitable.

- (417) Second, the prices of smart mobile devices exceed the expenditure paid by consumers for their music streaming apps multiple times. As can be seen from Figure 29, the average sales price of iPhones throughout the years 2011 to 2018 was constantly above USD 600 and typically increasing over time. The price of iPhone models in the EEA in 2022 ranges from USD 407.65 for iPhone SE (2nd Gen) to USD 1 211.88 for iPhone 14 Pro Max.⁶⁵¹

Figure 29 – Average sales prices⁶⁵²



⁶⁵⁰ See <https://developer.apple.com/news/?id=e1b1hcmv>, accessed on 10 October 2022, ID 2571, and <https://www.macrumors.com/2022/09/19/app-store-prices-to-increase-in-europe-next-month/>, accessed on 10 October 2022, ID 2570.

⁶⁵¹ See Figures reported by Apple in Annex Q14 to its response to request for information dated 3 August 2023, ID 3004.

⁶⁵² Source: Statista based on data from Apple, ID 892. The average sales price of an iPad is typically lower. [...]. See also Figure 21.

- (418) These device prices are much higher than the prices paid by consumers for their music streaming apps. The download of a music streaming app is typically for free as music streaming service providers only charge in the case of an upgrade to the premium/paid service. An increase of the monthly music streaming subscription fees within the app by EUR 1 from EUR 9.99 to EUR 10.99 corresponds to only a very small increase [...].⁶⁵³ Moreover, a 10 % increase of the 30 % commission fee charged by Apple to developers would normally not translate into a 10 % price increase of the apps (or of the in-app subscriptions) to iOS users but it would – if fully passed on to consumers – only translate into a much lower increase of the price of apps (or in-app subscriptions) and thus to the consumers total cost of ownership of an iPhone.
- (419) Third, consumers lack transparency over the prices for app distribution and in-app conditions for accessing content and can therefore not make an informed choice, including life-cycle pricing, between various manufacturers in the market for smart mobile devices.
- (420) The lifecycle cost of apps in general is much less transparent at the point of the purchase decision of smart mobile devices, compared to, for example, mobile tariffs. The prices of apps and in-app content are not systematically available at the time and place where a mobile device purchase decision is taken, irrespective of whether consumers purchase their devices in a physical shop or online. Moreover, there are no effective comparison tools or websites available that allow consumers to systematically and easily compare app prices or in-app subscription conditions across app stores for different smart mobile OS.⁶⁵⁴
- (421) Consumers that are interested to learn more about app prices and in-app purchase prices have therefore in practice two main possibilities to compare them. First, they could access both the App Store and the Google Play Store. However, since these stores are only available as apps on their own smart mobile device and respective OS, this would mainly require that they have access to smart mobile devices running on the different smart mobile OSs. Second, they could compare the descriptions of the individual apps on Apple’s and Google’s homepages for their respective app stores.⁶⁵⁵
- (422) With respect to music streaming apps specifically, while Apple provides some information on music streaming apps available in the App Store and in-app subscription conditions on its homepage, this information is difficult to reach, difficult to compare and sometimes inaccurate. The information is difficult to reach among other reasons because users cannot have both the App Store (iOS) and Play Store (Android) apps on the same device, and hence need to open the mobile browser, type in the url of at least one app store, or arrive from a bookmark, link or a dedicated search to the store, and subsequently search for the specific music streaming app in the browser. The information is difficult to compare and incomplete as shown for example by the fact that both the App Store and the Play Store tend to

⁶⁵³ [...].

⁶⁵⁴ As also confirmed by BEUC’s representative at the oral hearing (recording of the oral hearing in Case AT.40437, as of 06:22:15, ID 3131).

⁶⁵⁵ For example, for the Spotify app this would mean opening in the mobile browser the links <https://play.google.com/store/apps/details?id=com.spotify.music> (Android), accessed on 2 May 2022, ID 2385, and <https://apps.apple.com/us/app/spotify-new-music-and-podcasts/id324684580> (iOS), accessed on 13 May 2022, IDs 2412 and 2421.

mention in-app price ranges, leaving unclear which of those prices would apply to the user.⁶⁵⁶ The information is sometimes not even available. For example Apple’s App Store website indicates that Spotify’s app is free and that there are four subscription options available, but does not indicate any price information for these subscription possibilities.⁶⁵⁷ Conversely, there is either no information on in-app music streaming subscription prices on Google’s Play Store website for music streaming apps or the information is only provided at a very general level that does not allow users to make an informed choice.⁶⁵⁸ Importantly, this does not imply that there are no differences in in-app prices and in-app purchase conditions across Android and iOS apps. On the contrary, such differences exist, but are difficult for users to realise, and to take into account to inform their smart device purchase decisions.

- (423) The Commission does not consider it likely that users would make an effort to compare music streaming apps and in-app subscription conditions on both mobile operating systems and notice that differences in in-app purchase conditions exist. Even if they made this effort, the available information would not allow them to make an informed choice due to the poor quality of the information available on the websites of the Apple and Google app stores.
- (424) With respect to the lifecycle costs of apps in general beyond music streaming, consumers can only have an incomplete conception of the apps they may use over the lifetime of the device and on how much they will use them. They cannot know what apps will be made available over the lifetime of their device and on which ones they will decide to spend money on. On average, developers release more than 30 000 new apps in the App Store each month.⁶⁵⁹ The most natural moment for a user to learn about the real price and in-app purchase conditions for a particular app is when the user already holds the device in his or her hand and is interested in a particular app. At this point in time, the device purchase decision had been taken. App prices and in-app purchase conditions therefore are unlikely to significantly influence device choice.
- (425) [...] ⁶⁶⁰ [...].
- (426) The consumer surveys conducted independently by [...] Spotify ⁶⁶¹ [...] ⁶⁶² which focused on music streaming apps confirm that consumers rarely compare in-app

⁶⁵⁶ For example, the Deezer app is indicated to include in-app products for “EUR 2.59 – EUR 218.99 if billed through Play” in the Google Play Store, <https://play.google.com/store/apps/details?id=deezer.android.app>, accessed on 26 September 2023, ID 3188, whereas for the App Store, the Deezer app shows several prices ranging from USD 5.49 to USD 20.99 and <https://apps.apple.com/app/deezer-music-podcast-player/id292738169>, accessed on 7 November 2023, ID 3189.

⁶⁵⁷ See <https://apps.apple.com/us/app/spotify-new-music-and-podcasts/id324684580>, accessed on 30 October 2023, ID 3198.

⁶⁵⁸ See for example for Tidal <https://play.google.com/store/apps/details?id=com.aspiro.tidal>, accessed on 2 May 2022, ID 2383, or for Spotify <https://play.google.com/store/apps/details?id=com.spotify.music>, (mentioning for in-app products “EUR 10.99 – EUR 104.99 if billed through Play”), accessed on 26 September 2023, ID 3197, or for Deezer, <https://play.google.com/store/apps/details?id=deezer.android.app>, (mentioning for in-app products “EUR 2.59 – EUR 218.99 if billed through Play”), accessed on 26 September 2023, ID 3188.

⁶⁵⁹ <https://www.statista.com/statistics/1020964/apple-app-store-app-releases-worldwide/>, accessed on 2 May 2022, ID 2375.

⁶⁶⁰ [...] <https://about.fb.com/news/2020/08/paid-online-events/>, accessed on 16 December 2020, ID 1089.

prices of music streaming subscriptions when purchasing a smart mobile device. Even if they do so, they typically do not compare prices across apps for different mobile operating system (i.e., in the iOS app and the Android app). Since they lack information regarding differences in in-app music streaming subscription conditions between Android and Apple devices, they are not in a position to make an informed smart device purchase choice including lifecycle pricing.

- (427) In the Spotify survey only a small proportion (8 %) of iOS users and (6 %) of Android users responded that they had compared the prices of music streaming services when buying their current smart mobile device. Nearly 90 % of respondents on both operating systems confirmed not having compared these prices. [...].
- (428) Furthermore, even among respondents who claimed to have compared the prices of music streaming services at the time of their smart mobile device purchase only a small minority made this comparison in a manner that would actually reveal differences in in-app music streaming subscription conditions between Android and iOS. For a consumer to realise that an Android device may provide different (better) in-app conditions to subscribe to music streaming services, (s)he would need to compare music streaming prices in both the Google Play Store for Android and the App Store for iOS devices. For example, comparing the prices of different music streaming services on their websites does not reveal any information to the user about differences in in-app music streaming subscription conditions. Nor is it informative to check music streaming fees on a just one mobile device (iOS or Android) and the website of the service provider, because even if a difference in the subscription conditions may be observed, the consumer would still not know about different subscription conditions of the other platform.
- (429) The surveys conducted by [...] Spotify contained questions regarding where users compared music streaming service prices. The responses show that even among the very low number of users that actually made any comparison, very few compared prices on both mobile operating systems.
- (430) In particular, in Spotify's survey only 13 (4 %) out of the 321 iOS users who responded to have compared music streaming prices when purchasing their device actually compared those prices both in the Google Play Store and the App Store. The remaining 96 % of iOS users that claimed to have compared prices did not check those prices in both major app stores.⁶⁶³ These users therefore could not have seen that music streaming subscription prices may differ on Android and iOS.
- (431) [...].⁶⁶⁴
- (432) The fact that only a negligible share of users inform themselves about how in-app music streaming subscription prices and conditions differ across iOS and Android devices shows that consumers are typically not in a position to make an informed

⁶⁶¹ Spotify Survey, ID 900 (Compass Lexecon document "Is Apple's dominance in the market for developers' access to iOS constrained by competition for iPhone sales", dated 22 March 2020), IDs 902, 903, 904, 905 (Spotify survey data and statistics), ID 901 (Spotify survey methodology note), IDs 956 (raw Spotify data and Stata codes) and 500 (Questionnaire for Spotify Premium (iOS & Android) & Free users).

⁶⁶² [...].

⁶⁶³ This should be seen in light of the fact that only 8 % of iOS users performed any comparison in the first place (see recital (427)).

⁶⁶⁴ [...].

choice that would take into account these differences when taking a purchase decision in the market for smart mobile devices.

- (433) Fourth, consumers are not likely to make an informed choice that would take into account app and in-app purchase conditions when buying smart mobile devices. This is for the following reasons.
- (434) In the first place, the surveys of [...] Spotify confirm that consumers to a very large extent fail to take into account the range and price of apps in general in their decision to purchase their smart mobile device.
- (435) In Spotify’s survey merely 14 % of iOS users indicated “*range of applications for download*” as an important factor when purchasing their current smartphone/tablet (Figure 25). [...].⁶⁶⁵ Several other factors were clearly more important for device choice, such as the ease of use and connecting, the brand of the device and wanting to stick with an Apple device. Upon the same question in Spotify’s survey only 1 % of iOS users mentioned “*the prices of applications*” to have been an important factor behind their device choice (Figure 25). [...].⁶⁶⁶
- (436) [...].⁶⁶⁷
- (437) The fact that consumers do not consider the range and price of applications in general to be of high importance for their device choice shows that they are unlikely to make an informed choice when purchasing a smart mobile device engaging in whole life costing.
- (438) In the second place, the surveys of [...] Spotify confirm that consumers do not take into account factors related to the price of the music streaming apps or in-app subscriptions when deciding to purchase their smart mobile device.
- (439) Less than 4 % of iOS users mentioned “*the range of music streaming apps*” as important device purchase factors in Spotify’s survey, and only 1 % mentioned “*the price of music streaming services*” as important (Figure 24). [...].⁶⁶⁸
- (440) The fact that consumers do not consider factors related to the ease and price of in-app music streaming subscriptions in their smart device purchase indicates that they are unlikely to make an informed choice including lifecycle pricing regarding music streaming apps and subscriptions when purchasing smart mobile devices.
- (441) In the third place, the primary factors that drive the smart mobile device choice of existing iOS users as well as the role of app prices have been analysed in the consumers’ survey conducted by Spotify among Spotify customers [...]. [...].
- (442) In the survey conducted by Spotify (Figure 24), the five most important factors influencing device choice indicated by users of iOS devices were “*ease of use*” (considered as an important factor by 59 % respondents), “*brand of mobile device*”

⁶⁶⁵ [...].

⁶⁶⁶ [...].

⁶⁶⁷ [...].

⁶⁶⁸ Even those few consumers who mentioned to have considered factors related to the ease and price of in-app music streaming subscriptions in their smart device purchase attributed a relatively low importance to these factors. In Spotify’s survey iOS respondents that mentioned as device choice factors “range of music streaming services for download” and “the prices of music streaming services” attributed on a scale between 1 (least important) to 5 (most important) an average score of respectively 3.8 and 4.0 to these factors. Other, more often cited factors such as “ease of use” or “brand of mobile device” received higher average importance ratings. [...].

(52 %), camera (38 %), “wanted/preferred to stick to same Apple device” (35 %), and “ease to connect with other devices” (33 %).⁶⁶⁹ [...].

- (443) In the fourth place, only very few users are first time buyers of smart mobile devices that are not already locked in, which increases the relevance of brand loyalty and lock-in effects and reduces the likelihood of an informed choice in the primary market.⁶⁷⁰ The vast majority of users have already an existing smartphone when they decide to purchase a new one. For these consumers loyalty to their existing mobile ecosystem plays a significant role in their smart device purchase decision.
- (444) In the fifth place, iOS users typically are less price sensitive than Android users and are therefore less likely to make an informed choice, taking life-cycle pricing of the device into account. In the Spotify survey, 17 % of iOS users considered the price of the device to be an important choice factor compared to 57 % of Android users (Figure 25). [...].
- (445) Fifth, the Commission considers that it is unlikely that consumers would adapt their purchasing behaviour at the level of smart mobile devices in case of an apparent policy of exploitation being pursued at the level of app distribution.
- (446) [...] the survey conducted by Spotify [...] included a hypothetical question regarding whether iPhone/iPad users would have still purchased their device in case the prices for music streaming services were observably approximately 10 % higher on Apple devices than on non-Apple devices.⁶⁷¹ In response to the survey by Spotify, 10 % of respondents indicated that it is unlikely or extremely unlikely that they would have still purchased an iOS device.⁶⁷² [...].⁶⁷³
- (447) While these responses indicate that for the majority of users, an observable price difference of 10 % between iOS and Android devices would not have impacted their choice of smart mobile device, there is a non-negligible proportion of survey respondents [...] indicating that their choice of smart mobile device would likely have been affected.
- (448) The Commission considers that the response to the questions about a hypothetical price increase, when interpreted in light of the responses to other questions of the survey, does not indicate a sufficient link between the market of smart mobile devices and the app distribution level that could discipline Apple’s market power. This is for the following reasons:
- (449) In the first place, this question makes the survey respondents aware of a price difference for music streaming services between iOS devices and Android devices,

⁶⁶⁹ Responses to question 7 of the Spotify survey: “What factors were important when you chose/purchased your current [smartphone/tablet]? Select up to 5 factors.” – see Table 3, page 36 et seq., ID 900.

⁶⁷⁰ See recital (398).

⁶⁷¹ In the Spotify survey, the following question 11 was asked: “If at the time of purchasing your [iPhone/iPad] the prices of music streaming services on all Apple devices had been [membership price+10 %] a month rather than [membership price] a month, but the prices of music streaming services on Non-Apple devices were still [membership price] a month, how likely is it that you would still have purchased an [iPhone/ iPad]? [Only applies to iOS premium users]”, Table 4, Q.11, page 41, ID 900. [...].

⁶⁷² 4 % of premium users said it was extremely unlikely and 6 % indicated, it was unlikely that they would have purchased an iPhone/iPad if the price of music streaming services was 10 % higher only on iOS. 12 % of respondents indicated “don’t know” to the respective question.

⁶⁷³ [...].

which they would typically not have been aware of at the time of smart mobile device purchase in view of the limited transparency of prices at the time of purchase. Indeed, the responses are inconsistent with the actual conduct of the same respondents in the past. Since at least 2015, the prices of most music streaming services for which an in-app subscription was possible on iOS apps were 30 % higher on iOS than on Android (typically EUR 12.99 compared to EUR 9.99 for an individual subscription plan). All of the iOS users that responded to the respective question decided to nonetheless purchase an iOS device - including those who said they would switch to Android – which in itself questions the reliability of the response to this question.

- (450) [...].⁶⁷⁴ It means that consumers are in reality (and without being made aware of it by a specific survey question) unlikely to associate high in-app subscription fees for music streaming services with Apple. Consumers are not able to allocate costs for their in-app purchases between developers and Apple as the operator of the App Store). Conversely, some iOS users would naturally – and wrongly – think that high fees for in-app subscriptions are solely the consequence of the price-setting decision of the music streaming service provider itself. In light of this, it is unlikely that they would consider switching smart mobile devices to avoid higher costs as the costs would not be associated with Apple.
- (451) In the second place, the questions in the surveys were hypothetical in respect to a number of elements, which was difficult to avoid for these purposes:
- They take a price level as the starting point that is for many if not most iOS users hypothetical and not the price level at which they currently purchase music streaming subscriptions on iOS devices.⁶⁷⁵
 - iOS customers of Spotify’s music streaming service cannot currently subscribe to Spotify’s paid service in the Spotify app at all, as Spotify decided in May 2016 to disable IAP because of the commission fees charged by Apple for in-app subscriptions and the price increases this would lead to for its customers.
 - Apple’s own service Apple Music does not have to pay the commission fee of 30 %. Given its low price, it provides an alternative customers can turn to in case they want to avoid higher subscription fees on their iOS devices which does not require switching devices.
 - Subscriptions can also be purchased outside an iOS app. This also means that, iOS users that are faced with a higher in-app subscription price, could - if aware of this possibility - rather than switching to a non-iOS smart mobile device subscribe to their favourite music streaming service outside of the app, which further limits any disciplinary effect competition for smart mobile devices could have on Apple’s ability to behave independently when setting the terms for app distribution.

⁶⁷⁴ [...]. See <https://about.fb.com/news/2020/08/paid-online-events/>, accessed on 16 December 2020 ID 1089; and Katie Paul, Stephen Nellis, “Exclusive: Facebook says Apple rejected its attempt to tell users about App Store fees”, Reuters, 28 August 2020, available at <https://www.reuters.com/article/us-facebookapple-exclusive-idUSKBN25O042>, accessed on 17 December 2020 ID 1037.

⁶⁷⁵ [...].

- (452) It is widely documented that survey respondents tend to have difficulties answering hypothetical questions. Consumer researchers denote this phenomenon as the “*hypothetical bias*”. Therefore, the Commission generally puts more weight on non-hypothetical survey questions, such as regarding factors consumers took into account in their last smart mobile device purchase decision than on hypothetical questions about a price increase.⁶⁷⁶
- (453) In the third place, the responses to this question in [...] surveys have to be read in light of responses by the same respondents to other questions in the [...] survey.
- (454) [...].
- (455) [...] ⁶⁷⁷, [...] ⁶⁷⁸ [...] ⁶⁷⁹ [...].
- (456) In the fourth place, survey questions with the hypothetical price increase⁶⁸⁰ are likely prone to the *Cellophane fallacy* in a context where Apple is suspected to hold some power to raise prices to a supra-competitive level on any component of its devices, including hardware and software. Questions about *hypothetical price increases* need to be treated cautiously when applied to abuse of dominance cases. If a SNIPP test is applied between a monopolised product and another one, the results may suggest a degree of substitutability between the two because consumers are already at the point where they stop purchasing from the monopolist or switch to alternative products. As shown by Apple’s ability to sustain high prices and margins on its devices and to reap a disproportionately large share of smart mobile market profits, Apple device prices are likely already at an elevated level compared to a fully competitive situation in the market of smart mobile devices (see Section 8.2.2.5.2.1 on the level of competition in the market for smart mobile devices). Therefore, even the few consumers who in theory may engage in life-cycle cost calculations would have to make their device choice decision in light of Apple’s current, likely elevated smart mobile device prices. Their response to the survey question with a hypothetical music streaming fee increase is therefore prone to the Cellophane fallacy.

⁶⁷⁶ There is broad consensus on the need to treat survey responses to questions with hypothetical price increases with caution. See for example UK CMA (2018), “*Good practice in the design and presentation of customer survey evidence in merger cases*”, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/708169/Survey_good_practice.pdf, accessed on 16 December 2020 ID 1115. “*Hypothetical diversion questions are inevitably subject to [the hypothetical] bias; this should always be carefully considered when interpreting findings based on them.*” “*Generally, the CMA does not consider responses to price diversion questions to be fit for the purpose of estimating own price elasticities. [...] this calculation requires a degree of accuracy that is particularly sensitive to the bias introduced by the hypothetical nature of the question.*” The Commission has in the past expressed serious concerns about the quality of survey respondent’s answers to questions about hypothetical switching behaviour. In *Staples/OfficeDepot* (M.7555), the Commission contacted survey respondents to verify their answers to questions about the extent a hypothetical scenario would trigger switching. The Commission found that “*while there was evidence of overstated switching behaviour in their replies to the SSNIP question, there was no evidence of an understated switching behaviour in reply to the same question.*” Commission decision of 10 February 2016 in Case M.7555 – *Staples/OfficeDepot*, Section 6.1.3.3.4. and paragraph 130.

⁶⁷⁷ [...].

⁶⁷⁸ [...].

⁶⁷⁹ With the exception of Apple Music and Spotify who decided to disable the in-app subscription possibility of Apple in view of the IAP obligation and the requirement to pay a 30 % IAP commission fee to Apple.

⁶⁸⁰ See footnote 671.

- (457) In the fifth place, even for those consumers [...].⁶⁸¹ A lot of switching in response to such a price increase may – as Apple points out – in theory indicate that Apple is facing strong competition from Android devices. However, one would also expect to observe significant switching if instead Apple faced no or limited competition from Android devices. [...].⁶⁸² Observing a relatively high number of consumers switching away from Apple in response to any price increase on Apple devices is therefore consistent with the Commission’s view that Apple is not constrained by strong competition in the market for smart mobile devices. [...].⁶⁸³
- (458) In sum, the questions about actual behaviour in the surveys show that consumers are typically not aware of music streaming subscription price differences on and off the iOS platform and do not take these into account in their device purchase decisions. This lack of awareness of price differences as well as the responses about actual past behaviour raise doubts about the reliability of the responses about the impact of a hypothetical price increase on device choice. Furthermore, the questions are likely subject to response biases, and their economic interpretation is ambiguous about the extent to which Android devices are able to discipline Apple in the smart mobile device market. Apple itself recognises this and confirms that “*we do not suggest that the findings of the SSNIP test [confidential quote] should be regarded as conclusive evidence in favour of a broad market definition*” in the primary market of smart mobile devices.⁶⁸⁴
- (459) The Commission puts more trust into the non-hypothetical survey results presented in recitals (433) to (444) regarding whether consumers took into account app prices and music streaming subscription price differences in their device choice than in the hypothetical question about switching. Those non-hypothetical responses indicate that consumers are most likely not even aware of differences in-app prices and in-app subscription conditions on various mobile devices and do not take such factors into account when buying a smart mobile device.
- (460) The Commission therefore concludes that it is unlikely that consumers would adapt their purchasing behaviour at the level of smart mobile devices to react to an apparent policy of exploitation at the level of the distribution of music streaming apps by Apple.⁶⁸⁵
- (461) Sixth, consumers would not adapt their purchasing behaviour at the level of smart mobile devices to an apparent effective price increase within a reasonable time.
- (462) The vast majority of consumers are not aware of differences on various mobile devices with respect to music streaming apps and in-app music distribution conditions.⁶⁸⁶ Even if they were aware of such differences, and they overcame the very significant switching costs entailed in changing the operating system of their

⁶⁸¹ [...].

⁶⁸² [...].

⁶⁸³ *Ibid.*

⁶⁸⁴ ID 990.

⁶⁸⁵ See also Commission decision of 18 July 2018 in Case AT.40099 – *Google Android*, paragraph 543 on the limited switching between smart mobile OSs and the fact that only very significant changes in number, range, quality or prices of apps could trigger such a switch. These arguments have been confirmed by the General Court in Case T-604/18 *Google Android*, EU:T:2022:541, paragraphs 192-199.

⁶⁸⁶ See recitals (438) et seq.

mobile device, any switching would occur with a very significant time delay, i.e., not within a reasonable time.

- (463) In the first place, according to a recent Eurobarometer⁶⁸⁷ report, upon the question “for how long would you like to keep using your current digital devices (e.g., smartphone or tablet) provided that there is no severe drop in performance (QC2)” 81 % of respondents in the EU28 indicated their desire to keep their current device for at least 2 years, and typically for at least 5 years.⁶⁸⁸ Consumers therefore have a desire to keep their smart mobile device typically a very long period (at least 5 years) unless there is a drop in performance.
- (464) In the second place, Spotify’s survey shows that more than two thirds of current iOS device users and 63 % of Android users have had their current device for longer than a year.⁶⁸⁹ 67 % of iOS users and 48 % of Android users explicitly stated their intent to purchase their next smartphone/tablet in more than one year of time. On both smart mobile operating system only 24 % of respondents indicated their willingness to buy their next smart device in less than a year of time.⁶⁹⁰ This confirms that the majority of smart mobile device users use their device for a significantly longer period than a year and less than a quarter would switch within a year’s time. [...] ⁶⁹¹ [...] ⁶⁹². [...].
- (465) In summary, consumers cannot make an informed choice about the life-cycle costs of their smart mobile devices, at the time of purchase. Prices at the app distribution level are not sufficiently transparent to allow them to make accurate calculations when purchasing smart mobile devices. iOS users typically do not compare app prices and subscription prices when purchasing their smart mobile devices and they are unlikely to make an informed decision when purchasing their devices, taking life-cycle costs, and in particular the conditions for in-app music streaming subscriptions into account.⁶⁹³ The link between smart mobile devices and the provision of platforms for the distribution of music streaming apps is therefore limited. Moreover, competition in the smart mobile device market, and in particular the high end segment is not effective and Apple enjoys market power even in this market. It is therefore unrealistic that music streaming apps, and in particular in-app subscription conditions in music streaming apps, influence sales at the level of smart mobile devices in a way that disciplines Apple’s market power vis-à-vis consumers at the app distribution level. The Commission therefore concludes that there are no meaningful constraints on the consumer side from competition on the market for smart mobile devices that constrain Apple’s ability to behave independently vis-à-vis

⁶⁸⁷ Special Eurobarometer 503, Report, Attitudes towards the impact of digitalisation on daily lives, from March 2020, in particular pages 5, 12 and 17, ID 887. Only 3 % say they would like to keep using them for at least a year. The most common reasons for purchasing a new digital device are that the user broke the old device (38 %) or that its performance had significantly deteriorated (30 %). [...].

⁶⁸⁸ Special Eurobarometer 503, Report, Attitudes towards the impact of digitalisation on daily lives, ID 887.

⁶⁸⁹ Compass Lexecon report “Is Apple’s dominance in the market for developers’ access to iOS constrained by competition for iPhone sales?” 22 March 2020, page 36, Q.6, ID 900.

⁶⁹⁰ Compass Lexecon report “Is Apple’s dominance in the market for developers’ access to iOS constrained by competition for iPhone sales?” 22 March 2020, page 40, Q.14, ID 900.

⁶⁹¹ [...].

⁶⁹² [...].

⁶⁹³ These findings on the limited interdependence between the market for smart mobile devices and the level of app distribution speak against a single “systems” market on the consumer side of the platform comprising both purchases of smart mobile device and purchases at the level of the app store.

developers of music streaming apps when setting the terms for the access to the App Store.

8.2.2.5.2.2.2. Assessment of Apple’s arguments

- (466) In its Response to the Statement of Objections of 28 February 2023⁶⁹⁴ Apple argues against the application of the *EFIM* test to the present case as it would not take into account some key features that distinguish it from classic aftermarket cases. In particular, music-streaming apps and services obtained through the App Store (i) are not “indispensable” for the use of smart mobile devices; (ii) are not available to users only through a device; (iii) are not priced by the provider of the device, but by app developers; and (iv) are only subject to the payment of a commission fee in specific cases, i.e., when their in-app content is transacted through the App Store.⁶⁹⁵ According to Apple, there is therefore not the type of lock-in that characterises aftermarket cases and the *EFIM* test cannot be applied to this case.⁶⁹⁶ In Apple’s view, the Commission misapplies the *EFIM* test to the present case, which involves a platform with a business model primarily based on monetisation through devices.⁶⁹⁷
- (467) As explained in recital (336), in the context of markets where users need to separately obtain complementary components to make use of a particular service (e.g., a smart mobile device and an app), it may be relevant to analyse how consumers take the decisions to obtain those components. The Commission acknowledges that the case at hand exhibits some features that make it different from traditional markets such as razors and razor blades, or printers and ink cartridges, where aftermarkets were originally considered in an antitrust context. However, as explained in recital (414), the Commission considers elements in the framework provided by the Court in aftermarket cases, including in the *EFIM* case,⁶⁹⁸ as useful and informative in the present case to assess whether competition at the level of smart mobile devices may potentially limit Apple’s ability to behave independently at the level of music streaming app distribution and to set the conditions under which such apps are accepted to the App Store. Contrary to Apple’s arguments, aftermarkets may exist also where the use of the secondary product is not indispensable for the use of the primary service, such as in the case of repair services which may or not may need to be used.⁶⁹⁹ It is therefore incorrect that the case law only relates to consumables or spare parts, as Apple suggests. Moreover, as explained in Section 8.1.4, the relevant market in this case is the market for the provision to developers of platforms for the distribution of music streaming apps to iOS users and not that for the sale of music streaming subscriptions, as claimed by

⁶⁹⁴ Apple considers the arguments brought forward with regards to market definition and dominance in its Response to the Statement of Objections of 28 February 2023, ID 2800, are a complement to its Response to the Statement of Objections of 30 April 2021, ID 2165, which it still considers applicable (see Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, footnote 160) and which the Commission has also taken into account in its analysis.

⁶⁹⁵ Apple’s Response to the Statement of Objections of 28 February 2023, Annex 6, page 2, ID 2806.

⁶⁹⁶ Apple’s Response to the Statement of Objections of 28 February 2023, Annex 6, pages 3, ID 2806.

⁶⁹⁷ Apple’s Response to the Statement of Objections of 28 February 2023, paragraph 152 and 153, ID 2800, and Annex 6, ID 2806.

⁶⁹⁸ Case T-296/09 *European Federation of Ink and Ink Cartridge Manufacturers (EFIM) v Commission*, EU: T:2011:693, paragraphs 60, 90 and 91, confirmed in Case C-56/12 *European Federation of Ink and Ink Cartridge Manufacturers (EFIM) v Commission*, EU:C:2013:575, paragraphs 12 and 36 et seq.

⁶⁹⁹ Case T-427/08 *Confédération européenne des associations d’horlogers-réparateurs (CEAHR) v European Commission*, EU:T:2010:517.

Apple.⁷⁰⁰ Contrary to Apple’s claims, the “secondary” product/service in question (i.e., apps) that can run on Apple’s smart mobile devices can only be downloaded from Apple’s App Store.

- (468) In addition to opposing to the Commission’s framework of analysis, Apple also disagrees with various specific elements of the Commission’s assessment.
- (469) First, Apple claims that the Commission misses the causality link between app distribution and devices, as well as the rationale of Apple’s overall business model. Apple considers that, in a device-funded model such as the one of Apple, revenues from the commission fee at the app distribution level can discipline Apple’s price-setting for its devices.⁷⁰¹ Apple criticises that the Commission has not analysed whether Apple has made terms for its devices more attractive to encourage device sales and monetise more in-app commission fees, rather than reducing in-app commission fees in view of competition at the device level.⁷⁰² Apple also argues that the link does not operate at the level of a single genre of apps but in terms of App Store revenues overall.⁷⁰³
- (470) As explained, the Commission assessed whether and to what extent consumers are likely to take informed choice about lifecycle pricing, that takes into account device prices as well as in-app subscription fees. In light of this analysis, the Commission concludes that consumers cannot make an informed choice about like-cycle costs of their smart mobile devices at the time of purchase and competition in the smart mobile devices does not meaningfully constrain Apple’s market power at the app distribution level. This framework of analysis takes into account the perspective of consumers. In particular, it assesses how aware consumers are of product features and prices over the lifecycle of a product. The origin of those features and prices are not relevant for this analysis. Therefore, Apple’s arguments regarding its alleged incentives to balance its revenues from its commission fees and the prices of devices carries no relevance for the analysis.
- (471) Second, Apple denies that there is a lack of transparency regarding app prices and their comparison and that consumers can take an informed choice, including lifecycle pricing, when purchasing a smart mobile device.
- (472) In the first place, according to Apple, when consumers decide to purchase a device, which involves an implicit assessment of spending on future apps, they do not need to compare all current prices of all potentially interesting apps, subscriptions and add-ons, but they rather accumulate information on the quality and variety of available apps taking into account their past experience and the experience of other people they know that have purchased different devices and apps. This general information generates an expectation about their future likely spend and prices they

⁷⁰⁰ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 124 to 129.

⁷⁰¹ Apple’s Response to the Statement of Objections of 28 February 2023, paragraph 152 and 153, ID 2800, and Annex 6, ID 2806. See also Apple’s Response to the Letter of Facts, ID 3330, paragraphs 181 and 183.

⁷⁰² Apple’s Response to the Statement of Objections of 28 February 2023, paragraph 156, ID 2800, and Annex 6, page 5, ID, 2806.

⁷⁰³ Apple’s Response to the Statement of Objections of 28 February 2023, paragraph 156, ID 2800, and Annex 6, page 5, ID, 2806.

will face. In any event, Apple also claims that price comparison websites offer vast information to consumers about prices of apps and in-app content.⁷⁰⁴

- (473) However, as explained in recital (420), the evidence in this case shows that the lifecycle cost of apps is not really transparent at the point of the purchase decision of smart mobile devices. The prices of apps and in-app content are not systematically available at the time and place where a mobile device purchase decision is taken, irrespective of whether consumers purchase their devices in a physical shop or online.
- (474) The Commission does not consider it likely that users would make an effort to compare music streaming apps and in-app subscription conditions on Android and iOS and notice differences in in-app purchase conditions. Even if they made this effort, the available information would not allow them to make an informed choice due to the poor quality of the information available on the websites of the App Store and Google Play, as detailed in recitals (422) to (425).
- (475) Contrary to Apple's claims, there are no effective comparison tools or websites available that allow consumers to systematically and easily compare app prices or in-app subscription conditions across app stores for different smart mobile OSs.⁷⁰⁵ Apple claims that there is a large number of price comparison websites that allow customers to identify any price difference from music streaming subscriptions purchased through IAP or through other channels. However, the examples provided by Apple do not seem to be an effective option for consumers to reliably compare prices. Most of the examples provided by Apple⁷⁰⁶ only compare prices among music streaming service providers generally, but do not compare the different prices available on different distribution channels, such as the price offered for in-app subscriptions on different platforms (Android and iOS) or on the providers' websites. Apple only provides a couple of national websites, which do not seem straightforward to find to most consumers, comparing in-app and web offers for only certain music streaming services. In particular, the websites only show such a price comparison for one music streaming service provider (IDAGIO in one of the websites and YouTube Music in the other), rather than a full comparison for the main music streaming service providers for which there are price differences, such as Deezer, Tidal, Napster or SoundCloud.
- (476) The Commission has not found easily accessible and reliable comparison tools or websites that would allow consumers to systematically and easily compare app prices or in-app subscription conditions across app stores. Most comparison websites easily available to consumers only compare the services and general prices of music streaming services. This has also been confirmed by BEUC, noting that some of its member occasionally publish reports and surveys regarding music streaming services, but these do not compare differences in price depending on whether the music streaming service is purchased in-app or through a website. It also noted that these surveys are generally behind paywalls and consumers would need to subscribe

⁷⁰⁴ Apple's Response to the Statement of Objections of 28 February 2023, Annex 6, pages 5 and 6, ID, 2806

⁷⁰⁵ Apple's Response to the Statement of Objections of 28 February 2023, Annex 4, ID 2804.

⁷⁰⁶ This was also supported by BEUC during their intervention at the oral hearing (recording of the oral hearing in Case AT.40437, as of 06:22:15, ID 3131).

to access them. BEUC also found Apple’s examples to not be effective price comparison options for consumers.⁷⁰⁷

- (477) With respect to the lifecycle costs of apps in general beyond music streaming, as explained in recital (420), consumers can only have an incomplete conception of the apps they may use over the lifetime of the device and on how much they will use them. App prices and in-app purchase conditions therefore are unlikely to significantly influence device choice.
- (478) The fact that many users of smart mobile devices accumulate information based on past experience and are familiar with the range of apps, prices and quality does not change these findings. These users may only be familiar with the conditions for existing apps they have used in the past on the smart mobile device they had already owned, but not with those running on a different smart mobile operating system or those which they have not yet used or which are only released over the lifecycle of the device.⁷⁰⁸
- (479) Moreover, as explained in recital (419), users typically do not have sufficient information to be able to allocate costs for their app or in-app purchases between developers and Apple and make informed choices on the lifecycle costs of iOS devices, [...].
- (480) As shown in recitals (426) to (431), the consumer surveys conducted by [...] Spotify⁷⁰⁹ [...] confirm that consumers rarely compare in-app prices of music streaming subscriptions when purchasing a smart mobile device and even if they do so, they do not compare prices across different mobile OSs (i.e., in the iOS app and the Android app). Even among respondents who claimed to have compared the prices of music streaming services when purchasing their smart mobile device, only a small minority made this comparison in a manner that would actually reveal differences in in-app music streaming subscription conditions between Android and iOS. This shows that consumers are typically not in a position to make an informed choice that would take into account these differences when taking a purchase decision in the market for smart mobile devices.
- (481) In the second place, in its Response to the Statement of Objections of 28 February 2023, Apple also argues that the prices of music streaming subscriptions are not informative for the analysis of whether consumers can make an informed choice when purchasing their smart mobile devices. Since subscriptions on iOS devices for competing music streaming services are mostly purchased through the website of the respective music streaming service providers (thanks to the reader and multiplatform rules) and not in-app, the device choice has in practice a limited impact on consumers’ subscription costs, since the prices for in-app content “are

⁷⁰⁷ *Ibid.*

⁷⁰⁸ A user of an iPhone might not be familiar with the conditions on the Google Play Store when buying a new smartphone.

⁷⁰⁹ Spotify Survey, ID 900 (Compass Lexecon document “Is Apple’s dominance in the market for developers’ access to iOS constrained by competition for iPhone sales”, dated 22 March 2020), IDs 902, 903, 904, 905 (Spotify survey data and statistics), ID 901 (Spotify survey methodology note), IDs 956 (raw Spotify data and Stata codes) and 500 (Questionnaire for Spotify Premium (iOS & Android) & Free users).

⁷¹⁰ [...].

effectively the same on Android and iOS".⁷¹¹ For a meaningful conclusion, the Commission should have looked at those respondents whose life-cycle costs might have been affected by the music streaming subscription prices and whether they have compared prices for music streaming subscriptions before purchasing their device.⁷¹²

- (482) The Commission does not consider this criticism as well founded. As explained in recital (414), the Commission uses the price of the music subscription within the app as a proxy for the price and quality of the app as the commission fee is the main element through which a deterioration of the access conditions set by Apple vis-à-vis developers could reach users. The Commission's analysis revolves around the question to which extent competition in the market for smart mobile devices may discipline Apple's market power vis-à-vis music streaming service providers when setting the terms for access to its app distribution platform. Those iOS users that are well aware of the possibility to subscribe to music streaming services outside of the iOS app, would – as Apple points out itself⁷¹³ – not need to switch smart mobile devices to avoid higher in-app subscription fees. For them, there is no possible disciplinary link between the market for smart mobile devices and the market for the provision to developers of platforms for the distribution of music streaming apps to iOS users where Apple sets the conditions for access of apps.
- (483) Third, Apple disagrees with the Commission's conclusions that consumers are not likely to make an informed choice that would take into account app and in-app purchase conditions when buying a smart mobile device [...].⁷¹⁴ According to Apple, the main reason why survey respondents did not take into account the range and prices of apps and the ease to subscribe to premium music streaming service within the respective app when buying a smart mobile device is, because device choice is driven by those factors where there is a material degree of differentiation between Apple devices and Android devices. According to Apple, this is not the case for Apple's App Store and Google's Play Store as both app stores offer a wide range of apps at comparable prices.⁷¹⁵ Moreover, the existence of the possibility to subscribe to music streaming services outside of the app and the application of the multiplatform and reader rules can explain why few users would consider the price of in-app subscriptions as an important factor for device choice.⁷¹⁶
- (484) The Commission considers that Apple's criticism is unfounded.
- (485) In the first place, while there is a strong overlap in the presence of the main apps in the Apple App Store and Google Play Stores because the main app developers need

⁷¹¹ Apple's Response to the Statement of Objections of 28 February 2023, Annex 8, pages 7 and 8, ID 2810.

⁷¹² ID 2170, paragraph 30, and CRA, "Do Consumers Care about the App Store when Purchasing a Mobile Device?", ID 990, p. 35 where it is argued that premium subscribers to music streaming services that have pre-existing subscriptions prior to their device purchase would not need to compare music streaming subscription prices when purchasing their device as they can access these subscriptions at no extra cost on the other smart mobile device.

⁷¹³ Apple's Response to the Statement of Objections of 28 February 2023, Annex 8, pages 7 and 8, ID 2810.

⁷¹⁴ Apple's Response to the Statement of Objections of 28 February 2023, paragraph 158, ID 2800 and Annex 8, pages 1 to 8, ID 2810.

⁷¹⁵ Apple's Response to the Statement of Objections of 28 February 2023, paragraph 159 to 160, ID 2800, and Annex 8, pages 1 to 8, ID 2810.

⁷¹⁶ Apple's Response to the Statement of Objections of 28 February 2023, paragraph 159 to 160, ID 2800, and Annex 8, pages 7 and 8, ID 2810.

to multi-home to reach the distinct groups of users of these stores, differences between Android and iOS exist in both the range and price of apps. As shown in Figure 30, the number of apps in the two app stores is close, albeit with a meaningful difference. This difference could in theory play a role for consumers for their device choice. However, as the survey evidence shows, the range of apps (including of music streaming apps) is not an important factor consumers tend to take into account for their device purchase decision.

Figure 30 – Number of apps available in Google Play⁷¹⁷

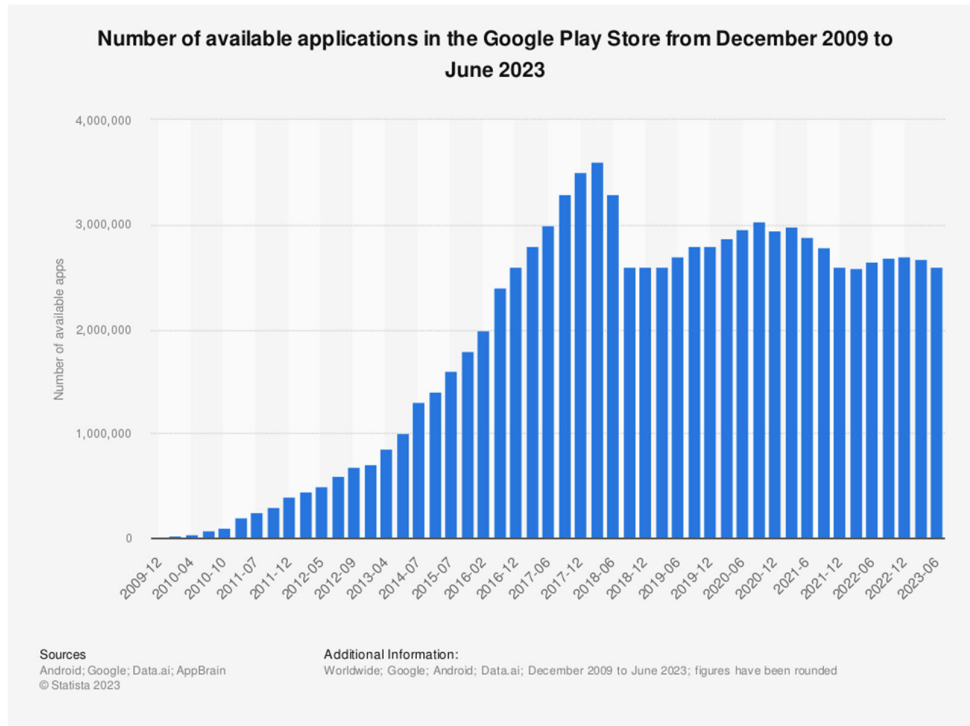
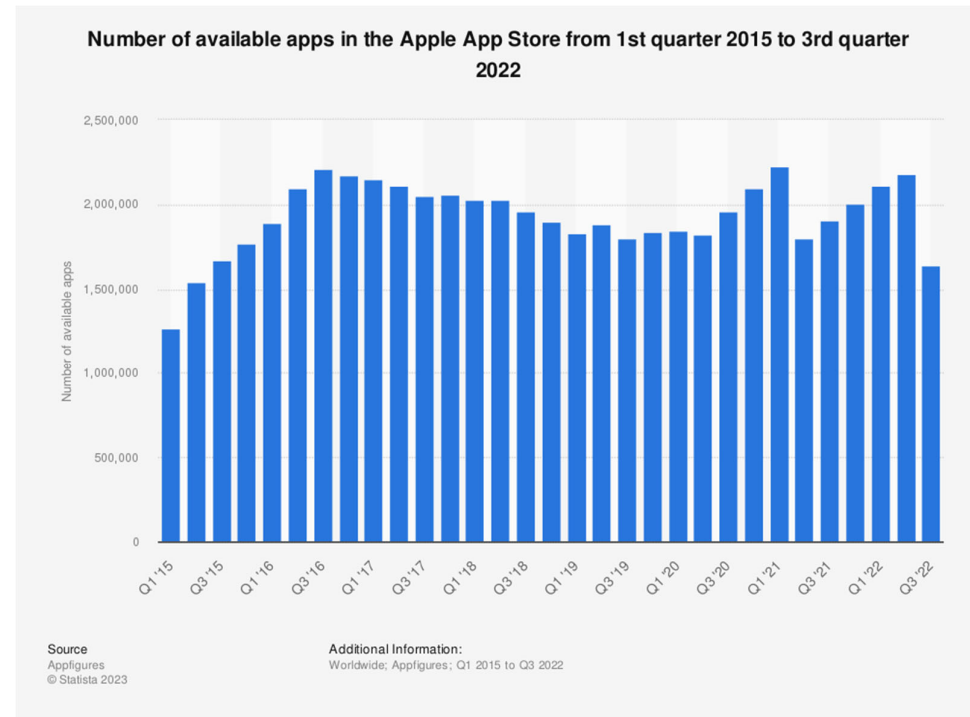


Figure 31 – Number of apps available in the App Store⁷¹⁸



⁷¹⁷ <https://www.statista.com/statistics/266210/number-of-available-applications-in-the-google-play-store/>, ID 3186

⁷¹⁸ <https://www.statista.com/statistics/779768/number-of-available-apps-in-the-apple-app-store-quarter/>, ID 3187.

(486) In the second place, app prices differ between iOS and Android, both in terms of download price and in-app purchase fees. For example, the Heads Up app (a top app in category “word games on iOS”) is free on Android and costs EUR 1.99 on iOS.⁷¹⁹ Plague Inc (a top game in the “simulation” category) costs EUR 0.99 on iOS and is free on Android.⁷²⁰ The *Forest-Stay focused* app (top in the “productivity” app category) costs EUR 4.99 on iOS and is free on Android.⁷²¹ Finally, the prices of in-app purchases and subscriptions as well as the purchase conditions can differ significantly between the App Store on iOS devices and the Google Play Store on Android devices⁷²², in particular in the case of music streaming apps where subscriptions in iOS apps were typically 30 % more expensive than on Android, or not available.⁷²³ Evidence in the file shows that there are significant differences in the monthly subscription fees and functionalities of these music streaming services depending on whether a subscription takes place in-app on iOS devices or in other environments, and music streaming services also offer multiple subscription packages at different prices, which may also differ on the subscription channel.⁷²⁴ Therefore, the lifetime costs of apps and music streaming apps in particular differ between iOS and Android.⁷²⁵ This also indicates that the survey respondents fail to take into account the range and prices of apps, in-app purchases and the ease to subscribe to premium music streaming service within the respective app when buying a smartphone. The Commission considers it much more likely that the reason why very few consumers consider the range and price of apps and in particular music streaming apps for their smart device purchase is that users are not aware about price and functionality differences across apps available on smart mobile devices running on a different mobile OS. This is evidenced by upset customer testimonies, when users discover price differences across mobile platforms.⁷²⁶

⁷¹⁹ See <https://play.google.com/store/apps/details?id=com.wb.headsup&gl=DE>, accessed on 15 February 2022, ID 2370; and <https://apps.apple.com/de/app/headsup/id623592465>, accessed on 26 October 2023, ID 3190.

⁷²⁰ See <https://play.google.com/store/apps/details?id=com.miniclip.plagueinc>, accessed on 15 February 2022, ID 2372, and <https://apps.apple.com/de/app/plague-inc/id525818839>, accessed on 15 February 2022, ID 2382.

⁷²¹ See <https://apps.apple.com/be/app/forest-stay-focused/id866450515>, accessed on 27 November 2023, ID 3203, and <https://play.google.com/store/apps/details?id=cc.forestapp>, accessed on 15 February 2022, ID 2373.

⁷²² See for example explanations of a game developer on <https://smallgiantgames.helpshift.com/hc/de/4-empires-puzzles/faq/864-why-are-the-prices-different-between-ios-android/>, accessed on 15 February 2022, ID 2376.

⁷²³ As of 1 April 2022, the terms available for end-users may also deteriorate in Android apps of music streaming service providers as Google forces developers to mandatorily use Google Billing for in-app payments for subscriptions to music streaming services and prohibits informing users about alternative methods of payments, see ID 2339. While Spotify has obtained a bespoke arrangement with Google allowing it to offer its own in-app payment mechanism and maintaining its retail price, other music streaming services like Tidal have disabled in-app subscriptions in their Google Play Store app as a consequence of Google’s policy change. See <https://support.tidal.com/hc/en-us/articles/4472166442769-Google-Play-Store> for Tidal, accessed on 3 June 2022, ID 2424.

⁷²⁴ For example, as opposed to other environments, the Spotify music streaming service is not-available for in-app subscription on iOS devices, and most other music streaming services charge a higher monthly subscription fee in-app on iOS devices.

⁷²⁵ For example, many Deezer premium subscribers pay EUR 12.99 per month when subscribing to the service in the iOS app, whereas Deezer users subscribing in the Android app pay EUR 9.99.

⁷²⁶ See <https://discussions.apple.com/thread/8031795>, accessed on 20 January 2021, ID 1177; <https://forums.macrumors.com/threads/why-ios-apps-are-more-expensive-than-android/>

- (487) Apple downplays the prevalence of differences in the price and accessibility of digital content on iOS and Android. Apple argues that only a small share of apps is paid in the first place.⁷²⁷ However, Statista data shows that a significant share of users pay for digital content. In particular, 17 % pay for mobile apps and 12 % pay for in-app purchases.⁷²⁸
- (488) Apple’s arguments do not contradict the Commission’s finding that there are differences between Android and iOS in the number of apps, the prices of apps and the functionalities and features of apps (e.g., in the subscription through the app features and even prices to music streaming services). Apple merely argues that these differences are small. However, this is irrelevant. The only relevant issue in this assessment is that consumers do not take into account the range and price of apps in their choice of smart mobile device, despite the fact that there are differences in the range and price of apps.
- (489) In the third place, [...],⁷²⁹ [...]. The data from the Spotify [...] surveys suggest that there are no qualitative differences between the relevant responses of users that had and those that did not have a music streaming subscription prior to their device purchase.
- (490) [...]. Users of only free music streaming services are more likely to have had no or a free subscription when they purchased their device than premium-only users. In theory, free-only users’ device choices may more likely have been affected by higher in-app subscription prices or a deteriorated experience than that of premium-only users.⁷³⁰ [...] ⁷³¹ [...].⁷³²
- (491) The same insight emerges from the Spotify survey: comparing music streaming subscription prices is rare even among users that are in theory more likely to be affected by lifecycle pricing. The Spotify survey asked in question 6 about how long the respondents had their current device.⁷³³ It also included the registration date of the user with the music streaming service. From this information, the Commission could identify the iOS respondents who registered with Spotify before and those which registered with Spotify after they purchased their current device. Respondents having registered with Spotify after their current device purchase likely did not yet have a paid music streaming subscription at the point of device purchase. Regardless of whether the respondents registered before or after buying their current device, only few respondents (9.4 % and 7.4 %, respectively) compared the prices of music streaming services to decide on their device purchase⁷³⁴ and they were unlikely to

apps.1948047/, accessed on 20 January 2021, ID 1178; <https://mobilesyrupt.com/2018/06/19/youtube-music-3-expensive-on-ios/>, accessed on 20 January 2021, ID 1179.

⁷²⁷ Apple’s Response to the Statement of Objections of 28 February 2023, Annex 8, ID 2810, pages 5 to 7.
⁷²⁸ <https://www.statista.com/statistics/1330125/leading-types-digital-content-purchased-worldwide/>, ID 3193

⁷²⁹ Annex 2 to Apple’s Response to the Statement of Objections of 30 April 2021, paragraph 47, ID 2170.
⁷³⁰ As premium subscribers can continue to use their pre-existing subscriptions at no extra cost with their new devices.

⁷³¹ [...].

⁷³² [...].

⁷³³ Question 6 of the Spotify survey asked: “How long have you had your current [smartphone/tablet].”

⁷³⁴ Respectively 83 % and 89 % stated not having compared these prices. The Commission could identify 382 iOS respondents who registered with Spotify after having purchased their device, implying that they had their ‘current’ device (at the time of completing the survey) when they registered with Spotify. 3,199 respondents registered with Spotify before their device purchase, so that they did not have their

have taken into account “prices of applications”, “range of music streaming apps for download”, or “the prices of music streaming services” for their device choice.⁷³⁵

- (492) This shows that even if the Commission were to focus on those respondents whose life-cycle costs are more likely to be affected by music streaming subscription prices, its conclusions would not change. In general, consumers lack transparency over the prices for app distribution and in-app conditions for accessing content. They therefore cannot make a fully informed choice, including life-cycle pricing that would factor in differences in in-app purchase conditions, when they decide between various manufacturers in the market for smart mobile devices and this is the case irrespective of whether users had or did not have a music streaming subscription at the moment of device purchase.
- (493) Fourth, Apple disagrees with the Commission’s [...] with regards to consumers’ reaction to a hypothetical difference in music streaming service prices on Android and iOS.⁷³⁶ Apple argues that the response to the hypothetical price increase questions in [...] Spotify’s surveys indicate show a high degree of price elasticity of demand of Apple devices (approximately in the range of [...]), which implies – according to Apple - that music streaming users’ smartphone choice is significantly impacted by even small increases in music streaming prices.⁷³⁷ [...].⁷³⁸
- (494) Such a high level of demand elasticity appears unrealistic. A demand elasticity of 11 would mean, for example, that if Apple increased the overall price of device and apps (expected over the lifetime of the device) by 5 %, it would lose 55 % of device sales. Or differently, if it was to reduce the overall price by 5 %, its device sales would increase by 55 %. Both seem far away from reality. In the same submission [...]”. Clearly, consumers are less willing to switch smart devices, as explained in recitals (381) et seq. [...]. The average iPhone price increased from USD 650-750 in 2015 to around USD 1 000 in 2019 while Apple maintained a constant profit margin rate per device. In the same period Apple did not lose significant market share among mobile devices.⁷³⁹
- (495) As explained in recitals (456) to (465), the Commission considers that the response to the questions about a hypothetical price increase, when interpreted in light of the responses to other questions of the survey, does not indicate a sufficient link between

‘current’ device at the time of registering with Spotify. Survey question 9 related to the comparison of music streaming service prices. See Commission calculation based on the Spotify survey, ID 2607.

⁷³⁵ Among the 382 iOS respondents in the Spotify survey who registered with Spotify after purchasing their current device, “prices of applications”, “range of music streaming apps for download”, or “the prices of music streaming services” were mentioned by respectively [...]. See Commission calculations, ID 2607.

⁷³⁶ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 158 and 161, and Annex 8, ID 2810, pages 8 to 10.

⁷³⁷ This argument is inconsistent with Apple’s argument that music streaming subscription prices are not relevant for making an informed device choice in view of the ability to purchase subscriptions also outside the app. See Annex 2 to Apple’s Response to the Statement of Objections of 30 April 2021, pages 7 and 8, ID 2170.

⁷³⁸ [...].

⁷³⁹ For the average iPhone prices: <https://www.allconnect.com/blog/iphone-price-increases-over-past-decade>, accessed on 22 January 2021, ID 1186; for Apple’s mobile device market share: <https://gs.statcounter.com/os-market-share/mobile/worldwide/#yearly-2009-2020>, accessed on 22 January 2021; ID 1188; for Apple’s margin per device over time: <https://wccfttech.com/apple-iphone-profits-declining/>, accessed on 22 January 2021, ID 1169, chart “The cost of iPhones”.

the market of smart mobile devices and the app distribution level that could discipline Apple's market power. The questions about actual behaviour in the surveys show that consumers are typically not aware of music streaming subscription price differences on and off Apple's smart mobile devices and do not take these into account in their device purchase decisions. As explained above, the questions are likely subject to response biases, and their economic interpretation is ambiguous about the extent to which Android devices are able to discipline Apple in the smart mobile device market. Apple itself recognises this and confirms that "*we do not suggest that the findings of the SSNIP test [confidential quote] should be regarded as conclusive evidence in favour of a broad market definition*" in the primary market of smart mobile devices.⁷⁴⁰

- (496) The Commission puts more trust into the non-hypothetical survey results presented in recitals (433) to (458) regarding whether consumers took into account app prices and music streaming subscription price differences in their device choice than in the hypothetical question about switching. Those non-hypothetical responses indicate that consumers are most likely not even aware of differences in-app prices and in-app subscription conditions on various mobile devices and do not take such factors into account when buying a smart mobile device.
- (497) Therefore, Apple's arguments do not alter the Commission's conclusion that it is unlikely that consumers would adapt their purchasing behaviour at the level of smart mobile devices to react to an apparent policy of exploitation at the level of the distribution of music streaming apps by Apple.
- (498) Fifth, Apple argues that the assessment whether consumers would react within reasonable time would need to take into account "*the time gap between the start of the exploitative conduct and the consumers' reaction*" and whether this gap "*is not long enough to make the exploitative conduct profitable.*"⁷⁴¹ Apple adds that even if the average Apple customer could only react within two years, gains from an exploitative behaviour by Apple in the aftermarket during these two years would hardly outweigh the future loss of the device margin.
- (499) The Commission preliminarily considers these arguments unfounded.
- (500) In the first place, the relevant question is not to find the time gap that would render Apple's conduct profitable, but to assess whether consumers could and would react to deteriorated app conditions within a reasonable time. In the case of smart mobile devices, it is unrealistic that consumers would react before the moment when they replace their smart mobile device at the end of its life-cycle (of at least 2-3 years) in view of the high costs of smart mobile devices and that they already made their investment and their desire to use them as long as possible unless the performance deteriorates.
- (501) In the second place, as outlined above, there is little transparency over the lifecycle costs associated with app purchases and in-app subscriptions and consumers typically do not take these issues into account as a factor for their device choice. As the surveys by Spotify [...] show, other factors influence device choice much more than app availability, app prices or prices for in-app subscriptions to music streaming service which renders any reaction in the smart mobile device market unlikely in the

⁷⁴⁰ ID 990.

⁷⁴¹ ID 2170, Annex 2 Observations of the EFIM test.

first place, even once the lifetime of a device has come to an end.⁷⁴² Even after the lifetime of their smart mobile device has come to an end, the majority of iOS users are loyal to their current smart mobile device/OS and are unlikely to switch, also because of their lock-in through monetary and non-monetary switching costs.⁷⁴³

- (502) As the evidence gathered by the Commission indicates,⁷⁴⁴ iOS device users are very brand loyal and likely to again purchase an iOS device, irrespective of how long they have had their device. [...].⁷⁴⁵ These users are more likely to purchase a new device in the near future, and consequently are likely to have owned their current device for relatively long. The fact that they plan to remain with the same brand and its operating system testifies that even users who have had their iOS device for a longer time are likely to repurchase the same brand. The fact that those users who are closest in time to purchasing a new device are very likely to stay on iOS again indicates that consumers are unlikely to act in the smart mobile device market within reasonable time, regardless of the time horizon taken into account.
- (503) In the third place, Apple’s arguments disregard that subscription prices for most music streaming service providers were until very recently (when Google tightened its own in-app payment terms) 30 % higher in iOS apps than in Android apps. If device sales were indeed to be impacted in the long run by the level of in-app subscription fees for music streaming apps, then the question arises why Apple has for years not reduced the commission fee charged to music streaming service providers or removed the Anti-Steering Provision thereby allowing web-based checkouts as those that were allowed on Android in order to improve device sales. The fact that Apple has not done this supports the conclusion that the link between the smart mobile device market and the distribution of music streaming apps is limited. This is confirmed by the survey results, which show that Android users are unlikely to switch to iOS devices in reaction to unattractive in-app subscriptions conditions for music streaming apps on Android based devices for the same reasons why iOS users are unlikely to switch to Android. [...].⁷⁴⁶ The Spotify survey confirms the same conclusion. Android users – similar to iOS users – attribute very little importance in their device purchase decisions to factors such as “range of applications to download” (Android: [...] %, iOS: [...] % mentioning), the “prices of music streaming services” and “prices of applications” in general (less than [...] % mentioning these on both platforms). With in-app purchase conditions playing so little role for Android users’ device choice, it is unlikely that even in the long run, when replacing their devices, attracting Android users would create incentives for Apple to improve its in-app subscription conditions.
- (504) In the fourth place, only very few consumers are first time owners of smart mobile devices. [...].⁷⁴⁷ New users typically have - in the absence of any prior experience on either of the App Store or the Google Play Store on Android - even less information and transparency than existing users about the availability of apps, their prices and in-app subscription prices across smart mobile OS. It is therefore highly unlikely that

⁷⁴² See Figures 24 and 25.

⁷⁴³ See Section 8.2.2.5.2.1.

⁷⁴⁴ *Ibid.*

⁷⁴⁵ [...].

⁷⁴⁶ See Figure 24.

⁷⁴⁷ [...].

such new customer would protect – as argued by Apple – the installed base from the exercise of market power that Apple enjoys at the level of app distribution. [...] ⁷⁴⁸

(505) For all the reasons stated above, the Commission considers that Apple’s arguments are unfounded and do not alter the Commission’s finding that the link between smart mobile devices and the provision of platforms for the distribution of music streaming apps is limited and that music streaming apps, and in particular in-app subscription conditions in music streaming apps, would not realistically influence sales at the level of smart mobile devices in a way that disciplines Apple’s market power vis-à-vis consumers at the app distribution level. The Commission therefore concludes that there are no meaningful constraints on the consumer side from competition on the market for smart mobile devices that constrain Apple’s ability to behave independently vis-à-vis developers of music streaming apps when setting the terms for the access to the App Store.

8.2.2.5.3. Constraints on market power vis-à-vis developers through alternative subscription mechanisms outside of the iOS app

8.2.2.5.3.1. The Commission’s position

(506) The Commission considers that alternative subscription mechanisms outside of the iOS app do not constrain Apple’s power to behave to an appreciable extent independently of music streaming service providers in the market for the provision to developers of platforms for the distribution of music streaming apps to iOS users, including with regard to the conditions for in-app sales which it attaches to the acceptance of apps in the App Store.

(507) While the Commission acknowledges that there are other channels through which third-party music streaming service providers can and do acquire customers for their paid subscriptions, these channels, and in particular the possibility to subscribe directly through the website of the music streaming service provider, do not meaningfully constrain Apple when setting the terms for app distribution for music streaming apps where it enjoys a monopoly position. This is for the following reasons:

(508) First, the possibility to sell music streaming subscriptions on the music streaming service providers’ website or through alternative channels such as through telco carriers, partnerships or social media platforms, does not replace the need for developers of music streaming services to use Apple’s App Store for the distribution of their apps to iOS users and to abide in this respect by all the rules that Apple imposes on app developers.⁷⁴⁹ It is precisely in this relationship and with this distribution platform for apps to iOS users where Apple enjoys a position of dominance vis-à-vis developers. Even if music streaming service providers can revert to subscribing users through the website, through telco carriers or otherwise, music streaming service providers still need to have a native app as smart mobile devices are the primary means of consumption of music streaming services and consumers that have subscribed through alternative channels still want to use their subscription within an app.⁷⁵⁰ This includes those music streaming service providers like Spotify

⁷⁴⁸ See Commission calculations in ID 2607.

⁷⁴⁹ These terms include inter alia the requirement to conduct all in-app sales of digital content in the app through Apple and its IAP, the requirement to pay a 30 %/15 % commission fee as well as the Anti-Steering Provisions.

⁷⁵⁰ See Section 8.1.4.1.3.

that have disabled IAP in view of the conditions Apple attaches to in-app sales and therefore do not sell subscriptions in their iOS apps. Irrespective of the possibility to sell subscriptions elsewhere, every music streaming service provider must have both an iOS app and an Android app, because of the importance of smart mobile devices for the consumption of streamed music and the distinct group of device users on these platforms.⁷⁵¹ In this respect, developers need to follow the users, who are to a large extent locked into their iOS devices, as examined above⁷⁵².

- (509) Second, the ability – provided by Apple consistently (since 2011 through the reader rule and since 2018 also through the multiplatform rule) – of music streaming service providers to get users with iOS devices to subscribe to their paid service outside the iOS app and subsequently stream music based on such subscriptions within their iOS app, does not alter this conclusion. These rules do not open up alternative ways for developers to distribute their apps to iOS users. The App Store remains the exclusive platform available for this purpose and music streaming service providers have to abide by Apple’s terms in this respect. Apple has quasi-regulatory powers for determining access conditions for developers to users of iOS devices and could modify its policies at any time.
- (510) Third, even popular music streaming service providers with a large number of active users have not been able to decisively influence the terms Apple set for access of apps to the App Store.⁷⁵³ Just like small developers, they have no choice but to abide by Apple’s license agreement and the Guidelines. While they may – in case their brand is sufficiently known and popular⁷⁵⁴ – decide to disable IAP and not offer in-app subscriptions at all hoping to attract users outside the iOS ecosystem, this does not provide them with any meaningful negotiation power vis-à-vis Apple in relation to the distribution of their apps, and Apple has consistently fended off requests for a more lenient interpretation or for substantial changes to its rules.⁷⁵⁵
- (511) Fourth, Apple’s Anti-Steering Provisions themselves – which all music streaming service providers have to abide to – reduce the benefit of subscription mechanisms outside the app. Through the Anti-Steering Provisions, Apple actively prohibits music streaming service providers from informing users about alternative subscription possibilities outside the app, which for most music streaming service

⁷⁵¹ See recitals (278) et seq.

⁷⁵² See recitals (381) et seq. In its “Mobile ecosystems market study final report”, paragraphs 4.179 and 4.180 the CMA observed “*while users moving purchases to an alternative channel may in theory provide some competitive constraint on the commission rates charge by Apple and Google (given the current pricing structure), it would provide a weaker or no constraint on the non-price aspects of the App Store and the Play Store. In particular, app developers will still need to accept the terms and conditions imposed by Apple and Google to distribute their native apps on the App Store and Play Store, respectively. On balance, the evidence suggests that Apple and Google face a limited constraint from alternative devices and users switching away from purchasing content and features in native apps.*”, accessed on 14 June 2022, ID 2431.

⁷⁵³ See Spotify’s Complaint, in particular paragraph 118, ID 1457.

⁷⁵⁴ Deezer explains in its response to question 32 of the Commission’s request for information (2019/048643), ID 1377: “*Deezer cannot consider this scenario as its brand awareness is way much lower than Spotify and Netflix. Besides, we strongly need our iOS subscriber base to keep growing even by increasing our retail price to € 12.99 (+30 %) in order to cope with the App Store commission. This makes us the most expensive music streaming platform on the market.*”

⁷⁵⁵ See Section 3.3. of Spotify’s Complaint detailing Spotify’s history of inability to achieve more lenient terms from Apple, ID 1457. Rather than achieving a more lenient treatment, Apple has broadened the wording of the Anti-Steering Provisions and their interpretation as outlined in Sections 7.2 and 7.3.

providers are offered at a significantly lower retail price. The Anti-Steering Provisions therefore remove the ability of app users that are unaware of price differences to make an informed choice in full knowledge of the facts through which they could exert some competitive pressure on Apple's in-app subscription conditions and the commercial terms attached to it. While many app users may ultimately find a way to subscribe to alternative subscription mechanisms, others are not aware of the existence of other (lower-cost) subscription channels than in-app purchase. For example, Napster who offers in-app subscriptions through IAP submits that only 0.2 % of its subscribers who subscribed through an in-app purchase, switched to a direct subscription with Napster.⁷⁵⁶ This is a very low share in light of the fact that a monthly Napster iOS subscription typically costs EU 12.99 if concluded in-app, compared to EUR 9.95 when made directly with Napster outside the IAP.⁷⁵⁷ Even for a well-known brand like Spotify and in situations where IAP has been disabled, the Anti-Steering Provisions limit the benefit of subscription mechanisms outside the app as exhibited by experiments that Spotify conducted to assess the impact of the Anti-Steering Provisions on conversion from free to premium users. These experiments indicate that a significant share of users ([...] %) that would otherwise upgrade from Spotify's free service to the premium tier are permanently lost on their "journey" as a result of having to face the sign-up experience that results from Apple's Anti-Steering Provisions.⁷⁵⁸

- (512) Apple's reduction of the commission fee as of the second year of a subscription to 15 % in September 2016 is in the Commission's preliminary view not evidence of meaningful constraints from outside subscriptions on Apple's ability to act independently in the market for the provision to developers of platforms for the distribution of music streaming apps to iOS users. In fact, in 2016, Phil Schiller, at the time senior vice president of worldwide marketing at Apple, explicitly insisted in an interview that this reduction was not in any way linked to companies encouraging users to go to their own websites to subscribe, but Apple rather wanted to reward companies more for their work in retaining subscribing customers.⁷⁵⁹ [...] ⁷⁶⁰ [...] Changes like the small business user program⁷⁶¹, which followed a class action in the US by small developers, have not provided relief to music streaming service providers and can therefore not be explained by competitive constraints from outside subscription offers. Overall, the main commercial conditions for the distribution of music streaming apps on iOS devices (and in particular the 30 % commission fee) have not meaningfully changed over the last 10 years.⁷⁶²

⁷⁵⁶ Napster's supplemental response to question 18 of the Commission's request for information (2019/029321), ID 778.

⁷⁵⁷ Napster's response to questions 4 and 28 of the Commission's request for information (2019/048724), ID 1345.

⁷⁵⁸ See recitals (743) et seq.

⁷⁵⁹ See article in The Verge of 8 June 2016, <https://www.theverge.com/2016/6/8/11880730/apple-app-store-subscription-update-phil-schiller-interview>, accessed on 2 May 2022, ID 2371.

⁷⁶⁰ See ID 772 – 000219.

⁷⁶¹ <https://developer.apple.com/app-store/small-business-program/>, accessed on 11 May 2022, ID 2398.

⁷⁶² In the *Epic Games, Inc. v. Apple Inc.*, Rule 52 Order after Trial on the Merits, Case No. 4:20-cv-05640-YGR, 10 September 2021, page 144, the Court considered that there are limited constraints on Apple's terms for app distribution and the commission fee it charges: "*Apple set its 30 % commission rate almost by accident when it first launched the App Store without considering operational costs, benefit to users, or value to developers, that is, both sides of the platform. That commission has enabled Apple to collect extraordinary profits as Mr. Barnes credibly shows that the operating margins have exceeded*

(513) Overall, the Commission concludes that outside subscription mechanism for music streaming services does not reduce the ability of Apple to unilaterally and independently determine the conditions for the provision of a distribution platform for music streaming apps to iOS users and the terms it sets for apps to be accepted on the App Store.

8.2.2.5.3.2. Assessment of Apple's arguments

(514) In its Response to the Statement of Objections of 28 February 2023, Apple disagrees with the Commission's views. Apple claims that the Commission's assessment on the unilateral imposition of Apple's rules is not indicative of dominance.⁷⁶³ Apple claims that the Commission fails to appreciate the competitive pressure that such channels exert on Apple thanks to the reader and multiplatform Rules and overestimates the practical significance of the Anti-Steering Provisions. Apple notes that in-app subscriptions concluded through IAP represented less than [...] % of the music streaming subscriptions by iOS users in December 2021, which shows that the App Store is not an important channel for music streaming service providers to get iOS users to subscribe.⁷⁶⁴

(515) These arguments do not alter the Commission's findings above.

(516) First, as explained in Section 8.2.2.4, the Commission considers that Apple's unilateral imposition of the App Store rules, which cannot be influenced by developers, reflects the weak negotiation position of app developers vis-à-vis Apple, which controls the only distribution channel for apps on iOS.

(517) Second, as explained in more detail in Sections 8.1.4 and 8.2.2, the relevant market in this case, where Apple enjoys a position of dominance, is the market for the provision to developers of platforms for the distribution of music streaming apps to iOS users and not that for the sale of music streaming subscriptions, as claimed by Apple.⁷⁶⁵ In this context, as explained above, the reader and multiplatform rules do not open up alternative ways for developers to distribute their apps to iOS users, as the App Store remains the exclusive platform available for this purpose. Even if music streaming service providers can obtain users from alternative channels, they still need to distribute a native app and abide by Apple's rules, as smart mobile devices are the primary means of consumption of music streaming services (as shown in recital (508)).

(518) Third, the Anti-Steering Provisions reduce the benefit of subscription mechanisms outside the app. These rules prevent users who are unaware of price differences to make an informed choice through which they could exert some competitive pressure on Apple. As shown in detail in recital (511), while many app users may ultimately find a way to subscribe to alternative subscription mechanisms, others are not aware of the existence of other (lower-cost) subscription channels than in-app purchase. The evidence shows that the Anti-Steering Provisions do limit the benefit of

75 % for years. Yet the 30 % commission rate has barely budged in over a decade despite developer complaints and regulatory pressure.” <https://cand.uscourts.gov/wp-content/uploads/cases-of-interest/epic-games-v-apple/Epic-v.-Apple-20-cv-05640-YGR-Dkt-812-Order.pdf>, accessed on 2 May 2022, ID 2378.

⁷⁶³ Apple's Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 134.

⁷⁶⁴ Apple's Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 134 to 147. See also Apple's Response to the Letter of Facts, ID 3330, paragraph 176.

⁷⁶⁵ Apple's Response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 124 to 129.

subscription mechanisms outside the app. As explained in Section 9.3.2.2, the low numbers of in-app subscriptions on iOS are precisely a result of the Anti-Steering Provisions hampering the ability of music streaming developers to effectively acquire their iOS users through their iOS app.

- (519) In any event, as shown above, outside subscription mechanisms for music streaming services do not reduce the ability of Apple to unilaterally and independently determine the conditions for the provision of a distribution platform for music streaming apps to iOS users and the terms it sets for apps to be accepted on the App Store.

8.2.3. Conclusion

- (520) In light of the above, the Commission concludes that Apple holds a dominant position in the EEA on the developer facing market for the provision to developers of platforms for the distribution of music streaming apps to iOS users for the EEA since at least 30 June 2015 where it enjoys a 100 % market share. App distribution on iOS devices not only exhibits indirect network effects, but also extremely high barriers to entry. Apple's ability to behave independently vis-à-vis developers of music streaming apps when setting the terms and conditions for access by developers to the App Store is neither constrained by the consumer side of the App Store nor by alternative mechanisms to subscribe to music streaming services outside the iOS app.

9. THE ABUSE

9.1. Principles

9.1.1. The relevant legal test

- (521) Article 102 of the Treaty prohibits as incompatible with the internal market any abuse of a dominant position insofar as it may affect trade between Member States.
- (522) Article 102 of the Treaty therefore places a special responsibility on undertakings in a dominant position, in requiring them not to abuse their dominant position.⁷⁶⁶ The actual scope of the responsibility imposed on a dominant undertaking must be considered in the light of the specific circumstances of each case.⁷⁶⁷
- (523) It follows that, in specific circumstances, undertakings in a dominant position may be deprived of the right to adopt a course of conduct or take measures which would be unobjectionable if adopted by non-dominant undertakings. Considering the special responsibility of such undertakings, their conduct cannot cease to be abusive merely because it is standard practice in a particular sector, as to hold otherwise would deprive Article 102 of the Treaty of any effect.⁷⁶⁸
- (524) The concept of abuse covers not only practices which cause harm to consumers through their impact on competition, but also those which may cause damage to consumers directly.⁷⁶⁹ Furthermore, the concept of abuse also covers practices that

⁷⁶⁶ See in particular, concerning the imposition of unfair trading conditions under Article 102(a) of the Treaty, the opinion of Advocate General Trstenjak in Case C-52/07 *Kanal 5*, EU:C:2008:491, paragraph 35.

⁷⁶⁷ Case C-52/09 *TeliaSonera Sverige*, EU:C:2011:83, paragraph 84; Case T-162/17 *Google and Alphabet v Commission (Google Shopping)*, EU:T:2021:763, paragraph 165.

⁷⁶⁸ Joined Cases T-191/98 and T-212/98 to T-214/98 *Atlantic Container Line and Others v Commission*, EU:T:2003:245, paragraph 1124.

⁷⁶⁹ Case 6/72 *Europemballage and Continental Can v Commission*, EU:C:1973:22, paragraph 26.

cause harm directly to other undertakings, irrespectively of whether these undertakings compete with the dominant undertaking or not.⁷⁷⁰

- (525) As a result, the special responsibility of dominant undertakings is not limited solely to conduct likely to reinforce the dominance of the undertaking concerned or reduce the level of competition on the market, since Article 102 of the Treaty concerns not only practices which hinder effective competition, but also those which may cause harm to either consumers or undertakings directly.⁷⁷¹ In light of their special responsibility, the onus is on the dominant undertakings to behave in a way which is proportionate to the legitimate objectives they seek to achieve.⁷⁷²
- (526) Under Article 102(a) of the Treaty, the direct or indirect imposition by an undertaking in a dominant position of unfair trading conditions constitutes an abuse of that position.
- (527) Although the case law on the concept of unfair trading conditions is rather limited to date, it can provide some useful indications thereon. In particular, in a preliminary ruling involving contractual clauses between an association managing copyright and its members, the Court of Justice qualified trading conditions imposed by a dominant undertaking as unfair where they involve obligations that are not absolutely necessary⁷⁷³ for the attainment of that undertaking's legitimate objectives and which thus encroach unfairly upon third parties' economic freedom, bearing in mind their effects.⁷⁷⁴
- (528) According to the Court, trading conditions can be regarded as unfair either in relation to trading partners or to third parties, including consumers.⁷⁷⁵
- (529) It can be inferred from the case law that, in essence, to be qualified as unfair under Article 102(a) of the Treaty and thus abusive, trading conditions must be: (i) imposed by a dominant undertaking on its trading partners,⁷⁷⁶ (ii) unfavourable or detrimental to the interests of that undertaking's trading partners or of third parties, including consumers, that are affected by the trading conditions imposed by the dominant undertaking,⁷⁷⁷ and (iii) not necessary for the achievement of a legitimate objective

⁷⁷⁰ Case 27/76 *United Brands v Commission*, EU:C:1978:22, paragraphs 248, 250; Case C-66/86 *Ahmed Saeed Flugreisen and Others v Zentrale zur Bekämpfung unlauteren Wettbewerbs*, EU:C:1989:140, paragraph 42.

⁷⁷¹ Case 6/72 *Europemballage and Continental Can v Commission*, EU:C:1973:22, paragraph 26; Joined Cases T-191/98 and T-212/98 to T-214/98 *Atlantic Container Line and Others v Commission*, EU:T:2003:245, paragraph 1124.

⁷⁷² Joined Cases T-191/98 and T-212/98 to T-214/98 *Atlantic Container Line and Others v Commission*, EU:T:2003:245, paragraph 1120.

⁷⁷³ Case C-127/73 *BRT v SABAM*, EU:C:1974:25, paragraphs 9-11.

⁷⁷⁴ Case C-127/73 *BRT v SABAM*, EU:C:1974:25, paragraphs 11 and 15. See also, to this effect, Case C-247/86 *Alsatel v Novasam*, EU:1988:469, paragraph 10.

⁷⁷⁵ See to that effect Case C-66/86 *Ahmed Saeed Flugreisen and Others v Zentrale zur Bekämpfung unlauteren Wettbewerbs*, EU:C:1989:140, paragraph 42. See also Commission decision of 20 July 1999 in Case No IV/36.888 – *1998 Football World Cup*, paragraph 88; Commission decision of 24 July 1991 in Case IV/31043 – *Tetra Pak II*, paragraph 123.

⁷⁷⁶ For the imposition criterion see Case C-127/73 *BRT v SABAM*, EU:C:1974:25, paragraph 15; Case C-247/86 *Alsatel v Novasam*, EU:1988:469, paragraph 10.

⁷⁷⁷ See to that effect Case C-27/76 *United Brands*, EU:C:1978:22, paragraphs 156-159 where the Court analyses the ways in which the conditions imposed were detrimental to the interests of the companies affected by them. See also Case C-66/86 *Ahmed Saeed Flugreisen and Others v Zentrale zur Bekämpfung unlauteren Wettbewerbs*, EU:C:1989:140, paragraphs 42 and 46.

or in any event not proportionate for that purpose, in that they go beyond what is strictly necessary to achieve it.⁷⁷⁸

- (530) A finding that a dominant undertaking imposes unfair trading conditions is sufficient to establish an abuse of a dominant position pursuant to Article 102(a) of the Treaty, without it being necessary to further consider whether the object or effect of the dominant undertaking's activities was to restrict competition between undertakings within the internal market.⁷⁷⁹ Rather, it is sufficient that the trading conditions in question affect parameters of competition such as price, choice, quality or innovation to the detriment of the interests of (or, in other words, harm), the dominant undertaking's trading partners or third parties, including in particular consumers.

9.1.2. *Assessment of Apple's arguments*

- (531) Apple argues that terms and conditions are not unfair if they are merely unfavourable or detrimental to the interests of trading partners or consumers. According to Apple, established categories of abuse such as margin squeeze and excessive pricing rely on and further define the notion of “unfairness” under Article 102(a) of the Treaty. To be unfair, terms should be so “disadvantageous” that no user would be interested in purchasing music streaming subscriptions. According to Apple, the Commission found in *Slovak Telekom* that the terms and conditions were unfair because they were set “so as to render [them] unacceptable.”⁷⁸⁰
- (532) Apple also submits that an exploitative abuse consisting in the imposition of unfair trading conditions under Article 102(a) of the Treaty can be found only if it is possible to show a causal link between the existence of a dominant position and the ability to impose the terms in question.⁷⁸¹
- (533) Apple submits that the requirement of such a causal link is needed to distinguish exploitative and exclusionary abuses as well as to preserve the effectiveness of the requirements set by the Court of Justice for showing that the terms and conditions at issue are at least capable of foreclosing equally efficient competitors.⁷⁸²
- (534) Apple argues that, otherwise, the Commission could establish an exploitative abuse within the meaning of Article 102(a) of the Treaty by “circumvent[ing] the Court of Justice's requirement for showing threshold foreclosure effects for exclusionary abuses”.⁷⁸³
- (535) Apple also argues that the Commission is obliged to benchmark the conditions imposed by the dominant undertaking against the conduct of other players, who do not have a dominant position, in order to be able to find an exploitative abuse within the meaning of Article 102(a) of the Treaty.⁷⁸⁴ According to Apple, the terms in questions must be “manifestly more disadvantageous to business partners than they would be in a competitive market.”⁷⁸⁵

⁷⁷⁸ Case T-139/98, *AAMS*, EU:T:2001:272, paragraph 79.

⁷⁷⁹ See opinion of Advocate General Mayras in Case 26/75 *General Motors v Commission*, EU:C:1975:141, under III.

⁷⁸⁰ Apple's Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 173.

⁷⁸¹ Apple's Response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 190-198.

⁷⁸² Apple's Response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 190-205.

⁷⁸³ Apple's Response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 169, 204.

⁷⁸⁴ Apple's Response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 169, 201, 246.

⁷⁸⁵ Apple's Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 176.

- (536) Apple’s view has to be rejected for the following reasons.
- (537) Article 102(a) of the Treaty expressly refers to the direct or indirect “imposition” of unfair trading conditions without requiring a specific causal link between the dominance and the content of those unfair trading conditions.
- (538) It is precisely the position of economic strength which follows from a dominant position, and which makes the dominant undertaking an unavoidable trading partner that enables that undertaking to impose trading conditions on its trading partners. This “power” to impose conditions constitutes the specific link between the dominant position and the conduct in question, irrespectively of whether other non-dominant undertakings may use similar trading conditions.
- (539) It follows from the special responsibility of dominant undertakings that their conduct can be subjected to the prohibition in Article 102 of the Treaty irrespectively of whether that same conduct is also shown by other, non-dominant undertakings.⁷⁸⁶
- (540) In *Europemballage*, the Court of Justice explicitly rejected the requirement of a causal link between the dominant position and the abuse, noting that “*the question of the link of causality raised by the applicants which in their opinion has to question exist between the dominant position and its abuse, is of no consequence, the strengthening of the position of an undertaking may be an abuse and prohibited under Article [102] of the Treaty, regardless of the means and procedure by which it is achieved, if it has the effects mentioned above.*”⁷⁸⁷ In *Atlantic Container Line*, the General Court clarified that this does not apply only in cases of reinforcement of a dominant position but also to conducts that harm consumers directly, and therefore also to exploitative abuses. Indeed, the General Court explained that “[...] *conduct cannot cease to be abusive merely because it is the standard practice in a particular sector; to hold otherwise would deprive Article [102] of the Treaty of any effect. Dominant undertakings within the meaning of Article [102] of the Treaty have a special responsibility not to allow their conduct to impair genuine undistorted competition on the relevant market [...]. Contrary to the submission of the applicant in Case T-213/98, that responsibility is not limited solely to conduct likely to reinforce the dominance of the undertaking concerned or reduce the level of competition on the market, since Article [102] of the Treaty concerns not only practices which hinder effective competition but also those which, as in this case, may cause damage to consumers directly [...].*”⁷⁸⁸
- (541) Similarly, in *BRT/SABAM*, the Court of Justice considered that the “imposition” criterion was met because the dominant copyright management association required its members to assign to it copyrights under certain conditions,⁷⁸⁹ irrespectively of whether similar requirements were also requested by other non-dominant associations. In *Tournier*, another preliminary ruling relating to a copyright management society, the Court of Justice expressly underlined the optional nature of a comparison with the conduct of other market players, noting “*that a comparison with the situation in other Member States may provide useful indications regarding*

⁷⁸⁶ Joined Cases T-191/98 and T-212/98 to T-214/98 *Atlantic Container Line and Others v Commission*, EU:T:2003:245, paragraph 1124.

⁷⁸⁷ Case 6/72 *Europemballage and Continental Can v Commission*, EU:C:1973:22, paragraph 27.

⁷⁸⁸ Joined Cases T-191/98 and T-212/98 to T-214/98 *Atlantic Container Line and Others v Commission*, EU:T:2003:245, paragraph 1124.

⁷⁸⁹ Case C-127/73 *BRT v SABAM*, EU:C:1974:25, paragraphs 7 to 12.

the possible abuse of a dominant position by a national copyright-management society”, without such comparison being required.⁷⁹⁰ The Court of Justice even explicitly stated that there may be “*other criteria not mentioned in the questions submitted by the national court which might serve to establish the unfairness of the rate of royalty.*”⁷⁹¹ In *Alsatel*, the Court of Justice stated, while ultimately not finding an infringement due to the lack of a dominant position, that the imposition of unfair trading conditions may consist of “*the obligation imposed on customers to deal exclusively with the installer as regards any modification of the installation*”,⁷⁹² without considering whether other companies requested similar conditions or not to their customers. In *AAMS*, the General Court found that certain conditions imposed in distribution agreements by a monopolist on a number of cigarette manufacturers constituted an exploitation of the monopolist’s dominant position without assessing whether there was a causal link between the dominant position and the imposition of the exploitative conditions.⁷⁹³

- (542) The aforementioned interpretation is not affected by the judgments in *Tetra Pak II*⁷⁹⁴ and *Kanal 5*⁷⁹⁵ referred to by Apple.⁷⁹⁶
- (543) While in *Tetra Pak II* the Court of Justice stated that “*the application of Article [102] presupposes a link between the dominant position and the alleged abusive conduct*”, this related to the question whether a conduct in a market distinct from the dominated market could constitute an abuse of a dominant position in that distinct market. When read in full, the quote referred to by Apple actually shows that there is no additional causality requirement beyond a specific link (see recital (538)), as the Court does not require the Commission to compare the conduct of the undertaking concerned with the conduct of other, non-dominant competitors: “*It is true that application of Article [102] presupposes a link between the dominant position and the alleged abusive conduct, which is normally not present where conduct on a market distinct from the dominated market produces effects on that distinct market. In the case of distinct, but associated, markets, as in the present case, application of Article [102] to conduct found on the associated, non-dominated, market and having effects on that associated market can only be justified by special circumstances.*”
- (544) Apple’s claim is also not supported by *Kanal 5*, where the Court of Justice stated that “*it is advisable therefore to ascertain whether the dominant undertaking has made use of the opportunities arising out of its dominant position in such a way as to reap trading benefits which it would not have reaped if there had been normal and sufficiently effective competition (United Brands and United Brands Continentaal v Commission, paragraph 249).*”⁷⁹⁷ This statement, which is a direct quote from *United Brands*, only applies in excessive prices cases, where it should generally be established whether the price actually charged by the dominant undertaking exceeds the price which that undertaking would hypothetically have charged had there been

⁷⁹⁰ Case 395/87 *Tournier*, EU:C:1989:319, paragraph 43.

⁷⁹¹ Case 395/87 *Tournier*, EU:C:1989:319, paragraph 44.

⁷⁹² Case C-247/86 *Alsatel v Novasam*, EU:1988:469, paragraph 10.

⁷⁹³ Case T-139/98 *AAMS*, EU:T:2001:272, paragraph 79, concerning Commission decision 98/538/EC of 17 June 1998 relating to a proceeding pursuant to Article 86 of the EC Treaty (IV/36.010- F3 — *Amministrazione Autonoma dei Monopoli di Stato*), paragraph 34.

⁷⁹⁴ Case C-333/94 P *Tetra Pak v Commission*, EU:C:1996:436, paragraph 27.

⁷⁹⁵ Case C-52/07 *Kanal 5*, EU:C:2008:491, paragraph 27.

⁷⁹⁶ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 194.

⁷⁹⁷ Case C-52/07 *Kanal 5*, EU:C:2008:491, paragraph 27.

effective competition.⁷⁹⁸ This approach is therefore specific to excessive pricing cases and cannot be generalised. Moreover, even in excessive pricing cases, the case law does not require benchmarking the prices of the dominant company to those of competitors. The Court of Justice indeed clarified that “[t]he questions therefore to be determined are whether the difference between the costs actually incurred and the price actually charged is excessive, and, if the answer to this question is in the affirmative, whether a price has been imposed which is either unfair in itself or when compared to competing products.”⁷⁹⁹ In other words, a benchmarking with competitors is only one of the options to find an infringement of Article 102(a) of the Treaty, but not a mandatory requirement. The same reasoning is applied by the Court of Justice in *Kanal 5*, where the Court does not require a benchmarking of the conduct in question but simply notes that “it is therefore appropriate to ascertain whether the royalties levied by STIM are reasonable in relation to the economic value of the service provided by that organisation, which consists in making the repertoire of music protected by copyright that it manages available to the broadcasting companies which have concluded licensing agreements with it.”⁸⁰⁰

- (545) In general, it would not be appropriate to adopt a restrictive reading of Article 102(a) of the Treaty excluding from its scope any trading condition imposed by a dominant company, even if unfair (such as the imposition of disproportionate exclusivity requirements extending far beyond the duration of a contractual commitment to provide certain services⁸⁰¹), simply because also non-dominant companies could (or do) request their trading partners to accept similar unfair conditions. Even if similar unfair conditions can be requested by non-dominant companies, they can still lead to an abuse if they are imposed by a dominant undertaking which has a special position of economic strength giving it the power to behave independently of its customers (for instance because it is an unavoidable trading partner), and therefore – according to the established case law – has a special responsibility under Article 102 of the Treaty.
- (546) Furthermore, contrary to Apple’s view, the causal link between the dominant position of the undertaking concerned and the conduct in question is also not required to distinguish exploitative from exclusionary abuses. Both types of abuses are directly rooted in Article 102 of the Treaty and neither the wording of that provision nor the case law of the Court of Justice provide for any reason to generally require a causal link between the dominant position and an exploitative conduct as alleged by Apple.⁸⁰²
- (547) The case law clarified that Article 102 of the Treaty covers both practices which may cause harm to consumers directly as well as those which are detrimental to them through their impact on an effective competition structure.⁸⁰³ Contrary to Apple’s view, exclusionary abuses do not take precedence over exploitative abuses.⁸⁰⁴

⁷⁹⁸ See the opinion of Advocate General Wahl in Case C-177/16, *Autortiesību un komunikēšanās konsultāciju aģentūra / Latvijas Autoru apvienība v Konkurences padome*, EU:C:2017:286, paragraph 17.

⁷⁹⁹ Case 27/76 *United Brands v Commission*, EU:C:1978:22, paragraph 252 (emphasis added).

⁸⁰⁰ Case C-52/07 *Kanal 5*, EU:C:2008:491, paragraph 29.

⁸⁰¹ As indicated, this was for instance the situation in Case C-127/73 *BRT v SABAM*, EU:C:1974:25 (see in particular paragraph 12).

⁸⁰² Case 6/72 *Europemballage*, EU:C:1973:22, paragraph 26.

⁸⁰³ Case 6/72 *Europemballage and Continental Can v Commission*, EU:C:1973:22, paragraph 26.

⁸⁰⁴ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 197.

Nothing in Article 102 of the Treaty suggests that the finding of an exploitative abuse within the meaning of Article 102(a) of the Treaty depends in any way on whether the conduct in question could potentially also be investigated as an exclusionary abuse, e.g., within the meaning of Article 102(b) of the Treaty. Notably, the different types of abuses address different legal and economic aspects and consequences arising from a given conduct. The case law concerning exploitative abuses within the meaning of Article 102(a) of the Treaty consisting in the imposition of unfair trading conditions does not require the demonstration that the conduct of the dominant company is liable to foreclose competitors. Foreclosure effects can only relate to undertakings that are competing in the market, not to conducts harming consumers who are not undertakings and therefore do not compete in any market. Accordingly, if there were a requirement for the Commission to show the capability to foreclose in the case of exploitative abuses under Article 102(a) of the Treaty, that would make it impossible to find an abuse where only consumers are harmed.

- (548) As stated by the General Court in its *Google Android* judgment, “[e]xclusionary effects characterise situations in which effective access of actual or potential competitors to markets or to their components is hampered or eliminated as a result of the conduct of the dominant undertaking, thus allowing that undertaking negatively to influence, to its own advantage and to the detriment of consumers, the various parameters of competition, such as price, production, innovation, variety or quality of goods or services.”⁸⁰⁵ However, this Decision does not analyse the question whether actual or potential competitors of Apple Music have effective access to any specific market. Rather, the analysis focusses exclusively on an exploitative conduct covered by Article 102(a) of the Treaty consisting in the imposition on Apple’s trading partners, the music streaming service providers, of conditions that are unfair vis-à-vis iOS users.
- (549) Contrary to Apple’s claim,⁸⁰⁶ Article 102(a) of the Treaty does not require that the conditions imposed on the trading partners be necessarily unfair vis-à-vis those trading partners, as they could be unfair also vis-à-vis third parties, including consumers, that are affected by the conditions in question. This applies in particular where, as in the present case, the unfair trading conditions imposed on the trading partners of the dominant undertaking specifically concern and specifically affect end users. Indeed, the Anti-Steering Provisions are specifically designed and applied to prevent music streaming service providers from informing iOS users about options available to them under the reader rule and the multiplatform rule and from allowing iOS users to effectively exercise an informed choice between different options. The iOS users are therefore the target of the Anti-Steering Provisions, which are specifically detrimental to them in the different ways set out in more detail in Section 9.3.
- (550) Contrary to Apple’s claim, once the Commission has shown that a given conduct gives rise to an exploitative abuse under Article 102(a) of the Treaty, it is not required to also assess whether the conditions for finding an exclusionary abuse are met. Thus, if the Commission establishes the existence of an exploitative abuse under Article 102(a) of the Treaty focusing only on the harm to consumers, it does not

⁸⁰⁵ Case T-604/18 *Google Android*, EU:T:2022:541, paragraph 281.

⁸⁰⁶ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 215; Apple’s Response to the Letter of Facts, ID 3330, paragraphs 32, 186-188.

*“circumvent the Court of Justice’s requirement for showing threshold foreclosure effects for exclusionary abuses”.*⁸⁰⁷

- (551) Moreover, contrary to Apple’s claim,⁸⁰⁸ the distinction between EU competition law on the one hand and the secondary EU legislation cited by Apple on the other hand cannot be made according to whether they are aimed at the pursuit of fairness. The fact that both Article 102(a) of the Treaty and that secondary EU legislation concern the fairness of certain conducts does not mean that they pursue the very same objective. As underlined, for example, by recital 11 of Regulation (EU) 2022/1925, that regulation *“pursues an objective that is complementary to, but different from that of protecting undistorted competition on any given market, as defined in competition-law terms, which is to ensure that markets where gatekeepers are present are and remain contestable and fair, independently from the actual, potential or presumed effects of the conduct of a given gatekeeper covered by this Regulation on competition on a given market. This Regulation therefore aims to protect a different legal interest from that protected by those rules and it should apply without prejudice to their application.”* By consequence, it is the complementary goal and the *ex-ante* nature of those rules which distinguishes the cited secondary EU legislation from Article 102(a) of the Treaty.
- (552) Rather, the fact that Article 5(4) of Regulation (EU) 2022/1925 generally prohibits, due to their unfair character, the imposition by gatekeepers of anti-steering rules further supports the Commission’s view that such conditions imposed by a dominant undertaking should be qualified as unfair.⁸⁰⁹
- (553) Finally, contrary to Apple’s claim, if certain trading conditions imposed by a dominant undertaking are (appreciably and not insignificantly) detrimental to the interests of the trading partners or third parties, including consumers, and are not necessary or proportionate for the attainment of a legitimate objective, they can be qualified as unfair, without having to show that they have *“an unacceptable impact”*. The very fact that those conditions are *“imposed”* by the dominant undertaking, which due to its market position has a special responsibility, means that the trading partners have no effective possibility not to accept those conditions. In any event, in the present case the Commission has shown that Apple’s Anti-Steering Provisions are significantly detrimental to the interests of iOS users or, in other words, they cause harm to them.
- (554) Contrary to what Apple suggests,⁸¹⁰ this assessment was not carried out by examining the Anti-Steering Provisions in isolation. Indeed, the Commission examined them in their context, by assessing how they affect iOS users in the framework of the music streaming services market, and by assessing their necessity for the achievement of a legitimate objective.

⁸⁰⁷ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 169.

⁸⁰⁸ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 190-205.

⁸⁰⁹ Article 5(4) of Regulation (EU) 2022/1925 provides that undertakings such as Apple, that have been designated as gatekeepers within the meaning of Article 3 of Regulation (EU) 2022/1925, shall allow business users, free of charge, to (i) communicate and promote offers, including under different conditions, to end users acquired via its core platform service or through other channels, and (ii) to conclude contracts with those end users, regardless of whether, for that purpose, they use the core platform services of the gatekeeper.

⁸¹⁰ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 186.

(555) It follows from the above that Apple's Anti-Steering Provisions give rise to an (exploitative) abuse under Article 102(a) of the Treaty, due to the imposition of unfair trading conditions, if: (i) they are unilaterally imposed by Apple on music streaming service providers; (ii) they are detrimental to the interests of iOS users of music streaming services; and (iii) they are not necessary for the achievement of a legitimate objective or in any event not proportionate for that purpose.

9.2. Apple's special responsibility under Article 102 of the Treaty

9.2.1. Introduction

(556) In Section 8, the Commission concludes that Apple holds a dominant position with respect to the provision to developers of platforms for the distribution of music streaming apps to iOS users. The App Store serves as an exclusive gateway to iOS users.

(557) As a result of this dominant position, Apple has a special responsibility to ensure *inter alia* that it does not impose unfair trading conditions on music streaming service providers. This special responsibility should be considered in light of the specific circumstances of the case at hand, and in particular the lack of competition at the App Store level in the iOS ecosystem, where Apple fully determines and controls the process of approval of apps for iOS devices.

(558) As explained in detail in Section 8.1 on the relevant markets and Section 8.2 on dominance, Apple's App Store is the only channel through which native apps can be distributed to iOS users, such that all developers that wish to offer native apps to iOS users have to do so through Apple's App Store, abiding by the License Agreement and Guidelines as formulated and enforced by Apple and following exclusively an app review process in which Apple enjoys full discretion to approve or reject apps.

(559) Consumers are to a considerable degree locked into iOS devices once they have purchased them, *inter alia* because of various monetary and non-monetary switching costs (see for instance recital (382)).

(560) The App Store's position as the only gateway for developers to reach iOS users which are to a considerable degree locked-in, together with the key importance of smart mobile devices and native apps to consume music streaming services, accentuates the special responsibility that Apple has with regard to the trading conditions it imposes upon music streaming service providers which concern (and are detrimental to the interests of) iOS users.

(561) In assessing Apple's special responsibility under Article 102 of the Treaty, the Commission has considered the following specific circumstances of the case: (a) Apple's monopoly on music streaming app distribution on iOS; (b) the fact that consumers predominantly use native apps on smart mobile devices to stream music and; (c) Apple's full control over the apps for iOS devices.

9.2.2. Apple's monopoly on music streaming app distribution on iOS

(562) As explained in Section 8.1 on the relevant markets and Section 8.2 on dominance, there is no realistic alternative for music streaming service providers to provide their services to iOS users other than through Apple. Apple does not face any competition with respect to the distribution of music streaming apps on iOS and dictates the conditions for the sale of in-app digital content, including subscriptions, in those iOS apps without facing any countervailing buyer power from music streaming service providers.

(563) The App Store is the only channel available for developers to offer native apps to iOS users, as Apple does not allow any competition from alternative app distribution platforms for iOS devices as of the date of this Decision. Apple is therefore facing no competition from third parties for the distribution of native music streaming apps on iOS and, as of the date of this Decision, excludes third parties from offering alternative in-app sales functionalities and related payment services.

(564) Music streaming service providers fully depend on Apple to have their apps distributed to iOS users and have no choice but to abide by Apple's rules in order to do so. At the same time, owners of iOS devices who have made a considerable investment in their devices are without alternative choices for app distribution and subsequent in-app purchases.

9.2.3. *Consumers predominantly use native apps on smart mobile devices to stream music*

(565) The evidence in the Commission's file shows that consumers stream music mostly on smart mobile devices.⁸¹¹ Moreover, streamed music consumption on smart mobile devices takes place almost entirely through native apps, which currently cannot be effectively replaced by other means of consumption such as web apps accessible through browsers or sideloading methods, which are hence not a viable alternative for providers of music streaming services (see Section 8.1). Music streaming service providers therefore need to multi-home in order to reach all their potential users and must have a native app for both iOS and Android devices.⁸¹² They are fully dependent on Apple for distributing their apps to iOS users. Conversely, iOS consumers that are interested in music streaming services will overwhelmingly use iOS native apps to access such services on their iOS devices.

9.2.4. *Apple has full control in relation to apps for iOS devices*

(566) Apple's role as platform operator and the lack of competition at the app distribution level on iOS devices provides it with the power to determine independently the rules according to which iOS users and music streaming service providers interact on the iOS platform, in particular the power to set and impose the terms and conditions under which the App Store operates, including the Anti-Steering Provisions and payment rules, as well as the power to accept or reject music streaming developers' apps and apps updates in the App Store.

9.2.5. *Conclusion*

(567) In light of the above, the Commission concludes that Apple has a special responsibility not to impose on music streaming service providers unfair conditions which are detrimental to the interests of users of music streaming services on iOS.

⁸¹¹ Google estimates that [70-80 %] of music on YouTube Music is consumed via smart mobile devices (YouTube Music's response to question 7 of the Commission's request for information (2019/048689), ID 1356); SoundCloud submitted that 85 % of users logged through smart mobile devices (SoundCloud's response to question 6 of the Commission's request for information (2019/048728), ID 1369).

⁸¹² Since smart mobile device users tend to own a single device and typically do not multi-home across different smart mobile operating system to access music streaming services, music streaming service providers have to offer their apps on both relevant mobile OS, i.e., iOS and Android (see in this regard recital (271)).

9.3. Analysis of the unfair character of the Anti-Steering Provisions vis-à-vis iOS users of music streaming services

(568) The Commission concludes that Apple’s Anti-Steering Provisions constitute unfair trading conditions pursuant to Article 102(a) of the Treaty, since: (i) they are unilaterally imposed by Apple on music streaming service providers (Section 9.3.1); (ii) they are detrimental to the interests of iOS users of music streaming services (Section 9.3.2); and (iii) they are not necessary for the achievement of a legitimate objective and in any event not proportionate for that purpose (See Section 9.3.3).

9.3.1. *Apple unilaterally imposes the Anti-Steering Provisions on music streaming service providers*

(569) As set out in Section 6.2, Apple unilaterally defines the terms and conditions of the Anti-Steering Provisions for the App Store and imposes them on app developers. In particular, the Anti-Steering Provisions are enshrined in the Guidelines and in the License Agreement which app developers need to abide by at the risk of having their apps removed from the App Store or having their app updates rejected by Apple.

(570) As further explained in Section 6.2.3, the License Agreement is a contract of adhesion, pre-defined by Apple and non-negotiable. The Guidelines contain the criteria that Apple uses to review all apps and app updates submitted to the App Store. Both the License Agreement and the Guidelines are defined, interpreted and enforced unilaterally by Apple, which has full discretion to approve or reject apps and app updates through its app review process.⁸¹³ Therefore, music streaming service providers have no other choice than accepting and abiding by Apple’s rules to be able to offer their apps in the App Store to iOS users.

(571) As shown in Section 7, Apple has consistently rejected apps and app updates submitted to the App Store which it believes do not comply with its interpretation of the Anti-Steering Provisions as set out in the Guidelines.

(572) Moreover, the language of the Guidelines is often ambiguous and unclear.⁸¹⁴ Apple defines the Guidelines as a “living document” that it has unilaterally updated many times.⁸¹⁵ Apple has unilaterally modified the wording and interpretation of the Guidelines over the years, sometimes in contradiction with previous interpretations and beyond the actual wording of the provisions (see Section 7.3). Changes to the rules were often decided internally by Apple, without necessarily including them in the Guidelines (see Section 7.2), making it difficult for developers to understand the actual scope of the rules and grasp what is expected of them in order to comply with the rules and to have their apps published in the App Store. . . [...].⁸¹⁶

(573) Music streaming service providers cannot escape this unilateral imposition of rules by Apple, as they need to provide their services through native apps for smart mobile

⁸¹³ Section 6.9 of the License Agreement states that: “[...] Apple may, in its sole discretion [...] **reject Your Application for distribution for any reason, even if Your Application meets the Documentation and Program Requirements**” [emphasis added], ID 3015.

⁸¹⁴ See the interview to Phillip Shoemaker on 12 January 2021 in the context of the Epic Games, Inc. v. Apple, Inc., Case No. 4:20-cv-05640-YGR, <https://app.box.com/s/6b9wmjvr582c95uzma1136exumk6p989/file/806840116174>, accessed on 6 May 2022, ID 2293.

⁸¹⁵ See Apple’s comments on Spotify’s Complaint, ID 330, paragraph 52.

⁸¹⁶ [...].

devices, which are the primary means of consumption for streamed music (see recital (508)).

(574) As explained in detail in Section 7, even if consumers subscribe through alternative (inferior) channels, they still want to use their subscription within an app on their smart mobile device. Music streaming service providers therefore need to have native apps for both iOS and Android devices, the two main OSs for mobile devices, to reach consumers, who typically single-home. Moreover, consumers that have purchased iOS devices are to a considerable degree locked into their iOS devices.

(575) Given these specific circumstances, music streaming service providers have no choice but to accept Apple's conditions for the App Store, however unfavourable, unclear and ambiguous those conditions may be. The evidence in the Commission's file shows that even popular music streaming service providers with a large number of active iOS users have not been able to influence Apple's terms for access to the App Store⁸¹⁷ and have no choice but to abide by Apple's implementation of the License Agreement and the Guidelines, including in particular the Anti-Steering Provisions. It follows from the above that Apple imposes its License Agreement and Guidelines on app developers, including on developers of music streaming apps.

9.3.2. *The Anti-Steering Provisions are detrimental to the interests of iOS music streaming users (consumers)*

(576) The Commission concludes that the Anti-Steering Provisions are detrimental to the interests of iOS music streaming users (consumers) in that they are liable to cause both direct monetary harm (see Section 9.3.2.1) and non-monetary harm (see Section 9.3.2.2) to them.⁸¹⁸

(577) The Anti-Steering Provisions prevent music streaming service providers from informing iOS users about and allowing them to effectively choose among options available to them under the reader rule and the multiplatform rule (see Sections 6.2 and 7). More specifically, the Anti-Steering Provisions prevent music streaming service providers (i) from informing iOS users in their iOS app about the possibility to purchase music streaming subscriptions outside of that app, generally at lower prices than through that app, and to use these subscriptions in that app (as explicitly allowed under the reader rule and the multiplatform rule), and (ii) from enabling iOS users to effectively exercise the choices available to them, for instance by making available web-based checkouts in the music streaming service providers' iOS app (e.g., through the use of "buy buttons" within the app).

(578) Based on Apple's interpretation and implementation of the Anti-Steering Provisions (see Section 7.3), music streaming service providers are prevented from providing iOS users in their iOS app with information necessary to make informed choices, namely the prices of subscription offers outside of the iOS app, the price difference between in-app subscriptions sold through IAP and those available elsewhere, the address of the developer's website on which such subscriptions can be bought, as

⁸¹⁷ See Section 3.3. of Spotify's Complaint, ID 1457.

⁸¹⁸ C-377/20 *Servizio Elettrico Nazionale*, EU:C:2022:379, paragraph 44 ("[...] likely to cause direct harm to consumers [...]").

well as any explanations or instructions about how to subscribe to music streaming service providers' offer outside of the iOS app environment.⁸¹⁹

- (579) The Anti-Steering Provisions also limit the possibility of developers to allow iOS users to actively request in their app additional information about such subscription possibilities directly from the developer, for example by way of an e-mail with instructions on where and how to subscribe and under which conditions.
- (580) Moreover, the Anti-Steering Provisions prohibit developers from offering buy buttons or other direct links within their iOS apps to subscription possibilities outside of the app (such as on the developer's website). This prevents iOS users from effectively exercising the choices made available to them by Apple. It prohibits music streaming service providers from offering in their apps web-based checkouts to purchasing mechanisms outside the app other than IAP. Such web-based checkouts would provide consumers with a visible and easy-to-use alternative to subscribing through IAP and would allow consumers to exercise in an easy and effective way their choice between subscribing through Apple or subscribing directly through the respective music streaming service provider.
- (581) When permitted,⁸²⁰ music streaming service providers have enabled web-based checkout payment solutions in their Android apps, thus allowing consumers to subscribe to their services at cheaper prices.
- (582) In 2020, Spotify described the checkout payment solution it used at the time for its Android app as follows: "It should be clarified that this is not technically in-app purchase as the purchase does not take place inside the app. When a user taps the "Get Premium" button in the app, the app redirects users to Spotify's organic checkout on the user's mobile browser. The transition from the app to the organic checkout is seamless, giving users the impression that the transaction takes place within the mobile app. This facilitates the user experience."⁸²¹ In addition, "*in that organic checkout, users can choose from several payment options (e.g., credit/debit card, PayPal, or mobile carrier), depending on their country of residence*".⁸²²
- (583) Deezer reported that "*For premium subscriptions made in Android Google Play, payments are usually directed to Deezer via a web view using the desktop payment method*" where "*different payment solutions are available such as the credit card or Paypal for instance*".⁸²³ Conversely, payments on Android made via Google Billing (where Google charged Deezer 30 % of the transaction) were rarely used (at least

⁸¹⁹ Response by Apple to question 25 of the Commission's request for information (2022/004722), ID 2232.

⁸²⁰ Until 1 April 2022, music streaming service providers could choose between using an in-app payment solution on Android via Google Play Billing, or a web-based checkout via their own websites or an alternative payment solution provided by a third-party. Between 1 April 2022 and 18 July 2022, Google amended its payment policy rules and introduced comparable anti-steering rules to those of Apple. On 18 July 2022, Google amended once again its payment policy for the EEA allowing app developers to offer an alternative billing system to EEA users without being required to offer Google Play's billing system. See: <https://blog.google/around-the-globe/google-europe/an-update-on-google-play-billing-in-the-eea/>, accessed on 5 October 2023, ID 3191.

⁸²¹ Spotify's response to question 17 of the Commission's request for information (2020/002646), ID 1431-2.

⁸²² Spotify's response to question 32 of the Commissions' request for information (2020/002646), ID 1431-2.

⁸²³ See Deezer's response to question 27 of the Commission's request for information (2019/048643), ID 1377.

until 1 April 2022), namely in the magnitude of 0.6 %, while “*payments on Android are most of the time made directly to Deezer via a web view*”⁸²⁴ in the magnitude of 99.4 %.⁸²⁵

- (584) Amazon Music reported that it “*directs Android customers to its mobile web view subscription channel*” but “*Apple does not permit Amazon to take the same approach*”.⁸²⁶ If Amazon were permitted to use this method in the iOS environment, it could “*notify customers of the lower subscription price in any number of these other channels and redirect customers to a web-interface from the iOS app for the sign up process*”.⁸²⁷
- (585) Napster stated that, at the time of its response, “*Android does not prohibit apps from informing users about (and linking to) payment systems offered outside of the app. As such, on Android, we enable credit card billing, with users directed to our website outside of the app to complete the sign-up process*”.⁸²⁸ Napster’s “*price remained at EUR 9.99 for Android due to the fact that we could avoid the Google billing fees by enabling users to input credit card details*”.⁸²⁹
- (586) SoundCloud explained that, at the time of its response, “*in our Android app, we are able to use a web-based checkout which does not require revenue share with Google or any other party, and accordingly, we can offer our users a lower subscription price*”.⁸³⁰ In addition, on Android, SoundCloud is free to “*advertise special promotions and products which can only be purchased on our website*” while on iOS “*this is not allowed and offering these products via the App Store would not be cost effective*”.⁸³¹
- (587) The restrictions stemming from the Anti-Steering Provisions deprive iOS users of the information and tools within iOS to effectively select their preferred subscription mechanism. Moreover, in addition to the Anti-Steering Provisions, [...]
- (588) This also includes the prohibition for developers to inform iOS users, in-app, of the fact that such commission fee is not due in case of music streaming app subscriptions concluded outside the app. This contributes to and reinforces the lack of information that iOS users have on the available options and possible price differences between them.⁸³²

⁸²⁴ See Deezer’s response to question 24 of the Commission’s request for information (2019/048643), ID 1377.

⁸²⁵ See Deezer’s response to question 13 of the Commission’s request for information (2020/029315), ID 1379.

⁸²⁶ Amazon’s response to question 27 of the Commission’s request for information (2019/048673), ID 1336, page 18.

⁸²⁷ Amazon’s response to question 32 of the Commission’s request for information (2019/048673), ID 1336, page 21.

⁸²⁸ Napster’s response to question 24 of the Commission’s request for information (2019/048724), ID 1345.

⁸²⁹ Napster’s response to question 24 of the Commission’s request for information (2019/048724), ID 1345.

⁸³⁰ SoundCloud’s response to question 24 of the Commission’s request for information (2019/048728), ID 1369.

⁸³¹ SoundCloud’s response to question 24 of the Commission’s request for information (2019/048728), ID 1369.

⁸³² In this regard, in its Response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 259-260, Apple claims that the Commission’s statement is incorrect and brings up the examples of Deezer and SoundCloud websites which mention, among others, “*Apple’s commission*” or

- (589) The absence of appropriate information for iOS users and the strict limitation on the tools that developers (including music streaming service providers) can use within iOS to inform users about and point to alternative subscription mechanisms outside iOS causes harm to iOS users in a number of ways.
- (590) First, insofar as the Anti-Steering Provisions result in iOS users subscribing to a music streaming service through IAP, these users end up paying a significantly higher price for their subscription as compared to a situation with the full information available to them in the absence of such Anti-Steering Provisions (see Section 9.3.2.1 on monetary harm).
- (591) Second, because of the Anti-Steering Provisions, many iOS users suffer a degraded customer experience and have less choice in some iOS music streaming apps (see Section 9.3.2.2 on non-monetary harm).
- (592) Third, because of the Anti-Steering Provisions, some iOS users end up either failing to subscribe to the music streaming service of their first choice because they are unable to find out – while they are engaged with the app – where and how to purchase a subscription to their preferred music streaming service outside that service’s iOS app or not subscribing to a music streaming service at all (see Section 9.3.2.2 on non-monetary harm).
- (593) For the sake of completeness, the Commission observes that higher prices or increased churn and lower conversion rates due to the Anti-Steering Provisions, for example, not only impact iOS users of music streaming service but, necessarily, also negatively impact music streaming service providers who incur significant additional marketing costs.⁸³³

9.3.2.1. Monetary harm to consumers

9.3.2.1.1. Price as a key parameter for consumers of music streaming services

- (594) Because of the Anti-Steering Provisions, iOS users of music streaming services that enable in-app subscriptions through Apple’s IAP are and remain uninformed about the availability of alternative subscriptions and payment mechanisms as well as about the costs associated with subscribing to a music streaming service in-app on iOS as compared to alternative subscription mechanisms.⁸³⁴
- (595) iOS users of music streaming services that enable in-app subscriptions through Apple’s IAP also lack effective mechanisms to exercise the choice between

“*transactional fees*” as causes for the higher subscription prices. In fact, Apple’s observation is misleading in this regard, because such information appears on the music streaming service providers’ website only and is not shown on the app itself, for example at the moment of the conclusion of a subscription when the iOS user is engaged in-app.

⁸³³ Based on data from Spotify, Apple calculates for Spotify “a cost of approximately EUR [...] per cpc conversion to a paid subscription.” This means Spotify has to spend EUR [...] on cost-per-click (cpc) marketing to achieve a conversion to a paid subscription. This is a [...] amount of money, which few music streaming service providers can afford. See Apple’s Response to the Statement of Objections of 30 April 2021, Annex 3, paragraph 30, calculated in 2185-20, worksheet “[...]”, cell B33, and paragraph 63 in ID 1643 referring to Annex 1 of the response to the Commission’s request for information dated 23 April 2020, ID 1434-3.

⁸³⁴ See, for example, Amazon’s response to question 32 of the Commission’s request for information (2019/048673), ID 1336, page 21 where Amazon indicated that “*if Apple permitted it in the iOS app, Amazon could notify customers of the lower subscription price in any number of these other channels and redirect customers to a web-interface from the iOS app for the sign up process*”.

subscribing through Apple and IAP or subscribing directly through the music streaming service provider of their choice.

- (596) As a result, a number of iOS users decide to purchase in-app music streaming subscriptions through IAP as opposed to alternative mechanisms without having been put in a condition of making an informed and effective choice, for instance in relation to the price of the subscription.
- (597) Price is one of the most important parameters affecting consumer decision for music streaming services. [...] ⁸³⁵ [...] ⁸³⁶ Deezer also confirmed that price is the most important factor of choice for consumers selecting a music streaming service. Typically, music streaming services are rather similar on other functionalities. ⁸³⁷ Amazon submitted that “*price is a key consideration for customers.*” ⁸³⁸ A trial Napster conducted in 2016 in which it increased the retail price to USD 12.99 for iOS users who sign-up through the App Store “*demonstrated a dramatic decline in the number of sign-ups [...]. In fact, the \$ 12.99 price-point caused a double-hit: (i) we had less users signing up for the service than at \$ 9.99; and (ii) those users stayed with the service for less time than the equivalent \$ 9.99 users - presumably because they could access a similar service elsewhere for \$ 9.99.*” ⁸³⁹ SoundCloud’s research indicates that price is the most important factor affecting consumers’ choice of music streaming service. SoundCloud explained that its user base was very young and often budget constrained. In SoundCloud’s user research [40-45 %] of users selected “to save money/can’t afford” as a reason for cancelling their SoundCloud Go+ subscription. In addition, another [7-10 %] give “price/affordability” as a churn reason. For [25-30 %] of users participating in the same survey “to save money/can’t afford” is the main reason for cancelling. ⁸⁴⁰
- (598) [...] ⁸⁴¹
- (599) These uninformed iOS users may end up paying higher prices for music streaming services on iOS than those they would have paid absent Apple’s Anti-Steering Provisions. ⁸⁴² This is the result of the fact that: (a) in-app transactions conducted through IAP and intermediated by Apple are accompanied by an obligation for app developers to pay Apple a 30 % commission fee during the first year of a subscription and 15 % after the first year of uninterrupted subscription (see Section 9.3.2.1.2); (b) the commission fee level imposes a substantial financial burden on music streaming services (see Section 9.3.2.1.3), and, as a result, (c) the cost of the commission fee must be and is passed on to iOS users in the form of higher prices for subscriptions to music streaming services (see Section 9.3.2.1.4).

⁸³⁵ Spotify’s response to question 13 of the Commission’s request for information (2020/002646), ID 1431-2.

⁸³⁶ See Figure at page 13 of Spotify’s response to question 13 of the Commission’s request for information (2020/002646), ID 1431-2.

⁸³⁷ Deezer’s response to question 9 of the Commission’s request for information (2019/048643), ID 1377.

⁸³⁸ Amazon’s response to question 9 of the Commission’s request for information (2019/048673), ID 1336.

⁸³⁹ Napster’s response to question 9 of the Commission’s request for information (2019/048724), ID 1345.

⁸⁴⁰ SoundCloud’s response to question 9 of the Commission’s request for information (2019/048728), ID 1369.

⁸⁴¹ Slide 21, ID 268-316; see also ID 1615 of February 2015.

⁸⁴² Some consumers may decide to accept a higher monthly subscription fee for the convenience and alleged privacy advantages that IAP provides; see also Response to the Statement of Objections of 30 April 2021, ID 2165, paragraph 318; Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 250 et seq.

- 9.3.2.1.2. In-app sales of music streaming subscriptions are subject to a commission fee
- (600) As described in Section 6.2, developers that sell digital content, such as e-books and music streaming subscriptions, within their iOS app through IAP are required to pay a commission fee to Apple.⁸⁴³
- 9.3.2.1.3. The commission fee level imposes a substantial financial burden on music streaming services
- (601) A 30 % / 15 % commission fee is problematic for developers operating in markets with thin margins and high fixed and variable costs, such as music streaming services.⁸⁴⁴ Due to the Anti-Steering Provisions, music streaming service providers are forced to either increase their prices for subscriptions through IAP to iOS users or to maintain the same price for IAP subscriptions available outside the iOS app and absorb the loss, thereby impacting or preventing their profitability (see Section 9.3.2.1.3).
- (602) [...] ⁸⁴⁵
- (603) [...]. In that period, the music streaming service provider Rhapsody (Napster) issued the following press release which was discussed internally within Apple: “*Our philosophy is simple too – an Apple-imposed arrangement that requires us to pay 30 percent of our revenue to Apple, in addition to content fees that we pay to the music labels, publishers and artists, is economically untenable. The bottom line is we would not be able to offer our service through the iTunes store if subjected to Apple’s 30 percent monthly fee vs. a typical 2.5 percent credit card fee*”.⁸⁴⁶
- (604) [...]”.⁸⁴⁷
- (605) [...]”.⁸⁴⁸
- (606) [...]
- 9.3.2.1.4. Music streaming services are compelled to pass-on the commission fee to iOS users
- (607) Music streaming service providers have little choice but to pass-on the commission fee to iOS users, as it is shown by the evidence below.
- (608) Deezer indicated that “*Considering its very low margin, Deezer had no other choice but to pass on this 30 % commission fee payable to Apple for IAP to its iOS customers, and so to lose its price competitiveness with this different pricing on iOS from March 2016. Through other OS, such as Android, Deezer’s subscribers are*
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- ⁸⁴³ See also Section 3.4 of Schedule 2 to the License agreement, ID 2593.
- ⁸⁴⁴ See footnote 372.
- ⁸⁴⁵ ID 1612. In its Response to the Statement of Objections of 28 February 2023, Apple argues that “*these quotes relate to a fee of 30 % for the full duration of a subscription, which had not been applicable since 2017.*” (ID 2800, paragraph 227). However, these quotes are still relevant for a subscription of one year or less. As for the substantial financial burden on music streaming services imposed even by a lower fee of 15%, see recitals (606) and (649).
- ⁸⁴⁶ ID 772-238.
- ⁸⁴⁷ ID 1628.
- ⁸⁴⁸ Annex 8 to Apple’s response to question 11 of the Commission’s request for information (2019/050361), Slide 25, ID 268-291.

*able to pay their subscription at the standard Web retail price because there is no such restriction with respect to the payment systems available on those platforms.”*⁸⁴⁹

- (609) SoundCloud submitted that its business was “*impacted*” by Apple’s “*stipulation in paragraph 3.1.3 that “you must not directly or indirectly target iOS users to use a purchasing method other than in-app purchase, and your general communications about other purchasing methods must not discourage use of in-app purchase”*”, which “*keeps us from advertising that purchasing via Web or Android is around 30 % cheaper at, e.g. € 9.99 / month instead of € 12.99 / month (in the EEA)*”.⁸⁵⁰
- (610) Qobuz, which charges high prices in its iOS app for its high-definition sound quality subscription offers, indicated that “*if we would not pass the 30 % commission fee payable to Apple*” for those premium offers “*we would simply be unable to cover our operating expenses and would systematically make a loss on every subscription*”.⁸⁵¹ In the same submission, Qobuz indicated that Apple “*prevent[s] us to access our customer in a proper way. We cannot let customers know how to do if they don’t want to go through the Apple store*” and that “*Customers should be offered a free choice inside our iOS application to register or not through the AppStore*”.⁸⁵²
- (611) It is therefore unsurprising all major music streaming service providers in the EEA actually increased their subscription prices for transactions concluded through IAP, typically from EUR 9.99 to EUR 12.99 for individual subscriptions, compared to the price they had applied before implementing IAP and/or the price they kept offering through other channels (such as their own website), thus passing on the commission to their iOS users in the form of a higher in-app subscription retail price.
- (612) This is the case for Spotify during the period it enabled IAP⁸⁵³, for Deezer,⁸⁵⁴ SoundCloud⁸⁵⁵, Napster⁸⁵⁶, YouTube Music⁸⁵⁷ and Tidal⁸⁵⁸. For example, when Spotify implemented IAP between June 2014 and May 2016 as well as when Deezer enabled IAP from 2016 onwards, they both increased the monthly subscription fees, typically from EUR 9.99 to EUR 12.99 for an individual subscription. This triggered numerous user complaints.⁸⁵⁹

⁸⁴⁹ Deezer’s response to question 4 of the Commission’s request for information (2019/048643), ID 1377.

⁸⁵⁰ SoundCloud’s response to question 22 of the Commission’s request for information (2019/048728), ID 1369.

⁸⁵¹ Qobuz’s response to question 29 of the Commission’s request for information (2019/110473), ID 497.

⁸⁵² Qobuz’s response to the Commission’s request for information (2019/110473), ID 497.

⁸⁵³ Spotify’s Complaint, paragraph 60: “*The IAP tax forced Spotify to choose between two detrimental alternatives: either raise the price of its subscription on iOS, passing on the 30 % overcharge to consumers, or absorb the 30 % surcharge at the expense of Spotify’s margins. Spotify reluctantly raised its Premium service price on iOS from € 9.99 to € 12.99 per month*”, ID 1457.

⁸⁵⁴ Deezer’s response to question 23 of the Commission’s request for information (2019/048643), ID 1377.

⁸⁵⁵ SoundCloud’s response to question 22 of the Commission’s request for information (2019/048728), ID 1369.

⁸⁵⁶ Napster’s response to question 28 of the Commission’s request for information (2019/048724), ID 1345.

⁸⁵⁷ YouTube Music’s response to question 4 of the Commission’s request for information (2019/048689), ID 1356.

⁸⁵⁸ Screenshots from Tidal App and mobile browser on 12 February 2021, ID 1294.

⁸⁵⁹ Deezer submitted having “*received numerous complaints in reaction to the price increase on iOS*”, mostly focussing on “*our customers seeing the price elsewhere being advertised at a lower point and seeing them charged EUR 12.99 by Apple*” (see Deezer’s response to question 23 of the Commission’s request for information (2019/048643), ID 1377). Spotify reported a number of Twitter messages complaining about Spotify’s price on iOS compared to Apple’s price in response to question 25 of the

- (613) When SoundCloud launched paid subscriptions in its iOS app in March 2016, it equally decided to charge an increased price for its “Go+” premium music subscription offer in its app (which was comparable to Spotify and YouTube Music offers combining a paid listener subscription in conjunction with an ad supported service) at EUR 12.99 rather than EUR 9.99 charged outside the iOS environment.⁸⁶⁰ Also Napster “increased the price to EUR 12.99 on iOS to try and absorb the margin impact of the Apple tax” and “the price remained at EUR 9.99 for Android due to the fact that we could avoid the Google billing fees by enabling users to input credit card details”.⁸⁶¹
- (614) In its Response to the Letter of Facts, Apple also concedes that music streaming service providers “pass on” Apple’s commission”, even if it states that they do it “to a different extent.”⁸⁶² Irrespective of how much of the commission fee each music streaming service provider passes-on, absent the Anti-Steering Provisions, iOS users would have been in a position to make an informed choice when first subscribing to a premium subscription, thereby avoiding both higher subscription fees in the first year and subsequent years. Even a partial pass-on of the commission fee would cause a monetary harm to iOS users.
- (615) Although in relation to a different industry, [...].⁸⁶³ This supports the finding that app developers subject to the commission fee have no other option than to pass it on.
- (616) In addition, evidence shows that a music streaming service provider operating under the same financial conditions as Apple Music would not have been able to absorb the commission fee of 30 % / 15 % and remain profitable without raising its in-app subscription price. This further supports the finding that music streaming service providers have no choice but to pass-on such fee to their iOS customers.
- (617) In this respect, the Commission has relied on Apple’s [...]⁸⁶⁴ [...]⁸⁶⁵ [...].⁸⁶⁶ [...]
- (618) The Commission relies on these [...].
- (619) The results of these calculations show that the commission fee constitutes a substantial financial burden for music streaming service providers [...]. This leads to the (full or partial) pass-on of the commission fee.
- (620) The results of these comparisons (cf. column 3 in Tables 4 and 5) further show that the commission fees that the music streaming service providers would have to pay Apple [...] over the lifetime of a subscription are of a similar magnitude and in some cases higher than the lifetime value of an equivalent subscription. A music streaming

Commission’s request for information (2020/002646), ID 1431-2 and in Spotify’s response to question 4 of the Commission’s request for information (2020/147746), ID 1447. These user messages include the following Tweets “Cancelled my @Spotify premium for a short while. Just gone to sign back up and it’s now [GBP] 12.99 !?! Apple Music, I’m coming for you” of 15 May 2016 or “@SaxNStrikeouts Apple Music has it. I ditched @Spotify when they jacked their price to USD 12.99.” of 8 May 2016 and “@Spotify is way better than Apple Music, but 12.99 a month is tooooooo much” of 19 February 2016.

⁸⁶⁰ SoundCloud’s response to question 8 of the Commission’s request for information (2019/048728), ID 1369.

⁸⁶¹ Napster’s response to question 28 of the Commission’s request for information (2019/048724), ID 1345.

⁸⁶² Apple’s Response to the Letter of Facts, ID 3330, paragraph 206.

⁸⁶³ ID 1612.

⁸⁶⁴ [...]

⁸⁶⁵ See footnote 54.

⁸⁶⁶ [...]

service offering in-app subscriptions on iOS devices, [...] would hence be significantly impacted in its profitability by the commission fee. Without increasing the retail price for in-app subscriptions, such a music streaming service provider would either make losses (in some Member States) as represented by the negative values in column 3 in both tables, or achieve only minimal profits.

Table 4 – [...]⁸⁶⁷

[...]

Table 5 – [...]⁸⁶⁸

[...]

(621) [...]⁸⁶⁹ [...]

(622) The results of these calculations show [...]⁸⁷⁰

(623) The above calculations and conclusions are also confirmed when relying on data from [...]. Even when relying on [...] data instead of [...] data, [...].

(624) In particular, in the [...] model, [...]

(625) [...]

(626) Table 6 provides the results of the Commission's recalculations, [...]

Table 6 – [...]⁸⁷¹

[...]

(627) [...]

(628) [...]

Table 7 – [...]⁸⁷²

[...]

(629) [...]⁸⁷³ [...]⁸⁷⁴ [...]

(630) [...]⁸⁷⁵ [...]

(631) Further, the Commission observes that the premium subscription prices remain higher in the iOS in-app channel, even after the general price increases in music streaming premium subscriptions in the years 2022-2023 implemented by the main music streaming service providers in the EEA (see recital (224)). When the subscription is concluded via IAP rather than via other channels, such as the music streaming service provider's website, iOS users end up paying EUR 1 to 3 more. For example, Deezer Premium currently costs EUR 11.99/month if bought on Deezer's website and EUR 13.99/month if bought in-app via Apple's IAP (see recital (224)).

⁸⁶⁷ ID 2607.

⁸⁶⁸ ID 2607.

⁸⁶⁹ [...]

⁸⁷⁰ [...] See Commission calculations, ID 2607.

⁸⁷¹ Commission calculations based on ID 508-045974, see ID 3217.

⁸⁷² Commission calculations based on ID 508-045974, see ID 3217.

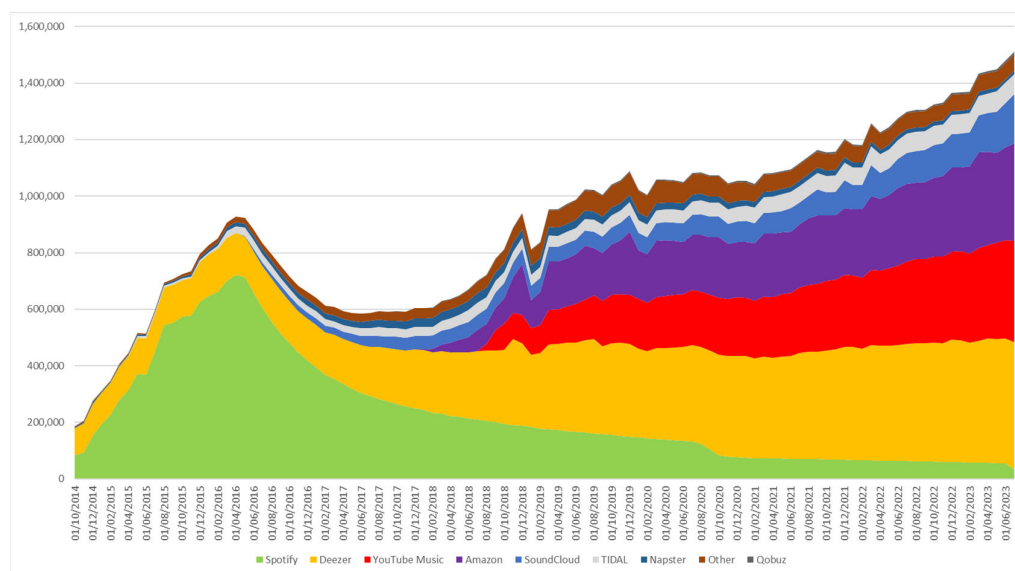
⁸⁷³ [...]

⁸⁷⁴ [...]

⁸⁷⁵ [...]

(632) The Commission has calculated that, as of July 2023, more than 1.4 million iOS subscribers in the EEA of the main music streaming services other than Apple Music (i.e., Amazon, Napster, SoundCloud, YouTube Music, Tidal, Deezer, Qobuz and Spotify legacy subscribers⁸⁷⁶) used IAP to subscribe. These customers typically have been charged monthly subscription prices that exceed those of Apple Music and also those of their chosen music streaming service provider outside the iOS app.⁸⁷⁷ Figure 32 provides the results of the Commission’s calculations, using Apple’s data. As explained above, higher prices charged by the main music streaming services other than Apple Music are a consequence of the necessity to pass-on the commission fee. Absent the possibility for iOS users to effectively exercise an informed choice because of the Anti-Steering Provisions, it follows that the latter are detrimental to the interests of those iOS users that end up paying higher prices for subscribing to music streaming services.

Figure 32 – Subscribers to music streaming services (other than Apple Music) through IAP at elevated monthly fee from October 2014 to July 2023 (EEA, including the UK)⁸⁷⁸



(633) These “IAP subscribers”⁸⁷⁹ include Spotify’s legacy subscribers who have been paying an elevated monthly fee due to subscribing in the period when Spotify adopted IAP and passed Apple’s commission fee on to consumers.

⁸⁷⁶ Subscribers of the Spotify Premium subscription that have subscribed through IAP during the period when Spotify enabled IAP, i.e., between June 2014 and May 2016. Spotify announced in July 2023 that all legacy subscribers would be automatically moved to a free, ad-supported membership (see ID 3194).
⁸⁷⁷ An exception may be the subscribers to the Deezer family subscriptions, where there does not appear to be a difference between the website price and the in-app (IAP) price for family subscriptions in France and Germany (see Apple’s Response to the Letter of Facts, Annex 9, ID 3324, page 13). Note that Apple Music generally charges the same price that music streaming service providers charge outside the app, as explained in Section 7.5.

⁸⁷⁸ Commission calculations based on Apple’s response to the Commission’s request for information of 3 August 2023, Annex Q7 and Q16. Deezer includes “HD” and “Music & Podcast Player”, Qobuz includes also “Music & Editorial”, Soundcloud includes “Music & Songs” and “Discover New Music”, TIDAL includes “Music” and “Music: HiFi, Ad-free”.

⁸⁷⁹ The term ‘IAP subscribers’ refers to those iOS users that subscribed to one of the music streaming services (other than Apple Music) through Apple’s in-app purchase mechanism IAP.

- (634) The difference in price between subscriptions concluded in- app and subscriptions concluded outside the app depends on the type of subscription plan (e.g., student/individual/family). For an individual subscription, this higher payment would typically be EUR 3 per month per affected iOS user, leading to a price of EUR 12.99 instead of EUR 9.99. After the price increases implemented by major music streaming service providers in 2022 and 2023, the payment at prices higher than the price for out-of-app subscriptions represents, e.g., in the example of Deezer EUR 2 per month per affected iOS user, leading to a price of EUR 13.99⁸⁸⁰ instead of EUR 11.99.⁸⁸¹ The current IAP price of YouTube Music subscription is EUR 12.99 and EUR 15.99 for YouTube Premium subscription.⁸⁸² On the website, the respective prices of these subscriptions amount to EUR 9.99⁸⁸³ and EUR 11.99 respectively.⁸⁸⁴ The current IAP price of Napster premium subscription is EUR 13.99,⁸⁸⁵ while on its website subscriptions can be bought at EUR 10.99 after its price increase.⁸⁸⁶ The current IAP price of Tidal is EUR 13.99,⁸⁸⁷ while on its website the price amounts to EUR 10.99 since July 2023.⁸⁸⁸ The current IAP price of Amazon Music Unlimited is EUR 11.99,⁸⁸⁹ while the price on Amazon’s website amounts to EUR 10.99 (for non-Prime customers) since January 2023.⁸⁹⁰
- (635) As of May 2016, when Spotify disabled IAP altogether, the number of Spotify legacy subscribers gradually decreased, reducing the number of subscribers to the Spotify Premium service at elevated prices. Those numbers will be reduced further, following Spotify’s announcement in July 2023 according to which those premium users who subscribed through IAP between June 2014 and May 2016 would be automatically moved to a free account after the end of the last billing period.⁸⁹¹ Despite these recent developments, the number of consumers across music streaming services paying more because of the IAP has overall been increasing over time (see Figure 32).⁸⁹² Harm to those individual consumers paying more accumulates over time, as paying iOS users continue their subscriptions over several months or years.
- (636) In view of the pass-on by music streaming service providers and the resulting higher prices for inapp subscriptions, the Commission concludes that the Anti-Steering Provisions are detrimental to the interests of those iOS users that end up paying higher prices for subscribing to music streaming services.

880 ID 3164.

881 ID 3205.

882 ID 3167.

883 ID 3215.

884 ID 3216.

885 ID 3165.

886 ID 3175.

887 ID 3171.

888 ID 3181.

889 ID 3172.

890 ID 3182.

891 See footnote 876 about legacy Spotify IAP subscribers.

892 The number of subscribers paying more because of the IAP would furthermore be multiple times higher, had Spotify not decided to disable in-app subscriptions through IAP in mid-2016 to avoid offering its users an elevated in-app price without being able to inform them on where to obtain the subscription at a competitive price.

9.3.2.1.5. Assessment of Apple’s arguments

- (637) In its Response to the Statement of Objections of 28 February 2023, Apple submits that the Anti-Steering Provisions do not apply to consumers and that “unfair” terms must be “disadvantageous” *vis-à-vis* the trading partner to whom they apply, i.e., the music streaming service providers in this case.⁸⁹³
- (638) In its Response of the Letter of Facts, Apple also argues that any monetary harm to consumers would be irrelevant.⁸⁹⁴
- (639) Furthermore, Apple also submits that the Anti-Steering Provisions do not have any cognisable indirect effects on consumers, as they do not entail any “monetary harm” to consumers. In particular, according to Apple, music streaming service providers (i) are free to price their music streaming services as they wish,⁸⁹⁵ and (ii) charge their users more than required to compensate for Apple’s commission fee.⁸⁹⁶ Apple also contests in its Response to the Letter of Facts⁸⁹⁷ the Commission’s conclusion in recital (632) according to which 1.4 million iOS subscribers in the EEA of the main music streaming services other than Apple Music have suffered monetary harm.
- (640) According to Apple, in any event, the commission fee does not constitute unfair prices.⁸⁹⁸
- (641) Apple’s views need to be rejected for the following reasons.

9.3.2.1.5.1. The Anti-Steering Provisions specifically affect consumers

- (642) To the extent that Apple argues that the Anti-Steering Provisions do not apply to consumers, the Commission submits that trading conditions can be regarded as unfair under Article 102(a) of the Treaty either in relation to the dominant undertaking’s trading partners on which those conditions are imposed or to third parties, including consumers.⁸⁹⁹
- (643) As set out in Section 9.1.2, the Anti-Steering Provisions are specifically designed and applied to prevent music streaming service providers from informing iOS users about options available to them under the reader rule and the multiplatform rule and from allowing iOS users to effectively exercise an informed choice. The iOS users are therefore the target of the Anti-Steering Provisions and those provisions affect them specifically in the different ways set out in this Section 9.3. Accordingly, the Anti-Steering Provisions specifically concern consumers.

⁸⁹³ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 214-216.

⁸⁹⁴ Apple’s Response to the Letter of Facts, ID 3330, Section H.II.1.

⁸⁹⁵ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 224-231.

⁸⁹⁶ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 232-242.

⁸⁹⁷ Apple’s Response to the Letter of Facts, ID 3330, paragraph 193.

⁸⁹⁸ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 243-251.

⁸⁹⁹ Case C-66/86 *Ahmed Saeed Flugreisen and Others v Zentrale zur Bekämpfung unlauteren Wettbewerbs*, EU:C:1989:140, paragraph 42. It does not matter whether the unfairness lies in the imposition of an unfair condition (in the *Ahmed Saeed* case, a tariff) that is directly unfair *vis-à-vis* consumers or in the imposition of a prohibition to inform consumers (which leads to an indirect impact on consumers because they are less informed about their choices). It follows from paragraphs 42 and 46 in *Ahmed Saeed* that unfair conditions (tariffs) imposed on other carriers may be unfair *vis-à-vis* passengers, which shows that the unfairness can be assessed *vis-à-vis* a third-party, different from the one on which a trading condition is imposed.

9.3.2.1.5.2. The Anti-Steering Provisions cause harm to consumers (iOS users)

- (644) The Commission rejects Apple’s claim that monetary harm caused to consumers is irrelevant. Apple argues “*that any such monetary harm would have to amount to excessive pricing under the United Brands test*”.⁹⁰⁰ Such premise is incorrect. As mentioned in recital (680), *United Brands* concerns specifically excessive prices and does not set forth a general legal test applicable to the imposition of any unfair trading conditions pursuant to Article 102(a) of the Treaty. Apple cannot therefore claim that any monetary harm stemming from unfair trading conditions pursuant to Article 102(a) of the Treaty must equate to an excessive price for it to be relevant. For the same reasons, the commission fee charged when using IAP does not need to be excessive for the Commission to find that there is monetary harm to consumers caused by the Anti-Steering Provisions.⁹⁰¹ Because music streaming service providers need to pass-on the commission fee, this necessarily translates into higher prices for consumers. Finally, there is no “*paradox*” in the Commission’s approach as argued by Apple.⁹⁰² As explained in more detail in recital (819), Apple’s alleged interest in the Anti-Steering Provisions essentially consists in avoiding a circumvention of the IAP functionality.⁹⁰³ However, this alleged objective is contradicted by the fact that Apple (i) allows for the reader rule and the multi-platform rule which specifically enable users to use in-app the content purchased outside the app, (ii) decided not to apply any commission fee for in-app sales to the majority of app developers, and (iii) does not specifically finance the App Store with commission fees paid by music streaming service providers. In addition, the Anti-Steering Provisions entirely disregard iOS users’ legitimate interest in getting information about the options available to them resulting from the choice made by Apple to not only allow iOS users to purchase subscriptions and content in-app but also outside their iOS apps and subsequently access it in the apps.
- (645) The Commission further disagrees with Apple’s argument that music streaming service providers have other alternatives to increasing the prices of subscriptions sold through IAP to iOS users.⁹⁰⁴ As analysed in detail in Section 9.3.2.1.4, music streaming service providers do not have – with the Anti-Steering Provisions in place – any other choice than to either increase their in-app retail prices or to forego their ability of acquiring customers through the iOS app by disabling IAP. Either way results in harm to consumers (iOS users).
- (646) As shown in recitals (608)-(610), music streaming service providers have stated that they have no other choice than to pass-on the commission fee.
- (647) As also shown in recital (602), [...]
- (648) Apple contends that the payment of higher prices by iOS users cannot be attributed to its commission fee and that as of year two of a subscription when the commission fee paid to Apple decreases from 30 % to 15 %, no music streaming service provider decreased its subscription prices. This would confirm, in Apple’s view, that subscription pricing is an independent business decision by music streaming service

⁹⁰⁰ Apple’s Response to the Letter of Facts, ID 3330, paragraph 199.

⁹⁰¹ Apple’s Response to the Letter of Facts, ID 3330, paragraph 200.

⁹⁰² Apple’s Response to the Letter of Facts, ID 3330, paragraph 201.

⁹⁰³ Apple’s Response to the Letter of Facts, ID 3330, paragraph 201.

⁹⁰⁴ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 225.

providers and that those providers maintain increased prices to maximise their profits.⁹⁰⁵

- (649) However, Apple’s arguments disregard that even a 15 % fee is problematic for developers operating in markets with thin margins and high fixed and variable costs such as music streaming (see recital (601)) and will therefore have to be passed-on to consumers. For music streaming apps, the higher price (for an individual plan) paid when subscribing in- app through IAP is paid throughout the entire duration of the subscription, i.e., is recurrent and may add up to a significant amount. The fact that music streaming service providers do not lower the price after the first year of the subscription, when Apple’s commission fee is lowered to 15 %, is not surprising, given that, in general, discounts for digital products are more likely to be granted for the initial subscription period(s) than for later subscription periods. In any event, the failure by music streaming providers to lower the price for subsequent years of subscription does not contradict the fact that the fee needs to be passed on and that this pass-on is triggered by Apple’s commission fee. In any case, absent the Anti-Steering Provisions, consumers could make an informed choice when first subscribing to a premium subscription, thereby avoiding both higher subscription fees in the first year and higher subscription fees in subsequent years.⁹⁰⁶
- (650) Moreover, as set out in recital (627), the [...] further supports the finding that the commission fee leads to increased prices for subscribers of music streaming services on iOS, as music streaming service providers other than Apple Music would see their profits erode due to Apple’s conditions and are therefore forced to either increase prices for in-app subscriptions on iOS or to drop in-app subscriptions on iOS devices (as can be observed in the case of Spotify). Apple is also wrong to claim that the [...] “*attempt to repurpose a margin squeeze analysis*”.⁹⁰⁷ The Court confirmed in *Deutsche Telekom* that “*margin squeeze is capable, in itself, of constituting an abuse within the meaning of Article 82 EC in view of the exclusionary effect that it can create for competitors who are at least as efficient as the appellant*.”⁹⁰⁸ As explained in the rest of Section 9, this Decision concerns an exploitative abuse in the form of unfair trading conditions vis-à-vis iOS users of music streaming services. As also explained in recital (650), the [...] confirm that the commission fee leads to increased prices for subscribers of music streaming services on iOS since music streaming service providers are forced to either increase prices for in-app subscriptions on iOS or to drop in-app subscriptions on iOS devices. The [...] do not seek to show an exclusionary effect on music streaming service providers but provide evidence for the need to pass-on the commission fees to consumers.
- (651) Apple is also wrong to claim that the Commission “*fails to demonstrate how this fee charged by Apple for developers’ access to Apple’s whole ecosystem becomes a consumer harm when developers independently decide to charge their customers for their own costs*”⁹⁰⁹ and that the Commission “*cannot disregard the benefits that iOS users and developers get from Apple – free-of-charge – even when consumers do not purchase through IAP*.”⁹¹⁰ First, as explained (Section 9.3.2.1.4), music streaming

⁹⁰⁵ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 232-235.

⁹⁰⁶ See also recital (932).

⁹⁰⁷ Apple’s Response to the Letter of Facts, ID 3330, paragraph 215.

⁹⁰⁸ C-280/08 P *Deutsche Telekom AG*, EU:C:2010:603, paragraph 183.

⁹⁰⁹ Apple’s Response to the Letter of Facts, ID 3330, paragraph 221.

⁹¹⁰ Apple’s Response to the Letter of Facts, ID 3330, paragraphs 227-229.

service providers are compelled to pass-on the commission fee. Second, Apple already charges USD 99 yearly for the Apple Developer Program giving access to developers to Apple’s ecosystem (see recital (265)). The fee charged for this program also serves to remunerate Apple for some of the services it provides to developers such as app updates. Third, Apple cannot ignore that developers, in return, bring considerable value to the App Store as popular apps generate traffic and therefore revenues for Apple.

- (652) In an attempt to justify higher subscription prices, Apple further submits that “*Apple’s services, including the App Store, are valued by both app developer and iOS users*”⁹¹¹ who would “*clearly value the convenience of being able to use their existing Apple ID and payment method [...]*”⁹¹². The Commission considers unlikely that all (or most of) these subscribers – were they fully informed and aware of price differences and available cheaper subscriptions – would willingly choose such higher subscription prices only to enjoy the convenience of a smooth in-app subscription experience without leaving the iOS app. For music streaming apps, iOS users would enjoy the added convenience only once, at the moment of the subscription (“*with one click, customers pick the length of subscription and are automatically charged based on their chosen length of commitment (weekly, monthly, etc.)*”⁹¹³), whereas they were obliged to pay higher monthly subscription fees throughout the entire duration of the subscription (see recitals (222)-(225)), which is recurrent and may add up to a significant amount over a longer subscription.⁹¹⁴
- (653) While some of these subscribers paying higher prices might have chosen to subscribe through the App Store even if they had been aware of the price difference with alternative subscription channels, it appears unlikely that all (or most of) IAP subscribers would have continued paying such higher fees month after month for an identical service had alternative subscription possibilities been made fully transparent and available to them within the developer’s iOS app. Evidence in the file confirms that where consumers are aware of significantly cheaper alternative subscription channels, a significant number of them would opt for those alternative subscription channels.⁹¹⁵
- (654) Apple also points to other benefits it provides such as ease of use, security, privacy and reliability that both app developers and iOS users would value.⁹¹⁶
- (655) The Commission does not contest that some iOS users may value subscribing through Apple’s IAP. The fact that “*iOS users can access [...] user-friendly services*

⁹¹¹ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 250-251.

⁹¹² *Ibid.*

⁹¹³ See <https://www.apple.com/newsroom/2011/02/15Apple-Launches-Subscriptions-on-the-App-Store/>, accessed on 15 December 2020, ID 1062.

⁹¹⁴ Music streaming services with enabled in-app subscriptions on iOS typically apply an in-app subscription price that does not change over time, with the exemption of eventual free trials. The additional amount paid over a typical two-year subscription would amount to 3*24= EUR 72.

⁹¹⁵ For example, in 2020 (i.e., before the entry into force of the new payment policy rules for Google Play Billing) Deezer reported that on Android, only 0.6 % of the payments were made via the higher priced Google Billing payment mechanism while 99.4 % of subscriptions were made directly through Deezer’s web-based checkout mechanism. Deezer’s response to question 13 of the Commission’s request for information (2020/029315), ID 1379.

⁹¹⁶ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 250. Apple’s Response to the Letter of Facts, ID 3330, paragraphs 223 et seq.

*provided through IAP*⁹¹⁷ is not relevant. The abuse in question relates to the fact that the Anti-Steering Provisions prevent music streaming service providers (i) from informing iOS users in their iOS app about the possibility to purchase music streaming subscriptions outside of that app, generally at lower prices than through that app, and to use these subscriptions in that app (as explicitly allowed under the reader rule and the multiplatform rule), and (ii) from enabling users to effectively exercise the choices available to them, for instance by making available web-based checkouts in their iOS app (e.g., through the use of “buy buttons” within the app). Whatever benefits iOS users may derive from IAP are unrelated. Furthermore, as the judge in the US *EPIC* trial has observed, “*while some consumers may want the benefits Apple offers (e.g., one-stop shopping, centralization of and easy access to all purchases, increased security due to centralized billing), Apple actively denies them the choice*”.⁹¹⁸ Indeed, the Anti-Steering Provisions entirely disregard the interest of iOS users by denying them the possibility to make an informed and effective choice between the available options on the devices they have bought.

- (656) In any event, it is for consumers, and not for Apple via the Anti-Steering Provisions, to decide whether they value the added convenience of an integrated platform subscription service so much that they are willing to continuously pay a considerably higher subscription price.
- (657) In its Response to the Statement of Objections of 28 February 2023 and its Response to the Letter of Facts, Apple further claims that music streaming service providers charge users more than required to compensate for its commission fee.⁹¹⁹ In particular, Apple contests the reliability of the [...] considered by the Commission (see Tables 4 to 7).⁹²⁰ Apple alleges that the Commission attempts to perform a “margin squeeze analysis” or an “as efficient competitor test” without considering, however, that other providers of music streaming services do not have the same cost structure as Apple Music. Apple also submits the following criticisms to the Commission’s analysis:⁹²¹
- [...]
 - [...]
 - [...]
 - The focus on consumer harm makes the Commission’s [...] even less informative. According to Apple, the [...] follow the logic of an “as-efficient competitor test” or a “margin squeeze analysis”, tools which are typically used to assess potentially exclusionary practices.⁹²²

⁹¹⁷ Apple’s Response to the Letter of Facts, ID 3330, paragraph 226.

⁹¹⁸ See <https://cand.uscourts.gov/wp-content/uploads/cases-of-interest/epic-games-v-apple/Epic-v.-Apple-20-cv-05640-YGR-Dkt-812-Order.pdf>, page 19, accessed on 2 May 2022, ID 2378.

⁹¹⁹ Apple’s Response to the Letter of Facts, ID 3330, paragraphs 206-207 and 212.

⁹²⁰ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 239-242.

⁹²¹ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 240; Charles Rivers Associates, “Review of the RSO’s analysis”, 19 May 2023, Annex 3 to the Response to the Statement of Objections of 28 February 2023, ID 2803. See also Apple’s Response to the Letter of Facts, ID 3330, paragraph 217, and Annex 9 (ID 3324).

⁹²² Apple’s Response to the Letter of Facts, Annex 9, ID 3324, page 6.

- (658) Apple further claims that the Commission has failed to take into account the price increases implemented by several music streaming service providers in recent years, which makes current market realities more nuanced.
- (659) Lastly, Apple states that the Commission cannot claim that 1 million users is a “significant number” of harmed premium subscribers “*and at the same time argue elsewhere that the corresponding commission payments (less than EUR 30 million for 2021) are too small to matter for Apple*”.
- (660) The Decision already explained in recital (649) how even a 15 % fee is problematic for music streaming service providers.
- (661) Apple’s arguments need to be rejected from both a legal as well as from an economic perspective.
- (662) From a legal perspective, Apple’s analysis of the [...] misconstrues its purpose.
- (663) First, Apple conflates (see recital (531)) the notion of exploitative abuses in the form of unfair trading conditions, for which the Commission relies (*inter alia*) the [...], with the notion of exclusionary abuses, for which conducting a margin squeeze analysis or an as efficient competitor test may be relevant.⁹²³ In fact, the Commission has not conducted any such analysis. [...] This supports the finding that Apple’s commission fee charged to developers constitute a substantial financial burden on music streaming services which is passed on to consumers. In this regard, even if the parameters are changed as Apple does by using [...] data instead of [...] data, there are still [...] Member States with [...], representing [...] of the European population.⁹²⁴
- (664) Second, to the extent that Apple argues that there are multiple alternative channels to acquire subscriptions of music streaming services and that IAP never accounted for more than [...] % of all premium subscribers of third-party music streaming services on iOS that offered IAP, the Commission notes that Apple [...]. The [...] are relevant because they compare how music streaming service offering in-app subscriptions on iOS devices, with the same cost structure as Apple Music, would be impacted. The purpose of the [...] is therefore to show that music streaming service providers are forced to pass-on Apple’s commission fee on iOS music streaming subscribers, to the detriment of iOS users.
- (665) Third, the Commission observes that during the investigation it requested Apple to provide [...], and Apple replied that [...].⁹²⁵ Notwithstanding this, the Commission found that [...] and concluded that it submitted incorrect information in this regard (see Section 17). Under these circumstances, it falls upon Apple that the Commission was not able to conduct a more recent analysis of Apple’s data.
- (666) Fourth, the Commission also disagrees with Apple’s view that the Commission cannot claim that 1 million users is a “significant number” of harmed premium subscribers “*and at the same time argue elsewhere that the corresponding commission payments (less than EUR 30 million for 2021) are too small to matter for Apple*”.⁹²⁶ The fact that music streaming apps only play a minor role in financing the

⁹²³ See also recital (650).

⁹²⁴ See recital (624).

⁹²⁵ Apple’s response to question 18(e), referring to Apple’s response to question 18(d) of the Commission’s request for information (2022/004722), ID 2232.

⁹²⁶ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 242.

operation and development of the App Store with just over EUR [...] in App Store commission fees paid by the main music streaming service providers in Apple’s FY 2023 (see recital 0) has no bearing on the question whether more than one million harmed consumers is a significant number or not. In the Commission’s view, more than one million misinformed iOS users who end up paying a higher price per month is a significant number of harmed consumers and the monetary harm to consumers increases with every month that passes as additional payments of existing IAP subscribers are made and new misinformed subscribers are subscribing through IAP.

- (667) In addition, considering Apple’s market power and the particular conditions of competition prevailing in the relevant market (see Section 8.2) as well as the fact that the Anti-Steering Provisions have an appreciable effect on trade between Member States (see Section 11), it cannot be considered that Apple’s practices have a minimal or insignificant effect. In any event, according to the case law of the Court of Justice on Article 102 of the Treaty, “*fixing an appreciability (de minimis) threshold for the purposes of determining whether there is an abuse of a dominant position is not justified.*”⁹²⁷
- (668) Furthermore, the Commission concludes that Apple’s analysis of the [...] is also flawed from an economic perspective.
- (669) First, Apple’s economic consultants submitted that “[confidential quote].”⁹²⁸
- (670) The Commission disagrees with Apple [...].
- (671) Second, Apple’s economic consultants submitted that “[confidential quote].”⁹²⁹
- (672) The Commission considers this argument unfounded. The [...] is relevant for the comparison of how a music streaming service provider in the same situation as Apple Music would be affected by Apple’s restrictions, facing the same costs, demand and other business parameters, trying to make an offer such as that of Apple Music. The assumption behind the modelling exercise of the Commission was therefore that the music streaming service in question would access the exact same customer acquisition channels as Apple. The Commission demonstrated elsewhere in this Decision that music streaming service providers may have used alternative channels to reach customers but those channels are costly and ineffective, and inferior in terms of consumer experience (see Section 9.3.2.2.1.2).
- (673) Third, Apple’s economic consultants further submitted that “[confidential quote].”⁹³⁰
- (674) The Commission does not agree with this view. The models used by the Commission are from the time around [...] and therefore relevant as part of the infringement period. They took as input the business parameters such as subscription prices and costs as well as demand that applied at the time. Furthermore, the models used should be populated with the relevant input parameters – in particular, subscription prices – that Apple Music offered at the time the model was valid. More recent versions of the model with “current price levels” may be informative, but those

⁹²⁷ Case C-23/14 *Post Danmark*, EU:C:2015:651, paragraph 73.

⁹²⁸ Charles Rivers Associates, “Review of the RSO’s analysis”, 19 May 2023, Annex 3 to the Response to the Statement of Objections of 28 February 2023, ID 2803, page 1.

⁹²⁹ Charles Rivers Associates, “Review of the RSO’s analysis”, 19 May 2023, Annex 3 to the Response to the Statement of Objections of 28 February 2023, ID 2803, page 2.

⁹³⁰ Charles Rivers Associates, “Review of the RSO’s [...]”, 19 May 2023, Annex 3 to the Response to the Statement of Objections of 28 February 2023, ID 2803.

“current prices” would need to be applied in versions of the model that contain all other input assumptions from the same period as the prices. Apple claimed [...], despite the Commission’s explicit request.⁹³¹

- (675) Apple also contests the Commission’s conclusion in recital (632) because the Commission “*not assess the composition of the allegedly harmed IAP subscribers*”.⁹³² In particular, Apple argues Amazon Music did not raise its prices as much as other music streaming service providers. Apple also notes that there is no price difference for Deezer family subscriptions in certain Member States. In relation to Amazon Music, the Commission’s calculation of the number of consumers having suffered monetary harm because of Apple’s conduct does not rely on the price difference between in-app subscriptions on iOS and on Amazon Music’s website, but instead on the number of consumers potentially affected. Regardless of whether the price difference between these two subscription channels is 1 EUR or 3 EUR per month, Amazon Music subscribers are affected as they have to pay an elevated price for in-app subscriptions on iOS due to Apple’s abusive conduct. Regarding the Deezer family subscribers possibly facing equal prices in the iOS app and outside in France and Germany, Apple calculates that Deezer accounts for less than a third (30%) of music streaming IAP subscribers. However, family subscribers constitute only a share of all Deezer music subscribers. It is therefore unlikely that removing Deezer family subscribers from the Commission’s calculations would significantly alter the numbers presented in recital (632). The Commission’s findings would not change even if all of Deezer’s subscribers were excluded from those that suffered monetary harm. Removing 30% of the 1.4 million customers who suffered monetary harm results in around 1 million customers, still a substantial number of customers. This number is conservative, among other reasons because it is based on the last period with data available and ignores that consumers have been suffering monetary harm over a longer period.
- (676) Finally, contrary to Apple’s claim,⁹³³ the Commission is under no obligation to precisely quantify the monetary harm to consumers and there is also no *de minimis* harm under which the conduct would not be abusive anymore.
- (677) In light of the aforementioned arguments, the Commission concludes that Apple has failed to refute the Commission’s assessment that the Anti-Steering Provisions cause harm to consumers.

9.3.2.1.5.3. The Anti-Steering Provisions are unfair trading conditions under the applicable legal test

- (678) Apple submits that the Commission cannot allege that Apple’s commission fee constitutes “unfair” pricing under the relevant test set out in the *United Brands* case law.⁹³⁴ This argument is ineffective.
- (679) First, the Commission does not take a position as to the legality of the IAP obligation (and the level of the commission fee attached to it) for the purposes of this Decision.
- (680) Second, *United Brands* concerned specifically excessive prices and did not set forth a general legal test applicable to the imposition of any unfair trading conditions

⁹³¹ See recitals (946) et seq.

⁹³² Apple’s Response to the Letter of Facts, Annex 9, ID 3324, page 14.

⁹³³ Apple’s Response to the Letter of Facts, ID 3330, paragraphs 231 et seq.

⁹³⁴ Case 27/76 *United Brands v Commission*, EU:C:1978:22.

pursuant to Article 102(a) of the Treaty. As set out in Section 9.1.1, to be qualified as unfair under Article 102(a) of the Treaty and thus abusive, the trading conditions must be (i) imposed by a dominant undertaking on its trading partners, (ii) detrimental to the interests of that undertaking's trading partners or of third parties, including consumers, that are concerned by the trading conditions imposed by the dominant undertaking and (iii) not necessary for the achievement of a legitimate objective or in any event not proportionate for that purpose, in that they go beyond what is strictly necessary to achieve it. As shown by the Commission in this Decision, these requirements are met in the present case.

9.3.2.2. Non-monetary harm to consumers

(681) Besides monetary harm (see Section 9.3.2.1), the Anti-Steering Provisions also cause non-monetary harm to many iOS users of music streaming services in the form of reduced quality of service and less choice. Specifically, the Anti-Steering Provisions cause: (i) a degraded user experience in the apps of music streaming service providers that have disabled IAP and less choice of subscription plans in some iOS music streaming service apps, and (ii) frustration of iOS users that are not able to subscribe to any or some of the subscription plans of certain music streaming service providers in the respective iOS music streaming app.

(682) The Commission sets out its conclusions on these different types of non-monetary harm in Sections 9.3.2.2.1 and 9.3.2.2.2.

9.3.2.2.1. Degraded user experience in the music streaming apps of developers that have disabled IAP and less choice of subscription plans within the iOS app

9.3.2.2.1.1. The importance of engaging with the customer in the app

(683) Engaging with the customer in the app is particularly important at the time the customer is using the service and is most interested in enjoying the benefits of the premium subscription.⁹³⁵ Therefore, the information and possibilities offered within mobile apps are of crucial importance for iOS users to make an effective choice and subscribe to premium.

(684) On the contrary, music streaming service providers that have decided to disable the use of IAP as a means to sell subscriptions in their iOS app (notably Spotify since 2016 and Google Play Music while it was still available) cannot – because of the Anti-Steering Provisions – either offer a web-based payment checkout in the form of a link in the app allowing them to transact directly with the music streaming service provider outside of the app or provide any other information in the app on where and how to subscribe to their paid service outside the app and at what price.

(685) Restrictions on the use of the music streaming apps and the information that can be provided therein leads to a degraded consumer experience.

(686) This is corroborated by the data on the conversion channels through which Spotify acquired premium subscribers during the period 2018-2022, including on Android, where subscriptions and marketing through the app (including web-based checkouts) were not restricted.

⁹³⁵ See comments by Gustav Gyllenhammer (Spotify) in the minutes of the video call with Spotify of 18 May 2020, page 2: “[confidential quote]”, ID 1350. See also the statements from Spotify's representative at the oral hearing (recording of the oral hearing in Case AT.40437, ID 3131, at 05:46:30: “[confidential quote]”).

Channel	2015	2016	2017	2018	2019	2020	2021	2022
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
%	[...%]	[...%]	[...%]	[...%]	[...%]	[...%]	[...%]	[...%]
[...]	#	[...]	[...]	[...]	[...]	[...]	[...]	[...]
%	[...%]	[...%]	[...%]	[...%]	[...%]	[...%]	[...%]	[...%]
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
%	[...%]	[...%]	[...%]	[...%]	[...%]	[...%]	[...%]	[...%]
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
%	[...%]	[...%]	[...%]	[...%]	[...%]	[...%]	[...%]	[...%]

(688) [...].

(689) [...].⁹³⁹

Table 10 – Spotify premium conversion channels, Android⁹⁴⁰

Channel	2015	2016	2017	2018	2019	2020	2021	2022
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
%	[...%]	[...%]	[...%]	[...%]	[...%]	[...%]	[...%]	[...%]
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
%	[...%]	[...%]	[...%]	[...%]	[...%]	[...%]	[...%]	[...%]
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
%	[...%]	[...%]	[...%]	[...%]	[...%]	[...%]	[...%]	[...%]
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
%	[...%]	[...%]	[...%]	[...%]	[...%]	[...%]	[...%]	[...%]

(690) [...].

(691) The three tables above confirm that music streaming service providers need to turn to alternative (paid) promotion methods in order for iOS users to convert their subscription to premium given that the Anti-Steering Provisions degrade those iOS users’ experience within the app by depriving them from the necessary information to make an informed choice.

(692) Table 11 also confirms that Apple itself relies extensively on its in-app subscription functionality when subscribing consumers to its Apple Music service. Between 2015 and 2022, in each year apart from 2017, more than [...] % of Apple Music subscriptions on iOS were concluded in-app. Contrary to Apple Music, music streaming service providers that have decided to disable the use of IAP as a means to

⁹³⁹ The acquisition channels in Tables 9 and 10 are the following: [...].

⁹⁴⁰ ID 1433, Table 1. Source of the data is Compass Lexecon using data provided by Spotify. ID 1433 presents in a cleaner version the data included in, respectively, IDs 1434-5 (Figure 1) and 1434-1 (Figure 2). For the years 2020-2022, see Spotify’s response to question 6 of the Commission’s request for information of 25 September 2023, ID 3097.

sell subscriptions can only offer a degraded customer experience because of the Anti-Steering Provisions.

Table 11 – [...]⁹⁴¹

	iOS	Android
2015	[...] %	[...] %
2016	[...] %	[...] %
2017	[...] %	[...] %
2018	[...] %	[...] %
2019	[...] %	[...] %
2020	[...] %	[...] %
2021	[...] %	[...] %
2022	[...] %	[...] %

- (693) It follows that, because of Apple’s Anti-Steering Provisions, music streaming service providers that have disabled IAP cannot duly inform iOS users within the app about alternative (better) subscriptions conditions to subscribe to premium services. Would music streaming service providers be unrestrained by rules such as the Anti-Steering Provisions, they would maximise conversions given the central role that the mobile app plays in this consumer journey. In other words, in the absence of the Anti-Steering Provisions, music streaming service providers could offer a non-deteriorated experience to their users (for instance, advertise their subscriptions through their iOS app in the form of a web-based checkout⁹⁴² at better conditions).
- (694) Further, a feature of the music streaming services is that consumers of music streaming services typically obtain the free version of a music streaming app which is reduced in functionality.⁹⁴³ Listening to music in the app requires interaction with the app, but the free functionality limits the consumers’ experience because of the lack of the typical features of a premium subscription that add value to the music stream service. At certain points in time of their interaction with the app, iOS users would typically be prompted to subscribe to the premium version, which “*unlocks*” further functionalities such as for example ad-free and off-line listening, the possibility to create and share playlists or to recommend music. However, the user experience is degraded when an iOS user who is interested in upgrading the functionalities of the music streaming app is not able to find the relevant information within the app about how, where and at what conditions to unlock additional functionalities, due to the Anti-Steering Provisions.

⁹⁴¹ Emails from Mr. Sven Völcker to the Commission of 8 April 2022, ID 2307 and of 28 September 2023, ID 3052. For completeness, sign-ups do not capture whether the consumer signing-up converted from trial to pay or cancelled its subscriptions shortly after.

⁹⁴² From a user perspective a web-based checkout resembles an in-app subscription. While technically not being concluded within the app, it provides an almost equivalent for users to subscribe “through the app”. See also footnote 949.

⁹⁴³ As outlined in recital (508), apps for smart mobile devices are the primary means where consumers engage with music streaming services.

(695) [...] ⁹⁴⁴ [...] ⁹⁴⁵ [...] ⁹⁴⁶ [...]

(696) [...]

(697) [...] ⁹⁴⁷ [...] ⁹⁴⁸

9.3.2.2.1.2. Subscription channels other than subscriptions through the app are inferior from the users' perspective

(698) As evidenced above, because of the Anti-Steering Provisions, providers that do not offer subscriptions through IAP like Spotify cannot even mention in their app their website to iOS users as a reference for further information or the price at which a subscription is offered outside the app. Such music streaming service providers are thus limited to describing their Premium offers and their functionalities without being able to tell iOS users where to obtain those services and at what conditions (for instance, at what price). iOS users of these music streaming service providers therefore lack information on where and how to unlock the full functionality of the music streaming app.

(699) Subscription channels other than subscriptions through the app ⁹⁴⁹ are inferior from the users' perspective and do not make up for the degraded experience caused by the Anti-Steering Provisions.

(700) For example, email marketing is an inferior channel compared to subscriptions through the app as it is less targeted by not arriving at the time the potential subscriber is using the service (i.e., when the user is "in" the app) and when s/he would be most interested in enjoying the additional features and benefits of the premium subscription. ⁹⁵⁰ As mentioned in recital (206), general marketing activities outside of the app, both conventional and digital, are a suboptimal and less efficient option to attract and convert free subscribers into premium on iOS. ⁹⁵¹ [...] ⁹⁵² In addition, even if Apple removed the prohibition of out-of-the-app communication that follows an initial sign-up by a user within the app, those users are not even shown and cannot even click on an "email me" button within the app that would, at least partially, help countering the negative impact of the Anti-Steering Provisions.

⁹⁴⁴ [...]"

⁹⁴⁵ Annex 9 to Apple's response to question 12 and their response to question 44 of the Commission's request for information (2019/050361), Slide 128 of Apple's FY19 Music Plan, ID 268-287.

⁹⁴⁶ See <https://support.google.com/googleplay/android-developer/answer/9992660>, accessed on 16 December 2020, ID 1024.

⁹⁴⁷ [...].

⁹⁴⁸ [...].

⁹⁴⁹ Subscription through the app includes marketing and linking external subscription options within the iOS app, such as buy buttons.

⁹⁵⁰ See comments by Gustav Gyllenhammer (Spotify) in the minutes of the video call with Spotify of 18 May 2020, page 2: "[confidential quote]", ID 1350.

⁹⁵¹ See also the statements from Spotify's representative at the oral hearing (recording of the oral hearing in Case AT.40437, ID 3131, at 05:46:30: "[confidential quote]"); and the statements from BEUC's representative at the oral hearing (recording of the oral hearing in Case AT.40437, as of 06:22:15, ID 3131): "*Apple argues that consumers can find pricing info elsewhere, for example by searching on the web, from emails or from other marketing activities of music streaming services providers. But none of this equivalent to clear price information at the moment it is most relevant, meaning when users are engaging with a MS provider in the app via their iOS devices and considering subscribing to a paid MS service or changing its existing subscriptions. This is because Email and marketing activities might come at times when they are of limited use and therefore not provide information at the right moment.*"

⁹⁵² Commission calculations (ID 2607) based on Annex 14 of Apple's response to the Commission's request for information (2022/004722), ID 2233-26. [...].

Marketing via emails therefore does not counterbalance the harm suffered by customers.

- (701) The Spotify 2018 experiments (see recitals (743) et seq.) also show that a large share of consumers who downloaded the Spotify app fail to subsequently upgrade to Spotify’s Premium service because of the Apple’s Anti-Steering Provisions.
- (702) Therefore, when users have the choice to subscribe through the app,⁹⁵³ they clearly prefer that option over other subscription channels. This affects a significant number of consumers, in particular users of Spotify on iOS since the time it disabled IAP on iOS devices in May 2016. As shown in recitals (686) et seq., data on conversion channels to Spotify premium show that on Android – where Apple’s restrictions are not in place – the majority of users convert to Spotify Premium through the app or via channels that are restricted on iOS due to Apple’s policies.
- (703) By way of illustration of the order of magnitude, the Commission estimated the number of users that did not subscribe to Spotify premium due to the downgraded experience stemming from Apple’s conduct (see Table 12). In particular, taking the number of Spotify’s existing iOS subscribers as the basis, the Commission extrapolated how many additional free users would have converted to premium subscriptions to Spotify absent the Anti-Steering Provisions. The Commission also calculated the number of Spotify subscribers that had to go through (inferior) channels other than subscriptions through the app.

Table 12 – Estimated number of harmed Spotify subscribers (2022)⁹⁵⁴

(1)	Number of Spotify iOS subscribers (December 2022), EEA excluding the UK	[...]
(2)	Estimated share of in-app subscribers in the absence of the Anti-Steering Provisions	[...] %
(3)	Estimated share of lost in-app subscribers	[...] %
(4)=(1)/[(2)*(1-	Estimated number of Spotify iOS subscribers	[...]

⁹⁵³ See footnote 1106.

⁹⁵⁴ Sources: (1) Commission calculations of Spotify’s 2022 December iOS premium subscribers, ID 3217, based on Spotify’s response to the Commission’s request for information dated 24 October 2023, using the midpoint of the non-confidential range provided in the Updated Annex 2.1, ID 3101. (2) The Commission conservatively assumes that [...] % of premium subscriptions on iOS are affected by Apple’s policies. In reality, this share is likely higher. In 2018/2019, Spotify generated around [...] % of premium subscribers on Android through the use of the app and through marketing channels which are not available on iOS due to the Anti-Steering Provisions. [...] In all years between 2020-2022 Spotify’s share of premium subscriptions on Android in the channels that are affected by Apple’s restrictions on iOS were always higher than [...] %. (3) Spotify’s experiments. As set out in recitals (746) et seq., the experiments find that the rate at which new registrations to Spotify’s Free service converted to Spotify’s Premium service was, respectively, [...] % lower (May 2018 experiment) and [...] % lower (December 2018 experiment) in the treatment group (iOS experience) than in the control group (Android experience), Section 4 (“Results of Spotify’s experiments”) of Compass Lexecon Report, “An economic assessment of the effects of Apple’s Licence Agreement with Spotify”, ID 1459-2. The Commission conservatively assumed a loss of in-app subscribers of 20 % on iOS.

(3)+(1-(2))	without Anti-Steering Provisions	
(5)=(4)-(1)	Estimated number of lost Spotify subscribers due to Apple’s restrictions	[...]
(6)=(4)*(2)*(1-(3))	Est. number of Spotify iOS users who subscribed under reduced in-app experience	[...]

- (704) As set out in Table 12, based on the experience on Android, it can be conservatively assumed that – absent the Anti-Steering Provisions – at least [...] % of subscribers subscribe through the app and the remaining [...] % through other channels.⁹⁵⁵ Moreover, Spotify’s experiments suggest that more than [...] % of consumers that try to subscribe in-app on iOS cannot subsequently find a way to subscribe out-of-app.⁹⁵⁶ On this basis,⁹⁵⁷ in 2022, under conditions comparable to Android, [...] users would have subscribed to Spotify premium on iOS absent Apple’s restrictions (row 4 in Table 12). This means that [...] users (row 5 in Table 12) got lost in the subscription process and did not end up subscribing to Spotify premium. More than [...] (row 6 in Table 12) Spotify users had to go through an inferior user experience outside the app to subscribe. The real number of iOS users affected by the degraded app experience is likely larger, because the above-mentioned number only relates to those iOS users that ultimately succeeded in subscribing to the Spotify Premium service.
- (705) While these calculations do not necessarily constitute a precise quantification of the number of Spotify users that have suffered actual harm, they illustrate that the Anti-Steering Provisions cause harm to Spotify users in the form of an inferior user experience and subscription process as well as in the form of an increased number of subscriptions through IAP at higher prices. In addition, the calculation of harmed users here captures only the users of Spotify and does not include the iOS users of other music streaming services that did not enable in-app subscription on iOS such as Google Play Music. Apple cannot therefore claim that if the “[*Anti-Steering Provisions were so manifestly burdensome to be unfair, the expectation would be that in their absence, iOS users would have all subscribed to their premium [Music Streaming Service] subscriptions through the app.*”⁹⁵⁸ The legal test is not that the conditions at stake are “*manifestly burdensome*”. Rather, they must be detrimental to the interests of the dominant undertaking’s trading partners or of third parties, including consumers.
- (706) Those consumers who find a way to subscribe outside the iOS app to a premium music streaming service lacking an in-app subscription mechanism are affected by potentially delayed subscription times and a more burdensome path for signing up than via Apple’s IAP or via a web-based checkout mechanism. These iOS users are

⁹⁵⁵ Between 2018 and 2022 the channels that were restricted on iOS consistently accounted for more than half of Premium conversions on Android. See Table 8.

⁹⁵⁶ See Table 8.

⁹⁵⁷ The Commission notes in this context that the figures for lost subscribers and subscribers going through an inferior user experience are conservative for several reasons. They are based on a lower share of in-app subscribers in the absence of the restrictions than the share of Spotify’s in-app subscribers on Android in all years with data available. Furthermore, these take subscription through the app shares on Android as basis ([...] %), [...]. The calculation of lost and harmed Spotify users also excludes the UK and relate only to those Spotify users that were paid subscribers in December 2022.

⁹⁵⁸ Apple’s Response to the Letter of Facts, ID 3330, paragraph 283.

faced with a deteriorated experience that requires them to go through various steps such as opening the browser on their iOS device, potentially search for the music streaming service’s website on the internet or even switch to another device to subscribe, and to enter additional payment details.

- (707) While such non-monetary harm from inconvenience is relatively small on a per user basis, it is non-negligible and affects a large number of iOS users. In the case of Spotify alone, the Commission estimates that out of the [...] iOS users that were subscribers to the Spotify Premium service in December 2022 in the EEA (excluding the UK), more than [...] had to go through an inferior subscription procedure due to Apple’s Anti-Steering Provisions, who would have otherwise been able to subscribe through a web-based payment checkout.⁹⁵⁹
- (708) Customers of (other) music streaming service providers are also harmed, when due to the Anti-Steering Provisions these providers cannot offer to them certain subscription plans or promotions for subscription through the app as these offers are not valid when the subscription is sold within the app on iOS devices through IAP because of the impact of the commission fee (see recital (739) in relation to SoundCloud).

9.3.2.2.1.3. Assessment of Apple’s arguments

- (709) Apple argues that the Commission fails to substantiate the nature and severity of the alleged harm.⁹⁶⁰ However, the Decision sufficiently explains how iOS users of music streaming service providers lack information on where and how to unlock the full functionality of their music streaming app. This leads to e.g., loss of time and frustration (see, for instance, recital (694)).
- (710) Apple claims that “it is irrelevant how important apps are (or not) for [music streaming service] providers to acquire iOS users, as it has nothing to do with an alleged abuse towards consumers.”⁹⁶¹ This is manifestly wrong. As explained in recital (683), music streaming apps are the best medium for consumers to effectively exercise an informed choice. Depriving iOS users of the possibility of effectively exercising an informed choice within the app is therefore particularly harmful to them.
- (711) Regarding the impact of the Anti-Steering Provisions on conversion of users as shown in recitals (686)-(693), Apple argues that the high share of Apple Music’s in-app subscriptions on iOS devices can be explained by its decision to direct mobile users from its website to the app for concluding the subscription, which is a choice that is made as part of its vertical integration.⁹⁶²
- (712) According to Apple, other music streaming services could “easily” substitute the direct in-app sign-up channel with alternative channels.⁹⁶³ Apple would therefore consider it appropriate to attribute subscription sign-ups to the “Apple Music iOS app” only when the sign-up resulted from communication through the app.⁹⁶⁴

⁹⁵⁹ See Table 12.

⁹⁶⁰ Apple’s Response to the Letter of Facts, Annex 9, ID 3324, page 19.

⁹⁶¹ Apple’s Response to the Letter of Facts, ID 3330, paragraph 247.

⁹⁶² Apple’s Response to the Letter of Facts, ID 3330, paragraph 259.

⁹⁶³ Apple’s response to question 5.a of the Commission’s request for information (2022/019122), ID 2270, referring to Annex 3 to Apple’s Response to the Statement of Objections of 30 April 2021.

⁹⁶⁴ Apple’s response to question 5.a of the Commission’s request for information (2022/019122), ID 2270, paragraph 8, first bullet point.

(713) The Commission disagrees and concludes that the high share of in-app subscriptions of Apple Music on iOS devices nonetheless shows how many more users of a music streaming service app that is unrestrained by the Anti-Steering Provisions would – without unnecessary friction – convert to a premium subscription. Moreover, Apple’s vertical integration on iOS cannot explain the large share of Android subscriptions which were concluded through web-based checkouts in Apple Music’s Android app, with more than [...] % of Apple Music subscriptions being concluded through the Android app from 2020 until Apple stopped offering a web-based checkout (initiated through the app) on its Android version of Apple Music (see Table 11). The fact that Apple Music relies heavily on its native app both on iOS and Android is consistent with the finding that a subscription through the app is the preferred option for consumers, offering a user-friendly experience for concluding a music streaming subscription. This is further illustrated by Figure 33 [...].

Figure 33 – [...] ⁹⁶⁵

[...]

(714) Apple presents the limited use of the app as a means to acquire paid subscribers on iOS by other music streaming service providers as evidence that subscriptions through the app are not important and the app is not an important means to acquire iOS users. Based on its own calculations, Apple considers that in-app subscribers never accounted for more than [...] % of all third-party music streaming service providers on iOS and for less than [...] % of their premium subscribers across platforms. In December 2018, Apple estimates that only [...] % of all iOS subscriptions were conducted through IAP.⁹⁶⁶ In December 2022 and July 2023, that figure [...] to [...] %.⁹⁶⁷ For Apple, “[t]he App Store is an insignificant customer acquisition channel because [Music Streaming Service] providers rely predominantly on alternative sales channels to acquire customers. The Commission cannot use that market reality – which it had ignored until now – as a new-found narrative for its case.”⁹⁶⁸

(715) The Commission considers Apple’s presentation as misguided.

(716) The fact that iOS users face limitations for subscribing to premium through the app (for example, through web-based checkouts), therefore depriving them of a user-friendly experience for concluding a music streaming subscription, is the direct consequence of Apple’s Anti-Steering Provisions. Most notably, Spotify shut down IAP in May 2016 precisely because of the inability to inform its iOS users in the app about cheaper subscription possibilities outside the app and facilitate such subscriptions through web-based checkout mechanisms in the iOS app. It is therefore

⁹⁶⁵ Commission calculations (ID 3217) based on Annexes Q7 and Q16 of Apple’s response to the Commission’s request for information of 3 August 2023, IDs 3000 and 3005. For Apple Music the Commission calculated the number of in-app subscribers on iOS by multiplying the number of iOS subscribers by the share of in-app iOS subscribers. For 2014 and 2023, the iOS in-app subscription shares were assumed to be equal with that in the closest year with data available.

⁹⁶⁶ Apple’s Response to the Statement of Objections of 30 April 2021, ID 2165, paragraph 278.

⁹⁶⁷ Apples’ response to the Commission’s request for information of 3 August 2023, ID 3007, paragraph 27.

⁹⁶⁸ Apple’s Response to the Letter of Facts, ID 3330, paragraph 249.

natural that the vast majority of Spotify’s subscribers have not subscribed through Spotify’s iOS app.⁹⁶⁹

- (717) The fact that only a small share of iOS premium music streaming users subscribe through the app of the music streaming service provider is in the Commission’s view not supporting Apple’s claim that the app is not relevant for customer acquisition of iOS users. Music streaming service providers have a logical interest in acquiring customers outside the iOS app, as this allows them, in compliance with Apple’s rules, to avoid the payment of the commission fee triggered by in-app subscriptions. It is the very consequence of the Anti-Steering Provisions that iOS users cannot successfully be informed within their app about the possibility of subscribing outside the app and be allowed an effective choice of the preferred subscription channel. Clearly, consumers would make more use of their iOS music streaming apps as a means to facilitate subscriptions to the paid service in the absence of the Anti-Steering Provisions. Deezer, for example, reported in 2019 that on Android, only 0.6 % of the payments were made via the higher priced Google Billing payment mechanism while 99.4 % of subscriptions were made directly through Deezer’s web-based checkout mechanism.⁹⁷⁰ Therefore, payments on Android made via Google Play Billing were rarely used (at least until 1 April 2022). The fact that [...] ⁹⁷¹ of Spotify’s premium subscriptions on Android come from a web-based checkout mechanism in the app while this channel is closed on iOS under Apple’s conditions also shows that consumers would rather subscribe to their services at cheaper prices via web-based checkout payment solutions in their apps, if permitted.
- (718) Apple also raises in its Response to the Statement of Objections of 28 February 2023 other arguments regarding degraded user experience imputable to the Anti-Steering Provisions.
- (719) First, Apple argues that iOS users are not clueless about the possibility to transact directly with music streaming service providers outside the app, since iOS users typically own other devices such as laptops, game consoles, smart tvs, e-book readers, voice assistants or wearables. Music streaming service providers offer their services across these types of devices, and iOS users can also take a look at the website of the music streaming service provider.⁹⁷² iOS users can also look for price comparisons online to get a clear picture of the pricing of music streaming services. The fact that “*IAP has at all times accounted for less than 10% of all music streaming service providers’ premium subscribers on iOS offering IAP in their app*” demonstrates, according to Apple, that users rely on alternative channels to acquire those Premium customers. In relation to Spotify, Apple submits that users know where and how to subscribe, as demonstrated by the fact that Spotify is the dominant

⁹⁶⁹ The roughly [...] Spotify IAP subscribers at the end of 2018 were those legacy subscribers that have initially subscribed through IAP and then continued to purchase their subscription at an elevated price month after month. The number of Spotify legacy subscribers naturally decreased over time as no new IAP subscribers were added. The number was reduced to approximately [...] in December 2021. See Apple’s Annex Q20 (revised) to the response to the Commission’s request for information (2022/019122), ID 2281. In July 2023, Spotify announced that all legacy subscribers would be automatically moved to a free, ad-supported membership. See <https://variety.com/2023/digital/news/spotify-cuts-off-apple-in-app-purchase-app-store-1235662082/>, accessed on 5 October 2023, ID 3194.

⁹⁷⁰ Deezer’s response to question 13 of the Commission’s request for information (2020/029315), ID 1379.

⁹⁷¹ See footnote 955.

⁹⁷² Apple’s Response to the Letter of Facts, ID 3330, paragraph 265.

player even if it disabled IAP.⁹⁷³ This latter point would be further sustained by the fact that “*Spotify’s website is currently the most effective channel for converting users on iOS.*”⁹⁷⁴

- (720) Apple’s views have to be rejected for the following reasons.
- (721) In the first place, it is contradictory that Apple curtails the information available to consumers directly from the music streaming service provider by means of the Anti-Steering Provisions and at the same time claims that consumers can inform themselves through other available, less reliable sources. Apple thereby implicitly acknowledges that the Anti-Steering Provisions are not necessary to achieve their purported aim, namely to protect the IAP mechanism and the payment of the related fee from alleged circumvention (see Section 9.3.3). This is further confirmed by Apple’s statement according to which “*Apple has no interest in [music streaming service] providers disabling IAP to rely solely on web / alternative subscription channels and the Reader Rule. Apple receives zero commission from such [music streaming service] providers despite all the technology it makes available to them for free through the App Store.*”⁹⁷⁵ In other words, Apple has a financial interest in depriving iOS users from having access within their music streaming app to valuable information about alternative subscription offers to make them subscribe in-app via IAP (when not disabled). Apple’s argument is also counterintuitive when music streaming service providers have disabled IAP. If no commission fee is due to Apple in such circumstances, then there is no valid reason why Apple needs to curtail the information available to consumers directly from the music streaming service provider by means of the Anti-Steering Provisions.
- (722) In the second place, the Commission disagrees with Apple’s view that the average iOS user would compare websites across devices to buy a music streaming subscription (see recital (420)). Smart mobile devices and in particular native apps are the main way to consume music streaming services and to convert to a premium subscription (see recital (683)). In fact, as clarified in Section 9.3.2.2.1.1, users are most interested in enjoying the benefits of a paid subscription while engaging with the app.⁹⁷⁶ The app is therefore the main support through which iOS consumers of music streaming services should be informed of key information, especially price (see recitals (594) et seq.). However, the Anti-Steering Provisions prohibit this, as evidenced by the information submitted by Apple. In its Responses to the Statement of Objections of 28 February 2023 and to the Letter of Facts, Apple provided screenshots of Spotify’s in-app marketing on iOS and the benefits of Spotify’s various Premium options when tapping the Premium tab at the bottom of the app.⁹⁷⁷ Evidently, no price information is given to users. The same holds true for music streaming service providers other than Spotify and their prices outside IAP.⁹⁷⁸
- (723) In the third place, Apple’s suggestion that an iOS user owning a game console, a virtual assistant or a smart TV would use such devices to subscribe to premium

⁹⁷³ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 255-258.

⁹⁷⁴ Apple’s Response to the Letter of Facts, ID 3330, paragraph 252.

⁹⁷⁵ Apple’s Response to the Letter of Facts, ID 3330, paragraph 262.

⁹⁷⁶ See, for instance, comments made by Gustav Gyllenhammer (Spotify) in minutes of video call with Spotify on 18 May 2020, page 2, ID 1350.

⁹⁷⁷ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, Figures 3 and 4.

Apple’s Response to the Letter of Facts, Annex 8, ID 3323, Figures 2,4, 6, 7, 10, 12.

⁹⁷⁸ See footnote 337.

music streaming services is highly unlikely and not supported by the evidence in the Commission’s file. The smartphone remains the main subscription driver for premium music streaming services. For Apple Music, in 2021, [...] % of music streaming activity took place via smart mobile devices compared to [...] % in desktop products and [...] % in other channels, including voice assistants, connected TVs, cars, connected sound systems wearables and other devices⁹⁷⁹ (see recital (279)). Also, on average between June 2015 and March 2019 the iOS mobile platform accounted for [...] % of Apple Music monthly paid subscribers, while over the same period Mac devices accounted for an average of [...] %. The share of Apple Music monthly paid subscribers on non-Apple devices – including Android, Windows and all unknown devices – never exceeded [...] %.⁹⁸⁰

- (724) As regards user conversion through other channels, the Decision has evidenced that subscription channels other than subscriptions through the app are inferior from the users’ perspective (see recital (700)). There is also a fallacy in Apple’s argument according to which users “*can and do reach [music streaming service] providers’ websites with a simple online search on any device. Spotify’s website ranks 1st globally in terms of traffic among music websites, SoundCloud’s 3rd, and Deezer’s 27th.*” This is not surprising given that the Anti-Steering Provisions prohibit music streaming service providers such as Spotify to provide the necessary information to its iOS users within the app to make an informed choice. iOS users are therefore obliged to navigate to the music streaming service providers’ website to find the relevant information.
- (725) In the fourth place, as explained by BEUC in the oral hearing, in particular comparison websites often do not contain accurate information concerning the actual prices of premium subscriptions of music streaming services. Thus, consumers who use comparison websites cannot easily obtain an overview of the applicable prices which poses a further obstacle to making an informed choice.⁹⁸¹
- (726) Second, Apple claims that consumers are not clueless about the fact that music streaming service providers have to pay a commission fee to Apple. According to Apple, the claim that Apple prevents developers from informing iOS users that developers have to pay a commission to Apple is contradicted by information provided on websites such as those of Deezer and SoundCloud about the fact that the price of the subscription includes “*Apple’s commission*”.⁹⁸²
- (727) The Commission disagrees with Apple’s views.
- (728) In the first place, Apple’s claims disregard that it takes time and effort to compare prices across devices and websites and the average consumer does not do that. In fact, the results of experiments conducted by Spotify and Apple show that consumers rarely compare in-app prices of music streaming subscriptions when purchasing a smart mobile device (see recital (426)). Expecting the user to take additional steps and browse price comparative websites before deciding to subscribe to a music streaming service, as Apple does, is not the right benchmark. Music streaming

⁹⁷⁹ Apple’s response to question 11 of the Commission’s request for information of 3 August 2023, ID 3007.

⁹⁸⁰ Data provided by Apple in its response to question 1 (Annex 1) of the Commission’s request for information (2019/050361), ID 268-2.

⁹⁸¹ Recording of the oral hearing in Case AT.40437, as of 06:22:15, ID 3131.

⁹⁸² Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 259-260.

service providers are prevented from indicating the price of their premium services in-app (see Section 7). [...].

- (729) In the second place, any information on the website of music streaming service providers about Apple’s commission fee already implies that the respective user has found his way to that website, i.e., has overcome the obstacles caused by the Anti-Steering Provisions.
- (730) In the third place, it is unlikely that the average iOS user consults the music streaming websites and learns about the price difference on iOS due to Apple’s commission fee, given that most of the conversions happen in the native app of the music streaming service provider.
- (731) Third, Apple claims that subscribing through IAP does not make user switching more difficult, because it allows consumers to use IAP subscriptions across devices (including across iOS and Android) provided that they link their subscription to their Apple ID.⁹⁸³
- (732) The Commission disagrees and notes that the fact that switching to other Apple or Android devices requires linking the subscription with a users’ Apple ID which is already an obstacle. In addition, having multiple subscriptions for different services through IAP and thus through Apple as an intermediary may make such switch more cumbersome and difficult and therefore increases the lock-in of users into the iOS ecosystem.
- (733) For example, the UK CMA has found that, in case consumers would want to continue using their in-app subscription on their new Android device (despite the higher subscription fee for the IAP subscription), they can do so only if they have previously agreed to link their developer account to their Apple ID, something that developers cannot insist on *vis-à-vis* their iOS users as Apple allows them to skip this step.⁹⁸⁴
- (734) Apple claims that this is a “*self-serving reading*” of the CMA’s report.⁹⁸⁵ However the same report provides examples of linking an Apple ID with a newspaper account and observes that non-linking “*can cause serious problems if a user forgets that they bought the initial subscription via the app and changes phones*”.⁹⁸⁶
- (735) Fourth, Apple claims that the decision to disable IAP is an autonomous decision of music streaming service providers and cannot be attributed to Apple. According to Apple, any such decision is conscious and results from those music streaming service providers that prefer not to pay any commission to Apple.⁹⁸⁷ In addition, according to

⁹⁸³ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 263-266.

⁹⁸⁴ CMA “Mobile ecosystems market study interim report”, accessed on 12 January 2022, ID 2208, paragraph 6.209. The example provided by the CMA in this regard concerns specifically linking an Apple ID with a newspaper/magazine account. The CMA observes that such non-linking “*can cause serious problems if a user forgets that they bought the initial subscription via the app and changes phones*”.

⁹⁸⁵ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 263.

⁹⁸⁶ UK CMA “Mobile ecosystems market study final report”, paragraph 6209, ID 2431.

⁹⁸⁷ See, for instance, Apple’s Response to the Letter of Facts, ID 3330, paragraph 258: “*Spotify’s choice to invest more in paid marketing channels rather than paying Apple’s commission is a commercial decision that Spotify, like any other developer on the App Store, can make*”.

Apple, music streaming service providers have many ways of communicating with customers and promoting their services, including within their app.⁹⁸⁸

- (736) The Commission disagrees and notes that, as evidenced in Section 9.3.2.2.1.1, Apple is well aware that consumers prefer engaging with their music streaming service provider in the app in order to subscribe to premium.⁹⁸⁹ When conversion from free to premium through the app (including marketing and linking external subscription options within the iOS app, such as buy buttons) is not enabled, key relevant information within the app on how to subscribe is withheld from the iOS user. Accordingly, music streaming service providers are faced with a difficult decision because IAP involves a high commission fee which requires them to increase their retail prices and the Anti-Steering Provisions prohibit them to include relevant information on how to subscribe outside the app and at what price. As shown above and further set out below, this leads to a deteriorated user experience and risk of consumer frustration in a channel which is key for customer acquisition and conversion.
- (737) Fifth, Apple claims that it cannot be held responsible for the music streaming service providers' decision to not offer promotions on subscriptions through IAP for alleged economic reasons, especially as the Anti-Steering Provisions do not prevent music streaming service providers from advertising different subscription plans and promotions in the app, as the SoundCloud example shows.⁹⁹⁰
- (738) The Commission disagrees and observes once again that the Anti-Steering Provisions prevent music streaming service providers from including relevant information about the price of alternative subscriptions in their apps. It is therefore irrelevant that music streaming service providers can communicate with their iOS users within the app if they are – at the same time – prohibited from informing their users, in the same communication, about key subscription elements such as price. The fact that “[music streaming service] providers can advertise their out-of-app services inside their apps by including marketing language such as “Upgrade to Premium” and using pop-ups and in-streaming advertising”⁹⁹¹ is therefore not a sufficient conduit of information for iOS users to make an informed choice. The fact that “[t]here is no confusion on how and where iOS users can subscribe to Spotify Premium”⁹⁹² is irrelevant since iOS users need to leave the Apple environment to navigate to the music streaming service provider's website, thus leading to a deteriorated experience compared to subscribing through the app.
- (739) Regarding the SoundCloud example provided by Apple, the Commission takes note that SoundCloud was and still is “*For these same reasons, [...] unable to offer our 50 % discounted offer for college & university students or any other promotional discounts on iOS. These types of offers not only provide a benefit to our users, they are also a key retention tactic.*”⁹⁹³ Apple claims that “opening the SoundCloud app

⁹⁸⁸ Apple's Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 271.

⁹⁸⁹ See footnote 949.

⁹⁹⁰ Apple's Response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 272-273 and Figure 14.

⁹⁹¹ Apple's Response to the Letter of Facts, ID 3330, paragraph 271.

⁹⁹² Apple's Response to the Letter of Facts, ID 3330, paragraph 271.

⁹⁹³ According to SoundCloud's response, “for these same reasons” refers to the following statement: “*Due to the slim margins in music streaming, we are unable to offer an equivalent price on iOS, due to the 30% app store fees. Subscription churn is higher on iOS vs. other platforms, and the audience research*

shows that SoundCloud does inform users of that promotion".⁹⁹⁴ While SoundCloud was allowed to inform its iOS users of the existence of such programmes, it could neither show the price of such programmes nor offer that choice (i.e., make the in-app subscription available), e.g., via action buttons inside the app therefore depriving iOS users from key information allowing them to effectively exercise such choice.⁹⁹⁵

(740) Finally, the Commission disagrees with Apple's statement according to which "[music streaming service] providers recognize the relevance of out-of-app communications to obtain new premium subscribers, which is also consistent with the fact that most iOS users do not use IAP to subscribe to [a music streaming service]".⁹⁹⁶ As shown in this Decision, the Anti-Steering Provisions prohibit music streaming service providers from informing iOS users within the app about alternative subscriptions methods. These providers therefore need to have recourse to out-of-app communications to inform users where they can convert to premium. The Commission does not dispute that these out-of-app communication channels are relevant. However, they constitute an inferior subscription channel from the users' perspective compared to subscriptions through the app (see Section 9.3.2.2.1.2).

9.3.2.2.2. Frustration of iOS users that are unable to find out where and how to purchase their preferred music streaming subscription outside the iOS app and who, as a result, end up either not subscribing to their preferred music streaming service or not subscribing at all.

9.3.2.2.2.1. The Commission's position

(741) iOS users that are unable to find out where and how to purchase their favourite music streaming subscription outside the iOS app not only suffer, in terms of non-monetary harm, from a degraded in-app experience (see Section 9.3.2.2.1) as a result of the Anti-Steering Provisions. They also end up failing either to subscribe to the music streaming service of their first choice or to subscribe to any music streaming service at all. For instance, in its observations in response to the Statement of Objections of 28 February 2023, BEUC highlighted that "*consumers may not be able to find their first choice of music streaming service provider at all as a result of the Anti-Steering Provisions. [...] to the extent that premium music streaming service providers no longer offer in-app subscription because of the IAP, consumers may not find them elsewhere, further reducing effective consumer choice. Consumer choice is further reduced if consumers decide not to subscribe to a premium music streaming service at all (or cancel an existing subscription) because the price is too high.*"⁹⁹⁷

(742) This affects predominantly users or would-be users of music streaming services such as Spotify and Google Play Music (while it was still offered), which either disabled or never enabled in-app payment on iOS and whose users remain (or in the case of Google Play Music, remained) uninformed of available choices because of the Anti-Steering Provisions. It also affects potential subscribers of music streaming services

indicates that the primary reason for this is price." SoundCloud's response to question 22 of the Commission's request for information of 8 April 2019 (2019/048728), ID 1369.

⁹⁹⁴ Apple's Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 273. See also Apple's Response to the Letter of Facts, Annex 8, ID 3323, paragraph 21.

⁹⁹⁵ See, in this regard, Figure 16 in Annex 5 to the Response to the Statement Objections of 28 February 2023, ID 2800. See also Figure 16 in Annex 8 to Apple's Response to the Letter of Facts, ID 3323. Both Figures are screenshots from the SoundCloud iOS app dated 13 April 2023.

⁹⁹⁶ Apple's Response to the Letter of Facts, ID 3330, paragraph 276.

⁹⁹⁷ BEUC's comments to the Statement of Objections of 28 February 2023", ID 2870, paragraph 30.

like Deezer or SoundCloud that are not willing or able to pay the elevated subscription fee and that are unaware of alternative subscription options outside the app at lower prices in view of the Anti-Steering Provisions.⁹⁹⁸

- (743) Spotify has also conducted experiments showing that a significant share ([...]%) of consumers that would otherwise upgrade from Spotify's free service to the premium tier are permanently lost on their journey as a result of having to face the sign-up experience that results from Apple's Anti-Steering Provisions.
- (744) These experiments measure the impact of Apple's Anti-Steering Provisions on the rate at which consumers who downloaded the Spotify app subsequently upgraded to Spotify's Premium service (i.e., the conversion rate).
- (745) These experiments were conducted on the Android platform⁹⁹⁹ and compared the conversion rate in Spotify's standard Android app at the time (which was not constrained by any Anti-Steering Provisions) to the conversion rate in a Spotify Android app that was modified to resemble Spotify's iOS app with the Anti-Steering Provisions of Apple in place. In particular, and in contrast to Spotify's standard Android app, the modified app did not allow a web-based checkout payment for the Spotify Premium service on its website, and Spotify's in-app marketing messages presented to consumers were modified to be compliant with Apple's Anti-Steering Provisions as they were applicable at the time. For each experiment, new downloads of the Spotify app were randomly given either the standard Android app (the "control" group) or the modified app with the iOS experience (the "treatment" group). Spotify then tracked the fraction of consumers in each group (control vs. treatment) who upgraded to Spotify Premium within 90 days (May 2018 experiment) or 77 days (December 2018 experiment) of downloading the app.¹⁰⁰⁰
- (746) The experiments find that conditional on being exposed to a marketing message encouraging conversion to Spotify Premium, the rate at which new registrations to Spotify's Free service converted to [...].
- (747) In the May 2018 experiment which was conducted on all Android users in France, Germany, Italy, Spain and the UK who registered between 15 and 28 May 2018, [...] % of consumers that registered for the free service converted to premium after 90 days when they were presented with the Android experience (i.e., an experience which allowed to convert to a premium subscription through a web-based checkout via a "Get Premium" button in the app). In contrast, with the iOS experience,¹⁰⁰¹ only [...] % of registered consumers subscribed to premium. In other words, [...] %¹⁰⁰² of the consumers that would have otherwise subscribed to the premium service did not do so because of Apple's Anti-Steering Provisions and the resulting degraded "iOS

⁹⁹⁸ The choice of those consumers who do not want to purchase a premium music streaming subscription at the elevated subscription price of EUR 12.99 per month but who are at the same time not aware of cheaper purchasing options outside of the iOS app, is essentially reduced to Apple Music as the only provider not subject to any restrictions impacting their ability to offer a lower subscription price and full information about subscription parameters in the app.

⁹⁹⁹ Precisely because of Apple's Anti-Steering Provisions, the experiment could not be conducted on the iOS platform.

¹⁰⁰⁰ The results remain qualitatively unchanged when a longer period after registration is taken into account.
¹⁰⁰¹ Instead of a "Get Premium" button, the users are exposed to a „Learn more“ button that leads to a walled off page advertising the Premium option without any sign-up option or any information on where and how to subscribe to it.

¹⁰⁰² [...] %.

experience”.¹⁰⁰³ The results remain largely unchanged even when looking at a longer period following registration for the free service.¹⁰⁰⁴

Table 13 – Results of Spotify’s experiment of May 2018¹⁰⁰⁵

Total users registering	[...]	
	Control group (Android experience)	Treatment group (iOS experience)
Random allocation to groups	[...]	[...]
Exposed users 90 days after registration	[...]	[...]
Subscribed users 90 days after registration	[...]	[...]
Proportion of these subscribing to paid services	[...] %	[...] %

(748) In December 2018, Spotify conducted a second experiment in order to separately identify the effect of several elements in the Anti-Steering Provisions. This second experiment was conducted on a larger set of consumers, comprising all users in Spotify’s five largest European markets (France, Germany, Italy, Spain and the UK) as well as Australia, Brazil, Mexico and United States who registered between 10 and 16 December 2018. Users were randomly allocated to four different groups, each with a different experience for the subscription to premium. The four groups were the following:

- “Control group”: Users received the standard Android app with all its normal Premium conversion features. In this case, users are exposed to a seasonal campaign banner that includes a “Get Premium” button. When they click that button they are directed directly to the web-based checkout page for payment. As before, the Control group is not subject to any of the Anti-Steering Provisions imposed by Apple. In particular, users in the Control group are able to convert to Premium using the app and are not affected by the limitations that Apple imposes on developers.
- “Web page group”: Users received a modified experience whereby they received an Android app which allowed them to convert to a paid subscription but only by taking them out of the app and to a web page. In this case, users are also exposed to a seasonal campaign banner that includes a “Get Premium” button. However, when they click that button they are redirected to a web page in a browser where they can subscribe to premium services after having logged in: there was no “in-app” conversion. This mimics a scenario where Spotify would be allowed to take iOS users outside of the App Store onto a webpage opening in the browser to subscribe to Premium.
- “Walled off group”: Users received a modified “iOS-style” app providing Premium conversion opportunities similar to those experienced by Spotify users on iOS, i.e., inability to convert in-app and restricted advertising. In this

¹⁰⁰³ Section 4 (“Results of Spotify’s experiments”) of Compass Lexecon Report, “An economic assessment of the effects of Apple’s Licence Agreement with Spotify”, ID 1459-2.

¹⁰⁰⁴ See results for longer periods in the rebuttal by Spotify to the response by Apple, Section 3, ID 1442.

¹⁰⁰⁵ Section 4, page 25 of Compass Lexecon Report “An economic assessment of the effects of Apple’s Licence Agreement with Spotify”, ID 1459-2.

case, users are exposed to a seasonal campaign banner that includes a “Learn More” button. When they clicked that button they were redirected to a walled off page, which did not contain any further information on where and how to subscribe or links to alternative subscription channels. This would therefore be equivalent to the experience of the Treatment group in the May 2018 experiment.

- “Generic walled off group”: Users received a further modified app which only included very generic information about Premium conversions, and unlike the apps for other groups, did not even specify the price of Premium subscriptions. That is, the seasonal campaign banner did not include any “Learn More” button. This mimics the actual iOS experience as it prevailed in December 2018 (the time at which the experiment was carried out).

Table 14 – Results of Spotify’s experiment of December 2018¹⁰⁰⁶

Total users registering	[...]			
	Control Group (Android experience)	Web page group	Walled off group	Generic walled off group (iOS experience)
Random allocation to groups	[...]	[...]	[...]	[...]
Exposed users 77 days after registration	[...]	[...]	[...]	[...]
Subscribed users 77 days after registration	[...]	[...]	[...]	[...]
Proportion of Exposed users subscribed	[...] %	[...] %	[...] %	[...] %

Notes: ‘Exposed users’ are those that have seen some message relating to conversion to Premium.

- (749) After tracking exposed users in the groups following their registration for 77 days, Spotify found conversion rates of [...] %, [...] %, [...] % and [...] % respectively among those “exposed users” who reached a point at which they would have been informed about premium through the app. This means that [...] % of the users that would have otherwise subscribed to Spotify’s premium service did not because they had to face the “iOS experience” resulting from Apple’s Anti-Steering Provisions. The Anti-Steering Provisions captured by the “web page group” and “walled off group” accumulate as each of these groups show significantly lower subscription rates than the control group with the Android experience. The conversion rate is the lowest for the participants in the “Generic walled off group”, who did not even receive any information on the price of Premium subscriptions.
- (750) Spotify was not able to provide to the Commission any information about whether the subjects in the experiment who failed to convert to Premium as a result of Apple’s Anti-Steering Provisions eventually signed-up with another music streaming service (including Apple Music) or abandoned their intention to subscribe to any premium music streaming service. Even those consumers that ultimately found a way to subscribe to the Spotify paid service had to conduct an inconvenient and time-consuming search and subscription process. Those who were not successful in finding a way to subscribe to Spotify outside the app either abandoned their purchase or signed-up with a provider other than Spotify that would not have been their first choice if they could have benefited from the same subscription conditions as the control group.
- (751) The experiments show the effect of Apple’s Anti-Steering Provisions on conversions isolated from other factors. Music streaming services can and to some extent do partly mitigate the number of lost customers due to Apple’s Anti-Steering Provisions, for example by increasing the marketing budget to attract iOS customers.

¹⁰⁰⁶ Section 4, page 28 of Compass Lexecon Report, “An economic assessment of the effects of Apple’s Licence Agreement with Spotify”, ID 1459-2.

However, as explained in recital (700), this an inferior app experience from a user perspective.

- (752) While the impact on conversions is significant in the case of Spotify, it may not be fully representative of impact on conversions to paid premium services in the case of other music streaming service providers. Spotify benefits from a strong brand, unlike several other smaller rivals.¹⁰⁰⁷ Moreover, iOS users of those music streaming services that have decided to use IAP at an elevated price (for instance, as previously observed, EUR 12.99 instead of EUR 9.99) may often not know that subscription conditions within the iOS app are worse than those outside the iOS app so that their incentives to search for outside purchasing possibilities are diminished compared to iOS users of a service that lacks an in-app subscription possibility. It is therefore less likely that they will look for alternative ways to subscribe to the respective music streaming service outside the iOS app and it is precisely the purpose of the Anti-Steering Provisions to limit the information that such iOS users obtain in the app about these ways and to prevent checkout mechanisms which would allow iOS users to make an effective choice.
- (753) While it is not necessary to quantify the number of users affected, the Commission can roughly estimate, in 2022, under conditions comparable to Android, 3.9 million users got lost in the subscription process and did not end up subscribing to Spotify premium. In addition, more than 15 million Spotify users had to go through an inferior user experience outside the app to subscribe (see recital (704)).
- (754) In addition, the Anti-Steering Provisions negatively impact the churn of music streaming service providers on the iOS platform. Indeed, not only are consumers less likely to subscribe to a more expensive music streaming service; they are also less likely to continue their subscription for the same time they would have in case they had benefitted from the more attractive monthly subscription fee.
- (755) As explained in Section 9.3.2.1.1, price is one of the most important factors affecting consumer choice for music streaming services and an important factor for customer churn, i.e., the termination of recurring subscriptions.
- (756) For example, SoundCloud indicated that iOS subscribers which pay through IAP typically show higher churn rates than subscribers who pay through other channels. “We see an approximate 30-35 % increase in the average length of time a customer subscribes when we are able to offer the Android/web price compared to the increased price offered through iOS. Due to the slim margins in music streaming, we are unable to offer an equivalent price on iOS, due to the 30 % app store fees. Subscription churn is higher on iOS vs. other platforms, and the audience research indicates that the primary reason for this is price.”¹⁰⁰⁸

¹⁰⁰⁷ For example, since 2017 Spotify has been one of the top 10 most important brands contributing to UK and German households, and in the UK ranked as second strongest brand in 2019, see <https://www.rankingthebrands.com/The-Brand-Rankings.aspx?rankingID=410>, ID 1075 and <https://www.rankingthebrands.com/The-Brand-Rankings.aspx?rankingID=409>, ID 1078, both accessed on 17 December 2020.

¹⁰⁰⁸ SoundCloud’s response to question 22 of the Commission’s request for information (2019/048728), ID 1369. See also response to question 28: “iOS subscribers show higher churn than subscribers who pay through other channels. Over the past 6 months, this difference has become more pronounced with iOS churn being 1.5x - 2.5x than the churn rates from other channels.”

- (757) Deezer indicated that without the Anti-Steering Provisions it “would have been able to inform its iOS customers that Deezer Premium is available at a similar price than the premium service offered by Apple Music. This difference of pricing between Deezer and Apple Music encourages (i) new subscribers to opt for the cheaper service and (ii) existing Deezer subscribers to churn and subscribe to Apple Music.”¹⁰⁰⁹
- (758) Napster also reported that the increase of the price in its iOS app significantly hampered both customer acquisition and retention: “Unfortunately, the test demonstrated a dramatic decline in the number of sign-ups (as shown below). In fact, the \$ 12.99 price-point caused a double-hit: (i) we had less users signing up for the service than at \$ 9.99; and (ii) those users stayed with the service for less time than the equivalent \$ 9.99 users - presumably because they could access a similar service elsewhere for \$ 9.99.”¹⁰¹⁰
- (759) Amazon confirmed that the retention rate of customers who subscribed through iOS IAP is lower than the retention rate for users of Android devices or of users of non-iOS and non-Android devices.¹⁰¹¹
- (760) Even if some of the churned IAP subscribers were to subsequently subscribe directly with the respective music streaming service provider at a lower price, this would not remove the harmful effects of the Anti-Steering Provisions.
- (761) Moreover, and importantly, it is the precise purpose of the Anti-Steering Provisions to limit the information an iOS user has on subscription possibilities outside the app. The Anti-Steering Provisions apply not only at the time of the purchase of a subscription, but also for existing subscribers. In the absence of the Anti-Steering Provisions, existing subscribers could be informed in their app that their subscription can be purchased elsewhere at a cheaper price facilitating a transfer of an IAP subscription to a direct subscription with the music streaming service provider providing for those consumers that prefer to transact directly with the music streaming service provider. Moreover, in the absence of the Anti-Steering Provisions, existing subscribers interested in subscribing outside the app at a cheaper price could effectively exercise this choice using a web-based checkout mechanism.
- (762) In any case, the evidence available does not suggest that many IAP subscribers that churn subsequently re-subscribe directly with the relevant music streaming service provider. For example, Napster reported that only 0.2 % of those users who subscribe through IAP subsequently switch to a direct subscription with Napster.¹⁰¹²
- (763) It follows from the above that iOS consumers of music streaming are unable to find out where and how to purchase their preferred music streaming subscription outside the iOS app and who, as a result, end up not subscribing to their preferred music streaming service.

¹⁰⁰⁹ Deezer’s response to question 33 of the Commission’s request for information (2019/048643), ID 1377.

¹⁰¹⁰ Napster’s response to question 9 of the Commission’s request for information (2019/048724), ID 1345.

¹⁰¹¹ See Amazon’s response to question 4.f) and Table 2 to Table 4 of the Commission’s request for information (2020/029308), ID 1342.

¹⁰¹² Napster’s response to question 18 of the Commission’s request for information (2020/029321), ID 1344. Several customer testimonies provided by Napster show that the elevated price of EUR 12.99 was associated with Napster being responsible for the high price rather than Apple and caused customers to discontinue the subscription relationship with Napster for good. Napster’s response to question 23 of the Commission’s request for information (2019/048724), ID 1345.

9.3.2.2.2.2. Assessment of Apple’s arguments

- (764) In its Response to the Statement of Objections of 28 February 2023, Apple claims that the Commission has not demonstrated how any alleged “lost” subscribers would be relevant to the “*fairness of Apple’s Anti-Steering Provisions under Article 102(a) TFEU*” and, in addition, it has not proven that Apple Music is imposing unfair conditions on “*such (non-) users*”.¹⁰¹³
- (765) The Commission disagrees with this view. The fact that potential subscribers are lost underlines the unfairness of Apple’s conduct vis-à-vis those iOS users who are interested in purchasing a music streaming service subscription but either ultimately do not purchase any subscription or purchase a subscription different from their preferred one, due to the Anti-Steering Provisions. Absent the Anti-Steering Provisions, iOS users would have all the information at hand to subscribe to their preferred option and would be put in a position to exercise an effective choice. However, as a result of the Anti-Steering Provisions, they may be lost in the process. This is also confirmed by BEUC (see Section 9.3.2.2.2.1).
- (766) In relation to the 2018 Spotify experiments, in its Response to the Statement of Objections of 28 February 2023,¹⁰¹⁴ Apple provides a number of arguments why it considers that the experiments cannot be generalised to iOS and why they would overstate the effects of the Anti-Steering Provisions on iOS devices. First, Apple argues that the Spotify experiments were not conducted on iOS subscribers. However, Android users would differ in meaningful ways from iOS users on average.¹⁰¹⁵ Second, Apple argues that there are various possibilities for calls to action outside the app.¹⁰¹⁶ Spotify could for example increase communications via e-mails or on other website and social media platforms to obtain iOS subscribers.¹⁰¹⁷ Moreover, Apple argues that the findings are not informative about the long-term effects and likely overstate them as they define users as converted even if they have since unsubscribed. The more relevant statistic, however, would be the share of consumers in each group that has remained subscribed in the long run, considering that churn is high among the participants in the experiment.¹⁰¹⁸ This is because many consumers that initially enrolled during the promotion do not remain subscribed after the promotion has expired. Third, Apple contends that, whilst Spotify has grown considerably on both operating systems, it has added significantly more subscribers on iOS than on Android.¹⁰¹⁹
- (767) The Commission considers that Apple’s criticism is not convincing.
- (768) First, the experiments tracked conversions via other channels than in-app that remained open to music streaming services. There were no meaningful differences in advertising between the two that would drive the results.¹⁰²⁰ While other marketing channels than the app remain open to Spotify (and Spotify does indeed in practice

¹⁰¹³ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 274-275.

¹⁰¹⁴ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 334.

¹⁰¹⁵ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 334, first bullet point.

¹⁰¹⁶ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 334, second bullet point.

¹⁰¹⁷ Annex 1 to Apple’s Response to the Statement of Objections of 30 April 2021, ID 2171, paragraph 108.

¹⁰¹⁸ Annex 1 to Apple’s Response to the Statement of Objections of 30 April 2021, ID 2171, paragraph 117.

¹⁰¹⁹ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 336.

¹⁰²⁰ Spotify’s rebuttal to Apple’s response, Annex B and Section 3 paragraph 3.7., ID 1449.

rely more heavily on external advertising channels to reach iOS users), the purpose of the experiment was precisely to single out the impact of the Anti-Steering Provisions on the user journey to convert to premium. As shown in this Decision, the Anti-Steering Provisions lead to a deteriorated subscription experience for iOS users.

- (769) Moreover, Apple’s claim that its Anti-Steering Provisions and the removal of the prohibition of out of the app communication that follows an initial sign-up by a user within the app do not prevent music streaming service providers from sending e-mail communication to iOS users that have created an account in the iOS app does not alter the Commission’s findings.¹⁰²¹ As evidenced in recital (700), email marketing is an inferior channel compared to subscriptions through the app. [...].¹⁰²² In addition, even if Apple removed the prohibition of out of the app communication that follows an initial sign-up by a user within the app, iOS users still couldn’t be shown an “email me” button within the app that would, at least partially, help countering the negative impact of the Anti-Steering Provisions. Marketing via emails therefore does not counterbalance the harm suffered by customers due to the lack of information in-app.
- (770) Second, the experiments look at how long after exposure to the different in-app experience consumers subscribe in both the treatment and the control group. The main result is that even after months (and beyond the initial period of 77 or 90 days), a large share of consumers that would otherwise have subscribed fail to subscribe. This negative impact on conversion does not change even if looking at a longer period.¹⁰²³
- (771) The Commission also considers as unconvincing the argument that it would have been more informative to have taken into account churn over time and to have focused on the share of users that were still subscribers at a given point in time after conversion. Doing so and looking for example at the share of users that were still subscribers after 365 (Experiment 1) or 277 days (Experiment 2)¹⁰²⁴ conflates the effect of Apple’s Anti-Steering Provisions with subscribers churning over time. Churn naturally occurs from a music streaming subscription over time; hence the share of remaining subscribers (the focus of Apple’s analysis) naturally declines in both control and treatment groups, the longer time period we look at. Apple’s argument effectively amounts to saying that users have not failed to subscribe to Premium because of the “iOS experience”, since in a year these subscribers would have anyhow churned. This does not take away the fact that even during that period of time, the Anti-Steering Provisions harm consumers inasmuch as they are faced with a downgraded user experience.
- (772) In addition, even in Apple’s own analysis looking at the retention rate (defined as the share of registered users that remained subscribed with the music streaming service

¹⁰²¹ ID 853 and former App Store Review Guidelines rule 3.1.3.: “Developers cannot use information obtained within the app to target individual users outside of the app to use purchasing methods other than in-app purchase (such as sending an individual user an email about other purchasing methods after that individual signs up for an account within the app).” This restriction has only been removed by Apple on 22 October 2021 in order to implement the settlement in the consumer class action in the US.

¹⁰²² Commission calculations (ID 2607) based on Annex 14 of Apple’s response to the Commission’s request for information (2022/004722), ID 2233-26. [...].

¹⁰²³ Spotify’s response to Apple, page 31 et seq., ID 1449.

¹⁰²⁴ See Table 12 in Annex 1 to Apple’s Response to the Statement of Objections of 30 April 2021: Apple’s “App Store Practices”: Empirical Evaluation, ID 2171.

after a certain period), the negative effect of Apple’s Anti-Steering Provisions as captured by the experiment remains substantial in the long run. In Experiment 1, after 120 days the retention rate was 9.3 % in the Control group (unrestricted in-app subscription experience), reducing to 7.1 under the Treatment group (Apple experience, no buy button in-app).¹⁰²⁵ This implies a 24 % decline of the 120 day retention rate under the Apple experience compared to normal circumstances, with a smooth in-app subscription process.¹⁰²⁶ In Experiment 2 the implied reduction of retention rates after 120 days compared to the control group depends on the type of treatment received, and amounted to 8 % (“Web page group”), 15 % (“walled off group”) and 21 % (“Generic walled off group”).¹⁰²⁷ Even when taking a longer time horizon, the negative effects of Apple’s conduct remain measurable. After 365 days, in Experiment 1 Apple calculates “the number of subscribed users in the treatment groups is just (sic) 13 % less.”¹⁰²⁸ In Experiment 2, in Apple’s own calculation “the treatment effect of being in the “Generic walled off” group translates into a decrease of 11 % in terms of registered subscribers on Android” following 277 days after registration.¹⁰²⁹ These calculations confirm that the harm caused by Apple’s Anti-Steering Provisions remains substantial even in the longer run.

- (773) Overall, the Commission considers that substitution between IAP and other forms of subscribing to the music streaming service outside the app is limited because turning off in-app subscriptions leads – in the presence of the Anti-Steering Provisions – to a considerable number of subscribers that fail to subscribe because of the “iOS experience”. Further, it should be noted that if some iOS subscribers use alternative mechanisms to subscribe to Spotify out-of-app, this is precisely because Apple’s Anti-Steering Provisions prohibit these users from being shown all key information within the app to make an informed choice. They therefore need to obtain that information outside the app and subscribe to the music streaming service provider of their choice outside the app too. It would be wrong for Apple to claim that these alternative mechanisms to subscribe are interchangeable or even similar from a user experience perspective.
- (774) It follows from the above that Apple’s Anti-Steering Provisions harm iOS users that are unable to find out where and how to purchase their preferred music streaming subscription outside the iOS app and who, as a result, end up either not subscribing to their preferred music streaming service or not subscribing at all.

¹⁰²⁵ Table 12 in Annex 1 to Apple’s Response to the Statement of Objections of 30 April 2021: Apple’s “App Store Practices”: Empirical Evaluation, ID 2171.

¹⁰²⁶ $(9.3-7.1)/9.3=23.6$.

¹⁰²⁷ Commission calculations based on Annex 1 to Apple’s Response to the Statement of Objections of 30 April 2021: Apple’s “App Store Practices”: Empirical Evaluation, ID 2171, Table 12, applying the formula $(\text{Control group retention rate}-\text{Treatment group retention rate})/(\text{Control group retention rate})$ to the 120-day retention rates. The retention rates are: Control group: 7.5 %, Web page group: 6.9 %, Walled off group: 6.4 %, Generic walled off group: 5.9 %.

¹⁰²⁸ Annex 1 to Apple’s Response to the Statement of Objections of 30 April 2021: Apple’s “App Store Practices”: Empirical Evaluation, ID 2171, Table 12 and footnote 79.

¹⁰²⁹ See paragraph 119 and Table 12 in Annex 1 to Apple’s Response to the Statement of Objections of 30 April 2021: Apple’s “App Store Practices”: Empirical Evaluation, ID 2171.

9.3.3. *The Anti-Steering Provisions are not necessary for the attainment of a legitimate objective, and in any case they are disproportionate*

(775) The Commission concludes that the Anti-Steering Provisions, as formulated, interpreted and implemented by Apple (see Section 7), are not necessary to achieve a legitimate objective, and in any event are not proportionate.

9.3.3.1. The Anti-Steering Provisions are not necessary to achieve a legitimate objective

(776) The Commission concludes that the prohibitions imposed by the Anti-Steering Provisions are not necessary to achieve the objective stated by Apple, namely to avoid that music streaming service providers circumvent their obligation to pay a fee when they sell music streaming subscriptions within their iOS app and to make sure that developers do not engage in free-riding.

(777) Apple explains that the obligation to pay a commission fee is triggered by the sale of digital content in an iOS app.¹⁰³⁰ On the contrary, as set out in Section 6.2, pursuant to the reader rule and the multiplatform rule, no obligation to pay a fee is triggered by the purchase of digital content (including music streaming subscriptions) outside an iOS app, even if the digital content is subsequently used in an iOS app. In this context, the App Store rules imposed by Apple include the Anti-Steering Provisions, which prevent music streaming service providers from informing iOS users in their apps about the possibility to purchase such digital content or services outside the App Store as well as from enabling those iOS users to effectively exercise such option, such as by linking out of the app to the website of music streaming service providers where the transaction could be concluded.

(778) According to Apple, the purpose of the Anti-Steering Provisions “*is to prevent developers from circumventing payment of Apple’s commission when it is due.*”¹⁰³¹ Furthermore, according to Apple, providers of music streaming services “*obtain the full reward for the value generated by their services outside the iOS app and grant their users the right to use their content on Apple’s devices without additional charges. Conversely, to the extent that customers discover the [Music Streaming Service] providers’ apps and subscribe to their premium versions through the App Store, Apple requires legitimate monetization by adopting the Anti-Steering Provisions that avoid systematic circumvention of its legitimate commission.*”¹⁰³² Apple claims that, if it is entitled to charge a commission, then it “*must have a means of ensuring that developers pay this commission when it is due and do not engage in free-riding.*”¹⁰³³

(779) Apple also claims that consumers are not clueless about transacting directly with music streaming service providers outside the app or about the fact that developers have to pay a commission fee, as it emerges for example from the websites of Deezer or SoundCloud.¹⁰³⁴ According to Apple, consumers can resort to price comparison websites or consumer reports to get a clear picture about subscription price differences in-app and outside of the app and find those prices “*which are cheaper*

¹⁰³⁰ Apple’s Response to the Statement of Objections of 28 February 2023 ID 2800, paragraph 68; Response to the Statement of Objections of 30 April 2021, ID 2165, paragraph 89

¹⁰³¹ Apple’s Response to the Statement of Objections of 28 February 2023 ID 2800, paragraph 99.

¹⁰³² Apple’s Response to the Statement of Objections of 28 February 2023 ID 2800, paragraph 119.

¹⁰³³ Apple’s Response to the Statement of Objections of 28 February 2023 ID 2800, paragraph 68.

¹⁰³⁴ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 259-260.

than the ones music streaming service providers charge for subscriptions sold via IAP”.¹⁰³⁵

- (780) Apple’s views are to be rejected for the following reasons.
- (781) First, the Commission considers that, contrary to Apple’s claims, the prohibition imposed by the Anti-Steering Provisions on music streaming service providers from duly informing iOS users about available options to purchase digital content outside the iOS app and from enabling them to exercise such options effectively cannot be considered necessary to ensure the objective stated by Apple, namely that music streaming service providers are not circumventing their contractual payment obligation when selling music streaming subscriptions within their iOS app and that developers do not engage in free-riding.
- (782) In the first place, Apple itself has chosen to allow iOS users access (at no extra cost) in their iOS apps to certain digital content that they have purchased outside the App Store, including directly from music streaming service providers (i.e., through their websites). The possibility of using such content or subscriptions purchased elsewhere in-app was offered by Apple to iOS users even before Apple explicitly provided for it in the Guidelines by formally introducing the reader rule in February 2011. As indicated in recital (134), already before that date, Apple allowed app developers to provide access to content subscriptions to users of their iOS app that had previously been purchased outside of the iOS app without this triggering any payment of a commission fee to Apple. Before February 2011 – when Apple introduced the Anti-Steering Provisions – music streaming service providers were not prevented from informing their users about the possibility to purchase a subscription outside the app or from including a link to their website within their app.¹⁰³⁶
- (783) In 2018, Apple confirmed explicitly that the possibility for users to access content that they have previously purchased outside the iOS app is not limited to “reader apps” – i.e., apps that do not require developers to offer in-app purchases of subscriptions through IAP – but that it is also available for music streaming apps which offer in-app subscriptions via IAP under the “multiplatform rule” (see Section 6.2.4.2). In both cases, iOS users can access and consume the content they have purchased elsewhere directly in the apps they have installed on their iOS devices. These rules increase the appeal and value of iOS devices for consumers by allowing them to access previously purchased content or services, including music streaming subscriptions, in the apps they can download from the App Store for their iOS devices.
- (784) Thus, on the basis of this business choice made by Apple – which has been explicitly enshrined in the reader and the multiplatform rules contained in the Guidelines but which existed already before – iOS users have the possibility (i) to purchase digital content including music streaming subscriptions in the iOS app, through IAP, which involves the payment of a commission fee to Apple by app developers (who in the music streaming market pass it on to iOS users, see Section 9.3.2.1.4), or (ii) to purchase such content outside of the iOS app, and subsequently access it within the app, without this triggering any payment of a commission fee to Apple.

¹⁰³⁵ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 257, 258 and Annex 4 (ID 2804).

¹⁰³⁶ See Spotify’s response to question 3 of the Commission’s request for information (2020/147746), ID 1447 and [...].

- (785) If iOS users were duly informed about those options offered by Apple and were to choose to purchase such content outside of the iOS app (and subsequently access it within the app), this would not trigger any obligation to pay a commission, which means that the iOS users and music streaming service providers would not be “*circumventing payment of Apple’s commission*”. Absent the Anti-Steering Provisions, music streaming service providers could duly inform iOS users about a choice that Apple itself has given to them and enable them to effectively exercise such choice. If iOS users decide to purchase content outside the iOS app in full knowledge of the available purchasing options, they are making use of a possibility allowed by Apple, without violating or circumventing any rule established by Apple.
- (786) In such a situation, requiring developers of music streaming apps to keep their iOS users uninformed about the possibility to subscribe to their services outside their iOS app at better terms and preventing those developers from enabling those users to effectively exercise an option expressly permitted by Apple cannot be considered necessary to avoid any alleged circumvention of Apple’s App Store-related rules.
- (787) Once Apple has decided to allow iOS users to purchase digital content outside of their iOS app and access and consume this content within their iOS apps, it cannot legitimately prevent that those users are fully informed about this possibility and are put in a position to exercise an effective choice.
- (788) In the second place, even if music streaming service providers benefit from iOS users’ choice to purchase digital content outside the iOS app and subsequently access it in the app, they cannot be considered to be unduly free-riding, simply because they inform the iOS users about the options made available to them by Apple and enable them to effectively make an informed choice.
- (789) In the third place, Apple claims that iOS users already know about their cheaper subscription options outside their music streaming apps.¹⁰³⁷ This claim is contradicted by the very existence of the restrictions set out in the Anti-Steering Provisions. It is the very aim of those restrictions to prevent app developers from informing iOS users about the existence of cheaper alternative subscription channels. The fact that Apple sees a need to enforce the Anti-Steering Provisions shows that not all consumers find out about alternative subscriptions channels. Apple also disregards the fact that information obtained from websites is not as effective, reliable and immediate as information provided in the app (see Section 9.3.2.2.1). Moreover, the experiments conducted by Spotify show that even nuances in how the relevant information is presented to consumers in the subscription process matter and have a significant impact on the conversion rates to premium music streaming subscriptions (see Section 9.3.2.2.2.). Concealing critical information from consumers, which is the very aim of Apple’s Anti-Steering Provisions, distorts the subscription process of consumers, impacts their choices and by consequence their purchase decisions.
- (790) Second, the Commission considers that Apple cannot validly claim that the Anti-Steering Provisions vis-à-vis music streaming service providers are necessary to monetise the App Store.
- (791) In the first place, under the business model freely chosen by Apple, absent the Anti-Steering Provisions, Apple could still charge for the sale of music subscriptions in

¹⁰³⁷ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 259-260.

the app to those iOS users who wish to subscribe through Apple’s IAP to the different music streaming services and who value this service and the additional functionalities that are associated with it.

- (792) In its response to the Statement of Objections of 28 February 2023, Apple states that its services, including the App Store, are valued by both app developers and iOS users for four reasons, namely ease of use, security, privacy and reliability, and that “consumers highly value the ‘seamless nature of transactions through IAP’ in addition to the features mentioned above.”¹⁰³⁸
- (793) Whether iOS users who have been fully informed about alternative options and who have been put in a position to make an effective choice would decide to transact through Apple and IAP or whether they would decide to leave the iOS app to transact directly with the music streaming service provider of their choice depends on how they appreciate the advantages and disadvantages of these two options and the terms that are associated with them. While some iOS users may value the seamless nature of transactions through IAP, others may prefer a subscription through the music streaming service provider at a better price and subject to the payment and privacy policy of the respective music streaming service provider.
- (794) The fact that Apple’s App Store may be less profitable should some additional consumers decide – in full knowledge of the available options offered by Apple – to avail themselves of the possibility to subscribe to music streaming services outside the apps downloaded in the App Store does in the Commission’s view not render the Anti-Steering Provisions necessary.¹⁰³⁹ Apple can design its business model, deciding which options to offer to its users, but cannot validly claim that the chosen model requires the misinformation of the users, who should not be made aware of the options available and should not be allowed to exercise an effective choice. In the second place, the revenues generated by Apple at the level of the App Store through commission fees paid by music streaming service providers do not support a finding that it is necessary for Apple to avoid transparency about the available options to iOS users of music streaming services in order to finance the App Store.
- (795) [...] ¹⁰⁴⁰ [...] ¹⁰⁴¹) [...] ¹⁰⁴²).
- (796) Apple has taken the position in the investigation that it cannot allocate the costs of setting-up and running the App Store on which it relies to argue that the Anti-Steering Provisions vis-à-vis music streaming service providers are necessary to finance the App Store and that it “does not generate actual profit and loss statements (“P&L”) at the product and service level in the normal course of business.”¹⁰⁴³ This makes it difficult for the Commission to analyse in more detail to which extent

¹⁰³⁸ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 250.
¹⁰³⁹ See also Case C-382/12 P *MasterCard v Commission*, EU:C:2014:2201, paragraph 91, on the notion of necessity in the context of Article 101 (1) of the Treaty.
¹⁰⁴⁰ [...].
¹⁰⁴¹ [...].
¹⁰⁴² [...]. Apple’s response to question 6 of the request for information of the Netherlands Authority for Consumers and Markets (ACM) of 23 January 2020.
¹⁰⁴³ See, in particular, answer to question 18 of Apple’s response to the request for information dated 4 September 2023, ID 3007.

commission fees (in particular from music streaming service providers for purchases through IAP) are required for Apple to cover its costs for the App Store.¹⁰⁴⁴ [...] ¹⁰⁴⁵

Figure 34 – [...]

[...]

Figure 35 – [...]

[...]

(797) [...] ¹⁰⁴⁶

Figure 36 - [...]

[...]

(798) In its response to the Statement of Objections of 30 April 2021, to which Apple refers in its response to the Statement of Objections of 28 February 2023,¹⁰⁴⁷ Apple argued that considering Apple’s total revenues from the App Store when analysing Apple’s conduct in relation to music streaming would not be appropriate.¹⁰⁴⁸ Rather one would need to consider whether specific music streaming related revenues as such would provide an appropriate contribution to Apple’s investments in the App Store. According to Apple, annual developer fees of music streaming service providers in the EEA are limited [...] and the aggregate App Store Search Ad spend of music streaming service providers in the EEA only accounts for [...] in Apple’s FY 2023 (and are thus [...] in App Store commission fees paid by the main music streaming service providers in Apple’s FY 2023 – see recital (7)). In the absence of the Anti-Steering Provisions developers could – according to Apple – use the iOS platform (and distribute their apps free of charge) without making any sort of contribution to Apple’s investments. This is however incorrect if one considers Apple’s claim that many users value the ease of use, security, privacy and reliability of transactions through IAP, as those users – even if duly informed about the available options – might still transact through IAP, thereby triggering the payment of the commission fee.

(799) In addition, Apple has not provided any evidence that these revenues are insufficient as a contribution to the cost of operating the App Store and in particular the costs that are associated with Apple’s review of apps and app updates of music streaming service providers.

(800) In its response to the Statement of Objections of 28 February 2023, Apple further argues that the fact that the commission revenues from music streaming service subscriptions are low is due to the fact that Apple allows developers such as Spotify to rely on the reader rule and disable IAP and this should not be a reason to force Apple to give up its Anti-Steering Provisions.¹⁰⁴⁹ Similarly, Apple claims that the revenues it obtains from developer program membership annual fees for music

¹⁰⁴⁴ Apple stated the following in the course of the investigation: “[confidential quote]”; see Apple’s response to question 18 of the Commission’s request for information (2019/050361), IDs 268-1.

¹⁰⁴⁵ See ID 2233-6. The Commission notes that Apple stated that it could not provide the corresponding profit and loss statements in relation to the App Store for the years 2020, 2021 and 2022 (see answer to question 18 of Apple’s response to the request for information dated 4 September 2023, ID 3007).

¹⁰⁴⁶ See ID 2233-6.

¹⁰⁴⁷ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, footnote 160.

¹⁰⁴⁸ Apple’s Response to the Statement of Objections of 30 April 2021, ID 2165, paragraph 374.

¹⁰⁴⁹ Apple’s response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 279.

streaming apps in the EEA [...] and Apple Search Ads on music streaming service providers in the EEA [...] are “minimal”.

- (801) Apple also claims that an assessment of whether or not the revenues are necessary goes beyond the Commission’s competition powers and that, in the absence of the Anti-Steering Provisions Apple’s incentives to operate the App Store would deteriorate.
- (802) These arguments do not change the Commission’s conclusions that the Anti-Steering Provisions *vis-à-vis* music streaming service providers are not necessary to contribute to Apple’s investments.
- (803) As already explained above, Apple would in the absence of the Anti-Steering Provisions continue to generate subscription revenues from those iOS users that prefer to subscribe through IAP because of their appreciation of the advantages of IAP as compared to other subscription mechanisms outside of the iOS app, even if those iOS users were fully informed by developers about their available options. In particular, music streaming service providers would, in the absence of the Anti-Steering Provisions, compensate Apple for its App Store services to the extent that their users made the informed choice to subscribe to their services in-app through IAP.
- (804) In addition, [...].¹⁰⁵⁰
- (805) With respect to Apple’s argument that the Anti-Steering Provisions *vis-à-vis* music streaming service providers are necessary to finance the App Store, it needs to be borne in mind that according to Apple, around [...] % of developers do not pay any compensation to Apple for the use of the App Store¹⁰⁵¹ as their apps are offered free of charge in the App Store, while around [...] % – including a very small number of music streaming service providers – finance its operation.¹⁰⁵² The fact that Apple does not spread the burden of financing the operation of the App Store across developers does not support a finding that the Anti-Steering Provisions are indeed necessary to ensure a compensation by developers and in particular music streaming service providers for their use of the App Store.
- (806) Furthermore, as explained by Apple’s external economic adviser during the oral hearing, there is no clear link between the commission fee charged by Apple and the financing of the App Store: “*The point is that the totality of the investments, and not just in the App Store, but in fact in the entire ecosystem, are monetized through a complex set of tools, which is, or channels: the App Store commission, services, most importantly the price of the device that is the main means through which investments are recovered, and advertising. So you have a set of channels through which you recover investments. The point I am trying to make is that that 30% commission is not even what is required to map exactly into the investment into the App Store. It’s one of the channels through which monetization occurs for the entire ecosystem.*”¹⁰⁵³
- (807) This directly contradicts Apple’s claim that the Commission would need to consider whether specific music streaming related revenues as such would provide an

¹⁰⁵⁰ [...].

¹⁰⁵¹ Beyond the Apple Developer Program fee of USD 99 per year.

¹⁰⁵² See ID 378, paragraph 37.

¹⁰⁵³ Recording of the oral hearing in Case AT.40437, at 02:51:19, ID 3131.

appropriate contribution to Apple's investments in the App Store (see recital (798)). Such a specific link, according to Apple's economic expert, does not exist.

- (808) It follows that even according to Apple's own view it is unclear to what extent the 15 % / 30 % commission fee serves to finance the App Store.
- (809) Furthermore Apple has deliberately chosen a business model for the App Store which relies on the financial contributions of a minority of developers.
- (810) Apple's economic adviser stated during the oral hearing that "*the monetisation objectively falls on a category of developers and there is vast cross-subsidisation to a huge tail of developers who pay zero, so benefit, get a sweet-heart deal, from this business model.*"¹⁰⁵⁴ "*The point is, someone needs to pay, and at the moment, there is a bunch of people who pay, but if you change that bunch of people, someone else needs to pay.*"¹⁰⁵⁵ The same adviser further noted that "*by definition, what I am saying is that in a world in which somebody pays and somebody doesn't, those who don't pay are being cross-subsidised. It's an objective observation. The point of how much of this is effectively going to be the component, I don't know, no-one does those calculations.*"¹⁰⁵⁶
- (811) These statements support the Commission's findings that the Anti-Steering Provisions do not serve to prevent an alleged free riding of app developers on Apple's services. Apple has failed to explain how its choice to impose the commission fee only for the sale of digital content which actually leads to a situation where some app developers that are subject to the commission fee under the Guidelines (e.g., those that sell digital content) make financial contributions in the form of commission fees to the financing of the App Store, whereas other app developers which are not subject to the commission fee under the Guidelines (e.g., those that sell physical goods or services or with an ads-based business model) do not have to pay the commission fee, effectively prevents what Apple refers to as "free riding" of app developers on Apple's services.
- (812) Against this background, the Commission concludes that the Anti-Steering Provisions vis-à-vis music streaming service providers (i) are not necessary to prevent these providers from circumventing their contractual payment obligation when selling music streaming subscriptions within their iOS app, (ii) they are not necessary to finance the App Store and (iii) they are not necessary to prevent free-riding.

9.3.3.2. The Anti-Steering Provisions are in any case disproportionate

- (813) The assessment of proportionality requires to verify whether any harmful trading conditions are limited to what is strictly necessary for the pursuit of a legitimate objective, or whether they go beyond what is strictly necessary, as the same legitimate objective could be reached by less onerous means.
- (814) When certain trading conditions are (to some extent) necessary for the provision of the service and the pursuit of other legitimate objectives, they may still be unfair if they go beyond what would be strictly necessary to achieve that legitimate objective, and therefore are disproportionate. In applying the principle of proportionality, which involves a certain balancing of the different interests, special regard has to be given

¹⁰⁵⁴ Recording of the oral hearing in Case AT.40437, at 02:47:10, ID 3131.

¹⁰⁵⁵ Recording of the oral hearing in Case AT.40437, at 02:48:21, ID 3131.

¹⁰⁵⁶ Recording of the oral hearing in Case AT.40437, at 02:52:08, ID 3131.

also to the question whether a certain legitimate aim could be achieved by other means, which are less onerous for the other parties.

- (815) The Commission concludes that Apple's Anti-Steering Provisions in any case fail to comply with the principle of proportionality.
- (816) First, as set out in the necessity assessment in Section 9.3.3.1, the Commission does not consider the Anti-Steering Provisions vis-à-vis music streaming service providers necessary (i) to prevent developers of music streaming service providers from bypassing the contractual obligation to pay a fee for music streaming subscriptions sold in the app and from free-riding and (ii) to finance the App Store.
- (817) Since the Anti-Steering Provisions are therefore not considered necessary to achieve a legitimate objective, there is no scope for a distinct proportionality assessment of whether the Anti-Steering provisions are strictly limited to what is required to achieve that specific legitimate objective.
- (818) Second, and in any event, the Commission considers that Apple's Anti-Steering Provisions also do not respect a proper balance between Apple's commercial interests and the interest of music streaming service providers and of owners of iOS devices.
- (819) Apple's alleged interest in the Anti-Steering Provisions essentially consists in avoiding a circumvention of the IAP functionality and to extract the 30 % / 15 % commission fee from developers by ensuring that developers do not inform users about alternative purchasing mechanism outside of the iOS app, allowed by Apple, and do not allow them to exercise an effective choice where to purchase their subscriptions. This alleged objective is contradicted by the fact that Apple (i) allows for the reader rule and the multi-platform rule which specifically enable users to use in-app the content purchased out-of-app (recital (134)), (ii) decided to not to apply any fee for certain app developers (recital (118)) and (iii) does not specifically finance the App Store with commission fees paid by music streaming service providers (recital (795)).
- (820) In addition, the Anti-Steering Provisions entirely disregard the interest of iOS users – who have bought a relatively expensive smart mobile device from Apple – to be able to make an informed and effective decision, on the basis of the options offered by Apple, on where to purchase digital content or services within apps downloaded on those devices, and in particular music streaming subscriptions. In this regard, iOS users have a legitimate interest in getting information about the options available to them based on the choice made by Apple to not only allow iOS users to purchase subscriptions and content in-app but also outside their iOS apps and subsequently access it in the apps. In light of the above, the Commission takes the view that the Anti-Steering Provisions imposed on music streaming service providers are in any case disproportionate.

9.3.4. *The Anti-Steering conditions are not objectively justified*

- (821) When the conduct of a dominant undertaking is liable to be caught by the prohibition under Article 102(a) of the Treaty, such conduct does not constitute an abuse if the

undertaking concerned demonstrates that such conduct is objectively necessary to protect its commercial interests.¹⁰⁵⁷

- (822) In its Response to the Statement of Objections of 28 February 2023, Apple argues that (i) the Anti-Steering Provisions are necessary to avoid free-riding by app developers as well as a circumvention of the requirement on app developers to pay a legitimate fee to Apple when they sell digital content or services within their apps which provides an appropriate contribution to Apple's investment in the App Store, and (ii) that subscribing through IAP provides a valuable convenience function to iOS users of music streaming service apps. Furthermore, Apple claims that a dominant company cannot be penalised for seeking pro-competitive solutions balancing its own interests against those of its direct and ultimate customers.¹⁰⁵⁸
- (823) The Commission has already explained in Section 9.3.3 that preventing music streaming service providers from duly informing iOS users about the available options under the reader and multiplatform rules and from allowing those users to make an effective choice is neither necessary nor proportionate (i) to prevent developers of music streaming apps from bypassing the contractual obligation to pay a fee for music streaming subscriptions sold in the app and from free-riding and (ii) for financing the provision of the App Store on iOS.
- (824) In light of these findings, the Commission does not consider the Anti-Steering Provisions to be justified in order to protect Apple's commercial interests.

9.4. Conclusion on the abusive behaviour

- (825) On the basis of the above considerations, the Commission concludes that with the Anti-Steering Provisions Apple imposes unfair trading conditions on music streaming service providers as (i) the Anti-Steering Provisions are imposed unilaterally by Apple on music streaming service providers; (ii) they prevent them from duly informing iOS users about the available options to purchase music streaming subscriptions outside of the app under the reader and the multiplatform rules and from enabling them to effectively exercise those options, which is detrimental to the interests of iOS users, and (iii) they are not necessary for the attainment of a legitimate objective and are in any case disproportionate.
- (826) Therefore, the Commission concludes that Apple has imposed unfair trading conditions within the meaning of Article 102(a) of the Treaty upon music streaming service providers through the Anti-Steering Provisions which are detrimental to the interests of iOS users.
- (827) In addition, for the sake of completeness, the Commission observes that, for example, higher prices or increased churn and lower conversion rates due to the Anti-Steering Provisions not only impact consumers but, necessarily, also negatively impact music streaming service providers who incur significant additional marketing costs.¹⁰⁵⁹ However, since the Commission focused its assessment on the detriment of Apple's Anti-Steering Provisions to the interests of iOS users, concluding on this basis that Apple has imposed unfair trading conditions within the meaning of Article 102(a) of the Treaty, it is not necessary to take a position as to whether the negative

¹⁰⁵⁷ See Case T-139/98 *AAMS vs. Commission*, EU:T:2001:272, paragraph 79 and Case T-191/98 *Atlantic Container Line*, EU:T:2003:245, paragraphs 1113.

¹⁰⁵⁸ Apple's Response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 276 to 281.

¹⁰⁵⁹ See footnote 833.

impact of the Anti-Steering Provisions on music streaming service providers amounts to an additional ground to conclude that they infringe Article 102(a) of the Treaty.

10. JURISDICTION

10.1. Principles

(828) In order to justify the Commission’s jurisdiction, it is sufficient that a conduct is either implemented in the EEA or is liable to have immediate, substantial and foreseeable effects in the EEA.¹⁰⁶⁰ These two approaches for establishing the Commission’s jurisdiction are alternative.¹⁰⁶¹

(829) The criterion of immediate, substantial and foreseeable effects of conduct in the EEA is satisfied when the conduct in question is capable of having such an effect, there being no need to show actual effects.¹⁰⁶² A relevant factor in conducting this assessment is whether the conduct was intended to produce effects within the internal market.¹⁰⁶³

10.2. Application to this case

(830) The Commission has jurisdiction to apply both Article 102 of the Treaty and Article 54 of the EEA Agreement to Apple’s conduct described in Section 7 as the Anti-Steering Provisions are capable of having substantial, immediate and foreseeable effects in the EEA.

(831) The effects are foreseeable.

(832) First, as mentioned in recital (507), Apple enjoys a monopoly for setting the terms for app distribution of music streaming apps on iOS. Therefore, if music streaming service providers want to reach iOS users, including in the EEA, they need to abide by the terms and conditions determined by Apple, under risk of removal from the App Store. Further, as stated in recital (310), Apple’s license agreements with developers as well as the Guidelines – which explicitly prohibit alternative app stores for iOS devices – are the same throughout the EEA. The conduct therefore has effects in the EEA since music streaming service providers that do not comply with Apple’s App Store rules, including the Anti-Steering Provisions, can be removed from the App Store and thus not be accessible for any iOS users in the EEA.

(833) Second, the unfair trading conditions Apple imposes on music streaming service providers affect consumers insofar as those providers are prevented from informing iOS users in the EEA about the options available to them and effectively exercising an informed choice. The Anti-Steering Provisions have resulted in iOS users subscribing to a music streaming service through IAP paying a significantly higher price for their subscription as compared to a situation with the full information available to them in the absence of such Anti-Steering Provisions. In addition, because of the Anti-Steering Provisions, many iOS users suffer a degraded customer experience and have less choice in some iOS music streaming apps.

¹⁰⁶⁰ Joined Cases 89/85, 104/85, 114/85, 116/85, 117/85 and 125/85 to 129/85 *Ahlström Osakeyhtiö and Others v Commission*, EU:C:1988:447, paragraphs 11 to 18; Case T-102/96 *Gencor v Commission* EU:T:1999:65, paragraphs 89 to 101.

¹⁰⁶¹ Case C-413/14 P *Intel Corp. v Commission*, EU:C:2017:632, paragraphs 40-46.

¹⁰⁶² Case T-286/09 *Intel Corp. v Commission*, EU:T:2014:472, paragraphs 251-252 and 296.

¹⁰⁶³ Case T-286/09 *Intel Corp. v Commission*, EU:T:2014:472, paragraphs 253-255.

- (834) The effects are substantial. As mentioned in recital (632), as of July 2023, more than 1.4 million iOS subscribers in the EEA of the main music streaming services other than Apple Music (i.e., Amazon, Napster, SoundCloud, YouTube Music, Tidal, Deezer, Qobuz and Spotify legacy subscribers) paid an elevated monthly subscription fee throughout the entire duration of the subscription. As also evidenced in Table 12, more than [...] Spotify users had to go through an inferior user experience outside the Spotify app to subscribe to Spotify’s premium music service. Furthermore, almost [...] Spotify users were unable to find out where and how to purchase their preferred music streaming subscription outside the iOS app and, as a result, ended up either not subscribing to their preferred music streaming service or not subscribing at all. This is a substantial amount of iOS users.
- (835) Finally, the effects are immediate. Because of the Anti-Steering Provisions, music streaming service providers are prevented from informing iOS users about the possibility of purchasing music streaming subscriptions outside the iOS app and from allowing iOS users to effectively exercise their choice.
- (836) Apple does not contest that the Commission has jurisdiction over its conduct.

11. EFFECT ON TRADE BETWEEN MEMBER STATES

11.1. Principles

- (837) Article 102 of the Treaty prohibits as incompatible with the internal market an abuse of a dominant position “*in so far as it may affect trade between Member States*”. Article 54 of the EEA Agreement contains a similar prohibition with respect to trade between Contracting Parties to the EEA Agreement.
- (838) According to settled case law, the effect on trade criterion consists of three elements.
- (839) First, “*trade*” must be potentially affected. The concept of trade is not limited to traditional exchanges of goods and services across borders but covers all cross-border economic activity. It also encompasses practices affecting the competitive structure of the internal market by eliminating or threatening to eliminate a competitor operating within the territory of the Union.¹⁰⁶⁴
- (840) Second, the practice does not necessarily need to reduce trade¹⁰⁶⁵; it is sufficient to show that the abuse “*may affect trade between Member States*”. In other words, it must be foreseeable with a sufficient degree of probability on the basis of a set of objective factors of law or fact that the practice in question has an influence, direct or indirect, actual or potential, on the pattern of trade between Member States.¹⁰⁶⁶
- (841) Third, the effect on trade between Member States must be “*appreciable*”. This element requires that effect on trade between Member States must not be insignificant and is assessed primarily with reference to the position of an

¹⁰⁶⁴ Joined Cases C-6/73 and C-7/73 *Istituto Chemioterapico Italiano S.p.A. and Commercial Solvents Corporation v Commission*, EU:C:1974:18, paragraphs 32-33; Joined Cases T-24/93, T-25/93, T-26/93 and T-28/93 *Compagnie Maritime Belge v Commission*, EU:T:1996:139, paragraph 203.

¹⁰⁶⁵ Case T-141/89 *Tréfileurope v Commission*, EU:T:1995:62, paragraphs 57 and 122.

¹⁰⁶⁶ Case C-5/69 *Franz Völk v Établissement J. Vervaecke*, EU:C:1969:35, paragraph 5/7; Case C-322/81 *NV Nederlandsche Banden Industrie Michelin v Commission*, EU:C:1983:313, paragraph 104; Case C-41/90 *Höfner and Elsnér v Macrotron*, EU:C:1991:161, paragraph 32; Case T-228/97 *Irish Sugar v Commission*, EU:T:1999:246, paragraph 170.

undertaking on a relevant product market.¹⁰⁶⁷ The stronger the position of an undertaking, the more likely it is that the effect on trade between Member States of a practice will be appreciable.¹⁰⁶⁸

11.2. Application to this case

- (842) In the present case, Apple's conduct has an appreciable effect on trade between Member States (and Contracting Parties to the EEA Agreement) for the following reasons.
- (843) First, Apple's conduct is, by its very nature, cross-border in scope. The framework of agreements governing Apple's legal and economic relationship with app developers (described in Section 6.2) are the same throughout the EEA and apply to all app developers active in the EEA, including in particular the Anti-Steering Provisions, and Apple enters into a single license agreement with developers covering app distribution in numerous EEA countries.
- (844) Second, Apple's conduct consisting in the Anti-Steering Provisions constitute unfair trading conditions in relation to iOS users throughout the EEA.
- (845) Third, Apple's conduct has been implemented in all Member States.
- (846) Fourth, since at the latest June 2015, Apple holds a dominant position in the market for the provision to developers of platforms for the distribution of music streaming apps to iOS users which is EEA wide.
- (847) The abuse is therefore capable of having an appreciable effect on trade between Member States (and Contracting Parties to the EEA Agreement).

12. DURATION

- (848) The Commission concludes that the infringement started at the latest on 30 June 2015 when Apple had already 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.¹⁰⁶⁹
- (849) On the date of adoption of this Decision, Apple has not removed the Anti-Steering Provisions.¹⁰⁷⁰ Therefore, the Commission concludes that the infringement of Article 102 of the Treaty is ongoing at the date of adoption of this Decision (except for the UK).
- (850) In its Response to the Statement of Objections of 28 February 2023, Apple submits that the Commission has delayed these proceedings and unduly extended the duration of the alleged infringement. It therefore expects a reduction of a possible fine solely for reason of excessive length.¹⁰⁷¹ Apple's arguments in this regard should be dismissed.

¹⁰⁶⁷ Case C-5/69 *Franz Völk v Établissement J. Vervaecke*, EU:C:1969:35, paragraph 5/7.

¹⁰⁶⁸ Case T-65/89 *BPB Industries and British Gypsum v Commission*, EU:T:1993:31, paragraph 138.

¹⁰⁶⁹ For the purposes of this Section, the EEA includes the UK 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.

¹⁰⁷⁰ As explained in recital (183), Apple announced on 25 January 2024 that it will implement certain changes to its App Store rules in March 2024. However, these rules are not yet in place at the time of adoption of this Decision and thus do not alter the Commission's assessment in this Decision.

¹⁰⁷¹ Apple's response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 392-395.

- (851) As regards Apple’s argument that the calculation of the duration must reflect the alleged delays in the Commission’s investigation, the Commission observes that the duration of an antitrust investigation depends on a number of factors, including the complexity of the case, the extent to which the undertaking concerned cooperates with the Commission and the exercise of the investigated undertaking’s rights of defence.¹⁰⁷² Further, it is settled case law that, for the purposes of assessing the reasonableness of the length of the administrative procedure before the Commission, the Union Courts distinguish between the investigative phase prior to the statement of objections and the remainder of the administrative procedure.¹⁰⁷³ In a procedure relating to EU competition law, the persons concerned are not the subjects of any formal accusation until they receive the Statement of Objections.¹⁰⁷⁴ Accordingly, the prolongation of this stage of the procedure alone is not in itself capable of adversely affecting defence rights and cannot be deemed as excessive.¹⁰⁷⁵ Further, the Commission issued the Statement of Objections of 28 February 2023 to replace the Statement of Objections of 30 April 2021 in light of Apple’s arguments in response to the latter. There have been less than three years between the 2021 Statement of Objections and the adoption of this Decision (and one year between the 2023 Statement of objections and this Decision). That period of time cannot be deemed to constitute an unprecedented delay as Apple claims. Indeed, the specific duration of this case is not excessive compared to the average duration of other investigations *vis-à-vis* undertakings of a similar size and active in digital markets such as Apple.¹⁰⁷⁶
- (852) There is therefore no basis for considering that the duration of the investigation was excessive in this case, and no reason for the Commission to reduce the amount of the fine on account of the duration of the administrative proceedings.

13. ADDRESSEES

13.1. Principles

- (853) Union competition law refers to the activities of undertakings and the concept of an undertaking covers any entity engaged in an economic activity, irrespective of its legal status and the way in which it is financed.¹⁰⁷⁷
- (854) When such an economic entity infringes the Union competition rules, it falls, according to the principle of personal responsibility, to that entity to answer for that infringement.¹⁰⁷⁸ The conduct of a subsidiary may be imputed to the parent company

¹⁰⁷² See e.g., Case C-238/99 P *Limburgse Vinyl Maatschappij and others v Commission*, EU:C:2002:582, paragraph 187.

¹⁰⁷³ See e.g., Case C-238/99 P *Limburgse Vinyl Maatschappij and others v Commission*, EU:C:2002:582, paragraphs 181-182.

¹⁰⁷⁴ Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU, OJ C 308, 20.10.2011, p. 6–32, paragraph 82.

¹⁰⁷⁵ See e.g., Joined Cases T-5/00 and T-6/00 *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied and Technische Unie BV v Commission*, EU:T:2003:342, paragraphs 78-79.

¹⁰⁷⁶ For example, the Commission’s investigation against Google lasted 2 years and 3 months (from the date of the Statement of Objections on 20 April 2016 until the decision on 18 July 2018) in Case AT.40099 – *Google Android* and 2 years and 2 months (from the date of the Statement of Objections on 15 April 2015 until the decision on 27 June 2017) in Case AT.39740 – *Google Search (Shopping)*.

¹⁰⁷⁷ Case C-511/11 P *Versalis v Commission*, EU:C:2013:386, paragraph 51.

¹⁰⁷⁸ Case C-90/09 P *General Química and Others v Commission*, EU:C:2011:21, paragraph 35 and the case law cited therein.

in particular where that subsidiary, despite having a separate legal personality, does not decide independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company, regard being had in particular to the economic, organisational and legal links between those two legal entities.¹⁰⁷⁹

- (855) In the specific case, however, in which a parent holds all or almost all of the capital in a subsidiary that has committed an infringement of the Union competition rules, there is a rebuttable presumption that that parent company in fact exercises a decisive influence over its subsidiary. In such a situation, it is sufficient for the Commission to prove that all or almost all of the capital in the subsidiary is held by the parent company in order to take the view that that presumption applies.¹⁰⁸⁰

13.2. Application to this case

- (856) For the reasons set out in this Decision, the Commission concludes that the infringement should be imputed to Apple Inc. as (i) the company which – for the entire period of the infringement – was and continues to be party to the License Agreements with developers, formulated and continues to formulate the App Store Review Guidelines and conducted and continues to conduct app reviews based on them and as (ii) the entity which (directly or indirectly) wholly owned and continues to fully own Apple Distribution International Limited (and which previously owned iTunes Sàrl as well as Apple Distribution International).¹⁰⁸¹
- (857) The infringement should also be imputed to Apple Distribution International Limited as the legal entity which developers in Europe appoint as a commissionaire for the marketing and end-user download of applications sold through the App Store in the EEA.¹⁰⁸²

14. SINGLE AND CONTINUOUS INFRINGEMENT

14.1. Principles

- (858) An infringement of the competition rules may result not only from an isolated act, but also from a series of acts or from a continuous conduct.¹⁰⁸³ It would be artificial to split up such continuous conduct, characterised by a single purpose, by treating it as consisting of several separate infringements, when what was involved was a single infringement which progressively would manifest itself in abusive behaviour. Such interpretation cannot be challenged on the ground that one or more aspects of that series of acts or continuous conduct could also, in themselves and taken in isolation, constitute an infringement of the competition rules of the Treaty.¹⁰⁸⁴ When the different actions form part of an “overall plan”, the Commission is entitled to impute responsibility for those actions on the basis of the infringement considered as a whole.¹⁰⁸⁵

¹⁰⁷⁹ Case C-521/09 P *Elf Aquitaine v Commission*, EU:C:2011:620, paragraph 54.

¹⁰⁸⁰ Case C-97/08 P *Akzo Nobel and Others v Commission*, EU:C:2009:536, paragraph 60.

¹⁰⁸¹ See recital (5) and Exhibit 21.1 of Apple’s Annual Report 2022, where Apple Distribution International Limited, incorporated in Ireland, is listed among the subsidiaries of Apple Inc.

¹⁰⁸² For a description of the Apple group’s companies incorporated in the EEA, see recital (5).

¹⁰⁸³ Case T-6/89 *Polypropylene*, EU:T:1991:74, paragraph 204 refers to a series of single efforts.

¹⁰⁸⁴ Case C-49/92 P *Commission v Anic Partecipazioni*, EU:C:1999:356, paragraph 81.

¹⁰⁸⁵ Case T-321/05 *AstraZeneca v Commission*, EU:T:2010:266, paragraph 892, referring to Joined Cases C-204/00 P and others *Aalborg Portland and Others v Commission*, EU:C:2004:6, paragraph 258. See

- (859) For the purposes of characterising various instances of conduct as a single and continuous infringement, it is necessary to establish whether they complement each other inasmuch as each of them is intended to deal with one or more consequences of the normal pattern of competition and, by interacting, contribute to the realisation of the objectives intended within the framework of that overall plan. In that regard, it will be necessary to take into account any circumstance capable of establishing or casting doubt on that complementary link, such as the period of application, the content (including the methods used) and, correlatively, the objective of the various actions in question.¹⁰⁸⁶

14.2. Application to this case

- (860) For the reasons set out in Section 9, the Commission concludes that Apple’s conduct described in Section 7 constitutes a single and continuous infringement of Article 102 of the Treaty and Article 54 of the EEA Agreement.
- (861) First, the Anti-Steering Provisions as described in Section 7 and as adapted throughout the infringement period pursue an identical objective, namely to prevent music streaming service providers from informing iOS users about the possibility of purchasing music streaming subscriptions outside the iOS app and from allowing iOS users to effectively exercise their choice. With the Anti-Steering Provisions in place, iOS users that are unaware of alternative subscription possibilities outside the iOS app cannot make an informed and effective choice about potential alternative (and often cheaper) subscription possibilities outside of the iOS app.
- (862) Second, the successive changes Apple introduced to the wording of the Anti-Steering Provisions as well as their interpretation over time, as assessed by the Commission in the present Decision (see Section 7), do not affect the conclusion that music streaming service providers have been – and still are – severely limited in their ability to inform iOS users inside the app, and to a certain extent also outside of the app, about alternative (cheaper) subscriptions possibilities outside of the app and from allowing an effective choice.
- (863) Third, Apple adopted a consistent course of conduct over time, characterised by its continuous reliance upon – and strict enforcement of – the Anti-Steering Provisions *vis-à-vis* music streaming service providers.
- (864) Fourth, the Commission’s conclusion that Apple’s conduct described in Section 7 throughout the period of infringement forms part of an identical pattern of conduct and constitutes a single and continuous infringement of Article 102 of the Treaty and Article 54 of the EEA Agreement is not affected by Apple’s claims in its Response to the Statement of Objections of 28 February 2023 that:
- (a) Apple “*had to clarify the Anti-Steering Provisions a number of times over the years, in particular in response to some developers’ (including Spotify’s) multiple attempts at circumventing Apple’s rules*”;¹⁰⁸⁷
 - (b) the Anti-Steering Provisions were introduced in the Guidelines in 2011, i.e., “*before Apple Music was launched*” and they “*have always been applied*”

also Case C-49/92 P *Commission v Anic Participazioni*, EU:C:1999:356, paragraphs 78-81, 83-85 and 203.

¹⁰⁸⁶ Case T-321/05 *AstraZeneca v Commission*, EU:T:2010:266, paragraph 892, referring also to Joined Cases T-101/05 and T-111/05 *BASF and UCB v Commission*, EU:T:2007:380, paragraphs 179 and 181.

¹⁰⁸⁷ Apple’s response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 95.

*equally to all apps that sell digital goods and services, regardless of whether they compete with Apple’s own apps”;*¹⁰⁸⁸

- (c) from 2011 onwards, Apple has “*constantly made available programs to developers that attract users without having to pay anything to Apple*” such as the introduction of the External Link Account Entitlement program in March 2022.¹⁰⁸⁹
- (865) In the first place, Apple’s claim that it adopted a consistent course of conduct over time aimed at enforcing the Anti-Steering Provisions to avoid circumvention of the obligation to pay its commission fee when developers use their iOS app to monetise their digital services does not affect the Commission’s conclusion that the Anti-Steering Provisions as described in Section 7 pursue the identical objective of restricting the developers’ ability to effectively communicate with their iOS users.
- (866) In the second place, the Commission does not contest that Apple has introduced the Anti-Steering Provisions a few years before Apple Music was launched nor that it has applied the rules equally to all apps that sell digital goods and services. The Commission however objects to the unfair character of the Anti-Steering Provisions as from 30 June 2015 when Apple had already 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.
- (867) In the third place, the various programs introduced by Apple allegedly facilitating developers to perform certain out-of-platform communication or allowing “*reader apps to include a link to their websites in their iOS apps*”¹⁰⁹⁰ are not such to substantially change the nature of the Anti-Steering Provisions. For example, under the External Link Account Entitlement program (see recital (209)) Apple prohibits app developers from mentioning the price of their products as part of the link (as confirmed by the different screenshots provided by Apple in its Response to the Letter of Facts¹⁰⁹¹) and also requires app developers to display a security warning when a user clicks on the external link.¹⁰⁹² Therefore, those programs do not substantially change the unfair nature of the Anti-Steering Provisions.
- (868) Therefore, the Commission concludes that, notwithstanding the more recent changes that Apple has made to the rules as described in Section 7, this set of rules, including the Anti-Steering Provisions have been in place – without interruption – throughout the entire period of the infringement.

15. REMEDIES

15.1. Principles

- (869) Article 7 of Regulation (EC) No 1/2003 provides that where the Commission finds that there is an infringement of Article 102 of the Treaty and Article 54 of the EEA Agreement it may by decision require the undertaking concerned to bring such infringement to an end. For this purpose, it may also impose on the undertaking concerned any behavioural or structural remedies which are proportionate to the

¹⁰⁸⁸ Apple’s response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 99.

¹⁰⁸⁹ Apple’s response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 111.

¹⁰⁹⁰ Apple’s response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 111.

¹⁰⁹¹ Apple’s Response to the Letter of Facts, ID 3330, Figures 10-12,

¹⁰⁹² Spotify’s observations on the Statement of Objections of 28 February 2023, point 7.16, ID 2799.

infringement committed and necessary to bring the infringement effectively to an end.

- (870) It follows that a decision pursuant to Article 7(1) of Regulation (EC) No 1/2003 may include an order to “*do certain acts or provide certain advantages which have been wrongfully withheld as well as prohibiting the continuation of certain action, practices or situations which are contrary to the Treaty*”.¹⁰⁹³ The requirement that a remedy has to be effective¹⁰⁹⁴ empowers the Commission to enjoin a dominant undertaking to refrain from adopting any measures having the same or an equivalent object or effect as the conduct identified as abusive.¹⁰⁹⁵ Any remedy must also apply in relation to the infringement that has been established¹⁰⁹⁶ and be proportionate to the infringement identified.¹⁰⁹⁷

15.2. Application to this case

- (871) It is necessary to order Apple to bring the single and continuous infringement described in Section 9 to an end without undue delay. For this purpose, Apple should remove the Anti-Steering Provisions from the relevant terms and conditions governing the use of Apple’s App Store by music streaming service providers, namely from the Guidelines and from Schedule 2 to the Licence Agreement.
- (872) The removal of the Anti-Steering Provisions from the relevant terms and conditions should enable music streaming service providers to freely communicate with, and inform, iOS users in the EEA within their apps about available subscription options as well as to allow those users to effectively choose among the options available, including by communicating and/or linking to external subscription options within their iOS apps. By removing the Anti-Steering Provisions, Apple should in particular not prohibit anymore any of the following:
- the use by music streaming service providers of hyperlinks, “buy buttons” or external links in their iOS app that point iOS users based in the EEA to other purchasing methods outside the app or to those providers’ websites. Apple should allow music streaming service providers to include, in the accompanying language, information about prices and to redirect users to any landing page chosen by those providers;
 - the use by music streaming service providers of emails to iOS users based in the EEA which are triggered by actions by iOS users within the iOS app, including any calls to action initiated from within the app such as an “e-mail me” button;
 - the use by music streaming service providers of any other method that effectively informs iOS users based in the EEA about the prices charged by

¹⁰⁹³ Joined Cases 6/73 and 7/73 *Istituto Chemioterapico Italiano S.p.A. and Commercial Solvents*, EU:C:1974:18, paragraph 45; see also, to this effect, Joined Cases C-241/91 P and C-242/91 P *RTE and ITP v Commission*, EU:C:1995:98, paragraph 90.

¹⁰⁹⁴ Joined Cases 6/73 and 7/73 *Istituto Chemioterapico Italiano S.p.A. and Commercial Solvents*, EU:C:1974:18, paragraph 46.

¹⁰⁹⁵ Case T-83/91 *Tetra Pak v Commission*, EU:T:1994:246, paragraphs 220-21.

¹⁰⁹⁶ Joined Cases 6/73 and 7/73 *Istituto Chemioterapico Italiano S.p.A. and Commercial Solvents*, EU:C:1974:18, paragraph 45.

¹⁰⁹⁷ Joined Cases C-241/91 P and C-242/91 P *RTE and ITP v Commission*, EU:C:1995:98, paragraph 93; Case C-119/97 P *Ufex and Others v Commission*, EU:C:1999:116, paragraph 94.

those providers, where or how subscriptions can be purchased outside of their iOS app.

- (873) Moreover, in order to ensure the effectiveness of the remedy,¹⁰⁹⁸ it is necessary to order Apple to refrain from adopting any practice or measure having an equivalent object or effect as the Anti-Steering Provisions described in Section 7.¹⁰⁹⁹ Apple should, in particular, refrain from making the acceptance of music streaming apps on the App Store conditional upon the adherence by developers of those apps to any limitations or requirements which would have an equivalent object or effect as the Anti-Steering Provisions and would lead to making the above remedies ineffective.
- (874) Apple shall not deteriorate the quality of any service it provides to music streaming service providers or iOS users based in the EEA who avail themselves of this Decision by informing those iOS users within their apps about available subscription options and allowing them to effectively choose among the options available to them. This includes the obligation for Apple not to discriminate in any way music streaming service providers who inform iOS users within their apps about available subscription options and allow them to effectively choose among the options available compared to those providers who choose not to do so. These examples are not exhaustive and do not prejudice other practices or measures that have an equivalent object or effect as explained in recital (873).

15.2.1. *Assessment of Apple's arguments about the remedies*

- (875) In its Response to the Statement of Objections of 28 February 2023, Apple claimed that the envisaged remedies would be unnecessary and disproportionate. Apple claimed in particular that, in relation to the lack of consumer information, the Statement of Objections of 28 February 2023 contains no separate analysis as to how the absence of “one click” means to exercise informed choices – such as “buy buttons” or “links” – would be sufficient to characterise the Anti-Steering Provisions as unfair. Apple also argued that the Commission has not examined the “*impact of Apple having already relaxed its rules on developers sending email communications to consumers since 2021*”¹¹⁰⁰ nor whether any (possible, future) change to the Anti-Steering Provisions to the effect that music streaming service providers could “*advertise in-app the price of their premium subscriptions outside the app (“digital billboards”) would be sufficient to address any alleged detriment to consumers and developers*”.¹¹⁰¹ In Apple’s view these providers could use, for example, banners and pop-ups “*to inform iOS users about their premium options, the relevant prices, as well as a description of where to go to sign up*”.¹¹⁰² In addition, Apple claimed that “*solutions such as “buy buttons” or “external links” are neither necessary nor proportionate*”,¹¹⁰³ and would also “*make it difficult for consumers to understand that they are leaving the confines of the app itself and thus the protections of Apple’s app review process*”.¹¹⁰⁴ For Apple, such “linking out” has “*significant consequences*

¹⁰⁹⁸ Joined Cases 6/73 and 7/73 *Commercial Solvents*, EU:C:1974:18, paragraph 46.

¹⁰⁹⁹ Case T-83/91 *Tetra Pak v Commission*, EU:T:1994:246 paragraphs 220-21.

¹¹⁰⁰ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 369.

¹¹⁰¹ *Ibid.*

¹¹⁰² Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 370.

¹¹⁰³ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 371.

¹¹⁰⁴ Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 372.

*for both consumers and Apple itself, as consumers having a negative experience resulting from such linking out may blame Apple for allowing such mechanism”.*¹¹⁰⁵

- (876) Apple’s claims do not affect the Commission’s conclusion that remedies consisting in the removal of the Anti-Steering Provisions, as described in Section 7, are both necessary and proportionate to bring the infringement effectively to an end.
- (877) This Decision has shown that (i) the information and options offered within the app are key for iOS users of music streaming apps to make an effective choice and subscribe to premium, since iOS users are most interested in enjoying the benefits of the premium subscription at the time when they are using a music streaming service in their app (see Section 9.3.2.2.1.1) and (ii) subscription channels other than subscriptions through the app¹¹⁰⁶ are inferior from the users’ perspective and do not make up for the degraded experience caused by the Anti-Steering Provisions (see Section 9.3.2.2.1.2). The Decision has also shown that the Anti-Steering Provisions prevent music streaming service providers (i) from informing iOS users in their iOS app about the possibility to purchase music streaming subscriptions outside of that app, generally at lower prices than through that app, and to use these subscriptions in that app (as explicitly allowed by Apple under the reader rule and the multiplatform rule), and (ii) from enabling users to effectively exercise the choices available to them, for instance by making available web-based checkouts in the iOS app of the music streaming service providers (e.g., through the use of “buy buttons” within the app) (see recital (577)). Allowing hyperlinks, “buy buttons” or external links in the app that point iOS users based in the EEA to other purchasing methods outside the app is therefore necessary for enabling users to effectively exercise the choices available to them and thus bringing the abuse effectively to an end.
- (878) This is further evidenced by the May 2018 experiment (see recital (747)), which demonstrates that communicating and/or linking to external subscription options within the app is the most effective method to allow users to convert their subscriptions to premium. Furthermore, the December 2018 experiment shows that even nuanced design features of the checkout process have a significant effect on the ability of users to subscribe to premium music streaming services. Table 15 recaps the experiment results already presented in Section 9.3.2.2.2.1. In particular, compared to the experience where users can in a smooth manner subscribe through a web-based checkout to premium music streaming (“Control group”), the conversion rate is [...] % lower when users are first taken out of the app to an external webpage to complete the checkout process (“Web page group”). If instead of the “Get premium” button users see only a “Learn more button” and are not provided with a direct link to subscription options (“Walled off group”), the conversion rate is nearly [...] % lower than under the smooth subscription through the app experience (“Control group”). This shows that allowing hyperlinks, “buy buttons” or external links in the app that link iOS users based in the EEA to other purchasing methods outside the app is necessary to allow users to exercise an effective choice.

¹¹⁰⁵ *Ibid.*

¹¹⁰⁶ Subscription through the app includes marketing and linking external subscription options within the iOS app, such as buy buttons.

Table 15 – Summary of the results of the 2018 December Spotify experiment¹¹⁰⁷

Experiment (December 2018) scenario	Scenario features	D77 conversion rate (%)	% reduction of conversion rate compared to control group¹¹⁰⁸
“Control group”:	Users are able to convert to Premium using the app through a web-based checkout and are not affected by the limitations that Apple imposes on developers.	[...]	[...]
“Web page group”:	No in-app conversion. Taking users onto a webpage opening in the browser to subscribe to Premium.	[...]	[...] %
“Walled off group”:	Instead of “Get Premium” button, just a “Learn More” button. When clicked, redirected to a walled off page, without further information on where and how to subscribe or links to alternative subscription channels.	[...]	[...] %
“Generic walled off group”:	Only very generic information about Premium conversions, even without specifying the price of Premium subscriptions. Not even a “Learn More” button.	[...]	[...] %

- (879) The Decision has also evidenced that – while Apple has relaxed the Anti-Steering Provisions with respect to outside communication through the change of the Guidelines on 7 June 2021 – it continues to object to outside e-mails to the extent that they have been triggered by some form of “call to action” within the iOS app or followed account creation within a time-lapse of 10 days (see recital (210)).
- (880) Digital billboards would not be sufficient to address the detriment to iOS users of music streaming services. According to Apple, music streaming service providers “could use similar designs to inform iOS users about their premium options, the relevant prices, as well as a description of where to go to sign up. Such solutions

¹¹⁰⁷ See Table 14 and footnote 1006.

¹¹⁰⁸ Calculated for the “Web page group” as [...]%. This can be read as the “Web page group” experiencing a [...] % lower conversion rate than the “Control group”, since the conversion rate difference of [...] % is [...] % if the conversion rate in the “Control group” is [...] (%). The calculations for all other experiment scenarios are analogous.

would fully remedy the concerns set out in the [Statement of Objections of 28 February 2023], as iOS users would be informed and could choose accordingly.”¹¹⁰⁹ As shown just in recital (877), these billboards would still not make up for the lack of possibility for iOS users to engage within the app and thus subscribe through the app. These billboards would therefore continue to constitute a degraded alternative to subscriptions through the app.

- (881) Finally, Apple’s argument that the remedies would have significant negative consequences for both consumers and Apple itself must also be rejected. As evidenced in this Decision (see e.g., recital (577)), Apple’s conduct, inasmuch as it unnecessarily prevents iOS users based in the EEA from being duly informed and effectively exercising the choices available to them when using their music streaming app, is abusive under Article 102(a) of the Treaty.
- (882) Therefore, Apple’s arguments about the lack of necessity and proportionality of the remedies are to be rejected.

15.2.2. *Implementation of the remedies*

- (883) Apple should comply without undue delay with this Decision.
- (884) The Commission is entitled to monitor the implementation by Apple of the remedies ordered by this Decision. For those purposes, the Commission is entitled to use the powers of investigation provided for in Regulation (EC) No 1/2003.¹¹¹⁰

16. PERIODIC PENALTY PAYMENTS

16.1. Principles

- (885) Pursuant to Article 24(1)(a) of Regulation (EC) No 1/2003 and Article 5 of Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the EEA Agreement,¹¹¹¹ the Commission may, by decision, impose on undertakings or associations of undertakings periodic penalty payments not exceeding 5 % of the average daily turnover in the preceding business year per day and calculated from the day appointed by the decision, in order to compel them to put an end to the infringement, in accordance with a decision taken pursuant to Article 7 of Regulation (EC) No 1/2003.

16.2. Application to this case

- (886) The Commission concludes that it is necessary to impose periodic penalty payments pursuant to Article 24(1)(a) of Regulation (EC) No 1/2003 and Article 5 of Council Regulation (EC) No 2894/94 if Apple were to fail to implement measures that bring the infringement effectively to an end within 30 days from the date of notification of this Decision.
- (887) In setting the level of the periodic penalty payments, the Commission considers that they must be sufficient to ensure compliance by Apple with this Decision. The Commission has also taken Apple’s significant financial resources into account.
- (888) Consequently, if Apple were to fail to comply with the obligation to remove the Anti-Steering Provisions as set out in this Decision, Apple would incur a daily

¹¹⁰⁹ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 370.

¹¹¹⁰ Case T-201/04 *Microsoft v Commission*, EU:T:2007:289, paragraph 1265.

¹¹¹¹ OJ L 305, 30.11.1994, p. 6.

periodic penalty payment of 5 % of Apple's average daily turnover in the business year preceding such failure to comply.

17. FINES

17.1. Principles

- (889) Pursuant to Article 23(2) of Regulation (EC) No 1/2003 and Article 5 of Council Regulation (EC) No 2894/94, the Commission may by decision impose fines on undertakings where, either intentionally or negligently, they infringe Article 102 of the Treaty and Article 54 of the EEA Agreement.
- (890) An infringement of Article 102 of the Treaty or Article 54 of the EEA Agreement is committed intentionally or negligently where the undertaking concerned cannot be unaware of the abusive nature of its conduct, whether or not it was aware that it was infringing the competition rules of the Treaty.¹¹¹² Regarding an undertaking in a dominant position, the undertaking is aware of the abusive nature of its conduct where it is aware of the essential facts justifying both the finding of a dominant position on the relevant market and the finding by the Commission of an abuse of that dominant position.¹¹¹³
- (891) Pursuant to Article 23(3) of Regulation (EC) No 1/2003, in fixing the amount of the fines, the Commission must have regard to all relevant circumstances and particularly to the gravity and the duration of the infringement. In doing so, the Commission sets the fines at a level sufficient to ensure deterrence. The Commission ensures that any aggravating or mitigating circumstances are reflected in the fines imposed.
- (892) The Commission enjoys a broad discretion as regards the setting of fines in relation to infringement of the EU competition rules.¹¹¹⁴
- (893) In setting the fines to be imposed, the Commission will, as a matter of principle, refer to the general methodology laid down in its Guidelines on Fines.
- (894) Point 37 of the Guidelines on Fines provides that the particularities of a given case or the need to achieve deterrence in a particular case may justify departing from such general methodology.

¹¹¹² Case T-83/91 *Tetra Pak v Commission*, EU:T:1994:246, paragraph 239, upheld on appeal in Case C333/94 P, EU:C:1996:246, paragraph 48; Case T-229/94 *Deutsche Bahn v Commission*, EU:T:1997:155, paragraph 130; Case T-271/03 *Deutsche Telekom v Commission*, EU:T:2008:101, paragraph 295 upheld on appeal in Case C-280/08 P, EU:C:2010:603, paragraph 124; Case T-336/07 *Telefónica SA v Commission*, EU:T:2012:172, paragraph 319, upheld on appeal in Case C-295/12 P, EU:C:2014:2062, paragraph 156; Case C-681/11 *Schenker & Co. and Others*, EU:C:2013:404, paragraph 37; Case T-286/09 *Intel Corp. v Commission*, EU:T:2014:547, paragraph 1601; Case T472/13 *Lundbeck v Commission*, EU:T:2016:449, paragraph 762.

¹¹¹³ Case 322/81 *NV Nederlandsche Banden Industrie Michelin v Commission*, EU:C:1983:313, paragraph 107; Case T-336/07 *Telefónica SA v Commission*, EU:T:2012:172, paragraph 320; Case T-286/09 *Intel Corp. v Commission*, EU:T:2014:547, paragraph 1601.

¹¹¹⁴ Case C-452/11 P *Heineken Nederland and Heineken v Commission*, EU:C:2012:829, paragraph 92; Case C-39/18 P *Icap*, EU:C:2019:584, paragraph 25.

17.1.1. *General methodology of the Guidelines on Fines*

- (895) Under the general methodology laid down in the Guidelines on Fines, the Commission sets the fine to be imposed in a given case on the basis of four distinct steps.
- (896) First, the Commission defines the basic amount of the fine.¹¹¹⁵ That amount is to be set by reference to the value of sales, namely the value of the undertaking's sales of goods or services to which the infringement directly or indirectly relates in the relevant geographic area in the EEA.¹¹¹⁶ The value of sales will be assessed before VAT and other taxes directly related to the sales.¹¹¹⁷
- (897) The Commission will normally take into account the sales made by the undertaking during the last full business year of the occurrence of the infringement.¹¹¹⁸
- (898) The amount of the value of sales taken into account will correspond to a percentage which is set at a level of up to 30 % of the value of sales.¹¹¹⁹ The choice of a given percentage will depend on the degree of gravity of the infringement. In assessing the gravity of the infringement, the Commission has regard to a number of factors, such as the nature of the infringement, the market shares of the undertaking concerned, the geographic scope of the infringement and whether or not the infringement has been implemented.¹¹²⁰
- (899) The proportion of the value of sales resulting from that percentage will then be multiplied by the duration of the infringement.¹¹²¹
- (900) The Commission may also include in the basic amount an additional amount of up to 25 % of the value of sales, irrespective of the duration.¹¹²²
- (901) Second, where applicable, the Commission adjusts the basic amount upwards or downwards to take into account aggravating or mitigating circumstances.¹¹²³ Those circumstances are listed non-exhaustively in points 28 and 29 of the Guidelines on Fines.
- (902) Third, the Commission will pay particular attention to the need to ensure that fines have a sufficiently deterrent effect. To that end, the Commission may increase the fine to be imposed on an undertaking which has a particularly large turnover beyond the sales of goods or services to which the infringement relates.¹¹²⁴
- (903) Fourth, pursuant to Article 23(2) of Regulation (EC) No 1/2003, the fine for an infringement must not exceed 10 % of the undertaking's total turnover in the preceding business year.

¹¹¹⁵ Point 10 of the Guidelines on Fines.

¹¹¹⁶ Point 13 of the Guidelines on Fines.

¹¹¹⁷ Point 17 of the Guidelines on Fines.

¹¹¹⁸ Point 13 of the Guidelines on Fines.

¹¹¹⁹ Point 21 of the Guidelines on Fines.

¹¹²⁰ Point 22 of the Guidelines on Fines.

¹¹²¹ Point 19 of the Guidelines on Fines.

¹¹²² Point 25 of the Guidelines on Fines.

¹¹²³ Point 27 of the Guidelines on Fines.

¹¹²⁴ Point 30 of the Guidelines on Fines.

17.1.2. *Point 37 of the Guidelines on Fines*

- (904) According to point 37 of the Guidelines on Fines, the Commission may depart from the general methodology laid down in the Guidelines on Fines, if the particularities of a given case or the need to achieve deterrence in a particular case justify such departure.
- (905) This is, in particular, the case where, following the general methodology of the Guidelines on Fines, sufficient deterrence would not be achieved, as the resulting fine would be particularly low, taking into account parameters such as the high total turnover of the undertakings concerned.
- (906) The Guidelines on Fines provide only limited guidance on the application of point 37. As a result, the fine to be imposed under point 37 of the Guidelines on Fines must be determined in accordance with the requirements of Regulation (EC) No 1/2003 and the case law, which underlines that point 37 of the Guidelines on Fines is intended to give the Commission some flexibility to ensure that the overall amount of the fine is sufficiently high to be deterrent in the light of the particularities of the case.¹¹²⁵
- (907) Article 23(3) of Regulation (EC) No 1/2003 provides that the Commission must take into account the gravity and the duration of the infringement in setting the amount of the fine. The gravity of the infringement has to be determined on the basis of numerous factors, such as, in particular, the circumstances of the case, its context, the size and economic strength of the undertaking¹¹²⁶ and the dissuasive effects of the fine; there is no binding or exhaustive list of criteria which must be applied.¹¹²⁷
- (908) According to the case law of the Union courts, when departing from the general methodology set out in the Guidelines on Fines in accordance with point 37, the Commission may impose a lump sum fine on the undertaking concerned.¹¹²⁸ Point 37 of the Guidelines of Fines may be applied either on a stand-alone basis¹¹²⁹ or in combination with the general methodology set out in the Guidelines on Fines.¹¹³⁰

¹¹²⁵ Case T-240/17 *Campine v Commission*, EU:T:2019:778, paragraph 346.

¹¹²⁶ Case 322/81 *Michelin v Commission*, EU:C:1983:313, paragraph 111; Joined Cases T-305/94, T-306/94, T-307/94, T-313/94, T-314/94, T-315/94, T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94 *LVM and others v Commission*, EU:T:1999:80 paragraph 1190, confirmed in Case C-238/99 P *Limburgse Vinyl Maatschappij and Others v Commission*, EU:C:2002:582, paragraph 605.

¹¹²⁷ e.g., Case T-679/14 *Teva*, EU:T:2018:919, paragraph 409; Case C-137/95 P *SPO and others v Commission*, EU:C:1996:130, paragraph 54; Case C-219/95 P *Ferriere Nord v Commission*, EU:C:1997:375, paragraph 33; Case 100/80 *Musique Diffusion française v Commission*, EU:C:1983:158 paragraph 120; Case 322/81 *Michelin v Commission*, EU:C:1983:313, paragraph 111.

¹¹²⁸ Case C-39/18 P *Icap*, EU:C:2019:584, paragraph 27; Case C-194/14 P *AC-Treuhand*, EU:C:2015:717, paragraph 67; Case T-679/14 *Teva*, EU:T:2018:919, paragraph 401.

¹¹²⁹ Case T-180/15 *Icap*, EU:T:2017:795, paragraph 286 et seq.; Case C-39/18 P *Icap*, EU:C:2019:584, paragraph 27; Case T-27/10 *AC-Treuhand*, EU:T:2014:59, paragraph 305; Case C-194/14 P *AC-Treuhand*, EU:C:2015:717, paragraph 67.

¹¹³⁰ Case T-240/17 *Campine*, EU:T:2019:778, paragraphs 333, 336 and 349.

17.2. Imposition of a fine

17.2.1. Intent and/or negligence

- (909) The Commission concludes that, contrary to what Apple claims,¹¹³¹ Apple committed the infringement described in this Decision intentionally or at least negligently.
- (910) First, as regards Apple’s claims regarding market definition, Apple ought to have been familiar with the principles governing market definition in the context of competition cases and, where necessary, ought to have solicited appropriate legal advice regarding the definition of the market for the provision to developers of platforms for the distribution of music streaming apps to iOS users in the EEA.¹¹³² In this regard, Apple’s claim that the Commission should have rather defined a “*market for the sale and purchase of [Music Streaming Service] subscriptions on iOS*” or analysed the alleged competitive constraints it faces on that market or at the device level¹¹³³ is unfounded (see Section 8.1.4.1).
- (911) Second, Apple could not have been unaware that the facts described in Section 6 and 7 could lead to the finding of an abuse of its dominant position on the market for the provision to developers of platforms for the distribution of music streaming apps to iOS users in the EEA.
- (912) Indeed, the circumstances under which conduct by a dominant undertaking can be considered to infringe Article 102(a) of the Treaty can, contrary to Apple’s claims, clearly be understood from the case law (see Section 9.1.1).
- (913) Moreover, even if Apple’s claim that certain features of its business model have not been challenged by any jurisdiction¹¹³⁴ or have not been examined in the past were correct, this would not prevent the finding of intent and/or negligence on the part of Apple in this case.
- (914) Third, Apple’s reference to its acquisition of Beats does not alter the conclusions set out above. Apple mentions that, in examining that acquisition, “*the Commission rejected the theory that Apple could use the App Store to foreclose competition in the downstream [Music Streaming Service] market.*”¹¹³⁵ It suffices to state that the present case concerns a very different theory of harm (based on an exploitative, not exclusionary, abuse). The remainder of Apple’s arguments (“*Spotify has continued to grow*” and “*new entrants have emerged*”¹¹³⁶) can be dismissed for the same reason, i.e., that this Decision is not concerned with any exclusionary effect on competitors in the music streaming service market.

¹¹³¹ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 384.

¹¹³² Case T-336/07 *Telefónica SA v Commission*, EU:T:2012:172, paragraph 323.

¹¹³³ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 22-24.

¹¹³⁴ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 375: “*To date no jurisdiction has required Apple to facilitate alternative payment mechanisms for the App Store without “any” payment to Apple*”, and footnote 507: “*No regulator has challenged Apple’s right to a commission per se*”.

¹¹³⁵ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 385.

¹¹³⁶ Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 385.

17.2.2. *Joint and several liability*

- (915) The Commission has concluded that Apple Inc. and Apple Distribution International Limited are jointly and severally liable for the infringement as of 30 June 2015 (see Section 13).
- (916) The Commission therefore concludes that Apple Inc. and Apple Distribution International Limited should be held jointly and severally liable to pay the fine.

17.3. **Amount of the fine**

- (917) The Commission sets the fine in the present case on the basis of a combination of (i) the general methodology of the Guidelines on Fines (see Section 17.1.1) as well as (ii) point 37 of the Guidelines on Fines which allows for the imposition of an additional lump sum (see Section 17.1.2).
- (918) When setting the fine, the Commission ensured in accordance with Article 23(3) of Regulation (EC) No 1/2003 that the amount of the overall fine imposed is proportionate and reflects the gravity and duration of the infringement.

17.3.1. *Application of the general methodology of the Guidelines on Fines*

17.3.1.1. Determination of the basic amount of the fine

- (919) The basic amount of the fine is to be determined on the basis of a proportion of the value of sales, depending on the degree of gravity of the infringement, multiplied by the number of years of infringement.¹¹³⁷

17.3.1.1.1. Value of sales

- (920) The Commission determines the value of sales based on the turnover 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 FY 2023, which lasted from 25 September 2022 to 30 September 2023¹¹³⁸ and which is Apple's last full business year of its participation in the infringement with regard to the EEA.¹¹³⁹
- (921) In Apple's FY 2023, the commission fees generated by Apple from the main music streaming service providers in the EEA amounted to [...].¹¹⁴⁰
- (922) In addition, the Commission concludes that the value of sales should also include the revenues generated by Apple from the App Store commission fees paid by the main music streaming service providers to Apple in the UK in Apple's FY 2020,¹¹⁴¹ as that was the last full business year of Apple's participation in the infringement concerning the UK. In Apple's FY 2020, which lasted from 29 September 2019 to

¹¹³⁷ Point 19 of the Guidelines on Fines.

¹¹³⁸ Apple's Response to the Commission's request for information of 1 December 2023, ID 3312, paragraph 6.

¹¹³⁹ Paragraph 13 of the Guidelines on Fines. For the purposes of this Section, the last full business year of the infringement with regard to the UK is calculated taking into account 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.

¹¹⁴⁰ Annex Q6 to Apple's Response to the Commission's request for information of 1 December 2023, ID 3310.

¹¹⁴¹ The abuse involves the entire territory of the EEA which included the UK for the period until and including 31 December 2020.

26 September 2020, the commission fees generated by Apple from music streaming service providers in the UK amounted to [...].¹¹⁴²

- (923) The App Store commission fees generated by Apple from music streaming service providers are directly or indirectly related to the infringement consisting in the imposition of the Anti-Steering Provisions on providers of music streaming services in the EEA to the detriment of iOS users (see Section 9). While in Apple’s view no fine should be imposed at all (see Section 17.3.2.3), Apple agrees that, if a fine were to be imposed, the fine should be set on the basis of the App Store commission fees which Apple generates from music streaming service providers.¹¹⁴³
- (924) In this regard, Apple’s clarification that these payments should be correctly qualified as retained billings from the commission share of billings rather than “revenues” because “*billings do not account for accounting-related adjustments and have not been verified by an authorised auditing firm or auditor*”¹¹⁴⁴ does not affect the Commission’s conclusion that the infringement directly relates to those retained billings from Apple’s commission share of billings.

17.3.1.1.2. Gravity

- (925) The proportion of sales to be taken into account depends on the gravity of the infringement, which in turn depends on a number of factors such as the nature of the infringement, the geographic scope of the infringement and whether or not the infringement has been implemented.¹¹⁴⁵
- (926) The Commission concludes that the proportion of the value of sales to be used to establish the basic amount of the fine in this case should be 11 %. In reaching this conclusion, the Commission takes into account the following factors under point 19 et seq. of the Guidelines on Fines.
- (927) First, the Commission takes into account that the geographic scope of the relevant market concerned by the infringement, namely the market for the provision to developers of platforms for the distribution of music streaming apps to iOS users, is EEA-wide, as described in Section 8.1.4.2. The infringement therefore covers the entire territory of the EEA, as well as the territory of the UK until 31 December 2020.
- (928) Second, 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%. In particular, Apple unilaterally defines the terms and conditions of the Anti-Steering Provisions for the App Store and imposes them on app developers. Therefore, music streaming service providers have no other choice than accepting and abiding by Apple’s rules to be able to offer their apps in the App Store to iOS users.

¹¹⁴² Annex Q7 to Apple’s Response to the Commission’s request for information of 1 December 2023, ID 3309.

¹¹⁴³ “*Apple’s EEA commission fee revenues from [Music Streaming Service] providers must thus constitute the ceiling for the calculation of the value of sales*”, see Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraphs 385-387. See also Apple’s Response to the Letter of Facts, ID 3330, paragraph 24.

¹¹⁴⁴ See, e.g., Apple’s response to question 12 of the Commission’s request for information of 3 August 2023, ID 2987.

¹¹⁴⁵ Points 20 et seq. of the Guidelines on Fines.

- (929) Apple states that the Commission’s considerations as to the “gravity” of the alleged infringement were focused on alleged harm to developers and that it is unclear how the Commission proposes to “adapt” that finding given its new focus on alleged consumer harm.¹¹⁴⁶ In addition, Apple submits that the Commission should also take into account the minimal impact that IAP represents as a marginal customer acquisition channel.¹¹⁴⁷ In this regard the Commission notes the following.
- (930) In the first place, the preliminary findings set out in the Statement of Objections of 28 February 2023 in respect of the gravity of Apple’s infringement related, among other factors, to the harm caused by the infringement to both developers and consumers. Since the harm caused to developers no longer forms part of the assessment in this Decision, the Commission adapted its objections in a clear and unambiguous manner and assesses the gravity of the infringement, as set out in the present section, without taking into account the harm caused by the infringement to developers.
- (931) In the second place, the Commission notes that the importance of IAP as an acquisition channel is not relevant for the purpose of determining the gravity of the present infringement as the present infringement relates to Apple’s Anti-Steering Provisions which apply to all apps on iOS, not only to apps that have enabled IAP, and Apple holds a monopoly on iOS, as set out in recital (928). In addition, the subscribers of the biggest music streaming service provider in the EEA, namely Spotify, currently cannot subscribe through Apple’s IAP and have not been able to do so since Spotify disabled IAP in May 2016.
- (932) Third, the number of premium (i.e., paying) iOS subscribers of the main music streaming service providers that have been charged high monthly subscription prices is not insignificant. As indicated in recital (632)), as of July 2023 more than 1.4 million iOS subscribers in the EEA of the main music streaming services other than Apple Music (i.e., Amazon, Napster, SoundCloud, YouTube Music, Tidal, Deezer, Qobuz and Spotify legacy subscribers) paid the typical difference (for an individual plan) of EUR 3 (or of EUR 2 at current prices) in monthly subscription fees throughout the entire duration of their subscription (see recitals (418) and (649)), which is recurrent and may add up to a significant amount over a longer subscription period. Over the course of the first year of subscription, these iOS users would typically pay an additional amount of EUR 36 (assuming a EUR 3 price increase), and proportionately more over a longer subscription.¹¹⁴⁸
- (933) Fourth, Apple’s Anti-Steering Provisions have caused other harm for consumers in terms of subscriptions terminated due to high prices, degraded customer experience (see recitals (706)-(708), difficulties in switching (see recital (732)) and frustration for not being able to find the music streaming service provider of first choice (see Section 9.3.2.2). As set out in recitals (704) and (628), it is likely, by way of approximation, that the Anti-Steering Provisions have caused direct monetary or non-monetary harm to around 21 million iOS users which amounts to around 5 % of the present population of the European Union.

¹¹⁴⁶ See Apple’s Response to the Letter of Facts, ID 3330, paragraphs 33, 314 and 314 as well as Apple’s Response to the Statement of Objections of 28 February 2023, ID2800, paragraph 391.

¹¹⁴⁷ See Apple’s Response to the Letter of Facts, ID 3330, paragraph 314.

¹¹⁴⁸ E.g., the additional amount paid over a typical two-year subscription would amount to $3 \times 24 = \text{EUR } 72$.

- (934) Such a high number of *directly* harmed consumers is unprecedented in the history of the enforcement of Article 102 of the Treaty.
- (935) The Commission's conclusion that the proportion of the value of sales to be used to establish the basic amount of the fine should be 11 % is not affected by Apple's claims that "*the notion of "affected" developers does not fit with the RSO's abandonment of the exclusionary abuse theory*" or that Apple "*earns very little from the sale of music streaming subscription sold through IAP in the EEA*".¹¹⁴⁹
- (936) The fact that Apple allegedly earns "*very little*" from music streaming subscriptions sold through IAP in the EEA (i.e., over [...] in App Store commission fees paid by the main music streaming service providers in Apple's FY 2023, see recital (7)) does not affect the Commission's conclusion regarding the proportion of the value of sales to be used to establish the basic amount of the fine as this percentage is to reflect the degree of gravity of the infringement and not the profits made by the undertaking infringing Article 102 of the Treaty.
- (937) In any event, a gravity percentage of 11 % is considerably below the upper limit of the scale referred to in paragraph 21 of the Guidelines on Fines which can go up to 30 %.

17.3.1.1.3. Duration

- (938) As set out in Section 12, the infringement started on 30 June 2015 and is ongoing.
- (939) For the part of the infringement taking place in the EEA, excluding the UK, the Commission therefore uses the date of the adoption of this Decision as the end date of the infringement for the purpose of calculating the fine. The Commission concludes that the duration with regard to this part of the single and continuous infringement is 3 171 days (or approx. 8.68 years).
- (940) For the part of the infringement taking place in the UK, the Commission uses the date of the end of the transition period following the UK's withdrawal from the European Union and thereby from the EEA, i.e., 31 December 2020, as the end date. The Commission concludes that the duration with regard to this part of the single and continuous infringement is 2 012 days (or approx. 5.50 years).

17.3.1.1.4. Additional amount

- (941) The Commission concludes that the basic amount should not include an additional sum of between 15 % and 25 % of the value of sales, irrespective of the duration of the infringement, in order to deter undertakings from even entering into horizontal price-fixing, market-sharing and output-limitation agreements.¹¹⁵⁰
- (942) In the present case, a sufficient level of deterrence is achieved by the additional lump sum imposed on Apple as described in Section 17.3.2.

17.3.1.2. Conclusion on the basic amount

- (943) The basic amount of the fine to be imposed on Apple for the single and continuous infringement amounts to EUR 34 154 000.

¹¹⁴⁹ See Apple's Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 389-390.

¹¹⁵⁰ Point 25 of the Guidelines on Fines.

17.3.1.3. Adjustments to the basic amount

17.3.1.3.1. Aggravating factors

17.3.1.3.1.1. Principles

- (944) The basic amount may be increased where the Commission finds that there are aggravating circumstances such as a refusal to cooperate with or an obstruction of the Commission in carrying out its investigation.¹¹⁵¹
- (945) Pursuant to Article 23(1)(a) of Regulation (EC) No 1/2003 the Commission may impose fines on undertakings that supply incorrect or misleading information in response to a request made pursuant to Article 18(2) of that regulation. The fact that Regulation (EC) No 1/2003 allows the Commission to impose a fine of up to 1 % of an undertaking's turnover for obstruction or for the supply of incorrect or misleading information in response to a request for information, as an autonomous infringement, does not mean that the same conduct cannot be taken into account as an aggravating circumstance.¹¹⁵²

17.3.1.3.1.2. Application to this case

- (946) In this case, the Commission concludes that there are aggravating circumstances that should result in an increase in the basic amount of the fine, for the following reasons.
- (947) In the course of the investigation, Apple submitted incorrect information in response to a request for information dated 20 January 2022.¹¹⁵³ The question concerned [...]”¹¹⁵⁴
- (948) In addition, the Commission requested Apple [...].¹¹⁵⁵ In response to these two further questions, [...].¹¹⁵⁶
- (949) Moreover, the Commission requested Apple to “[confidential quote]”.¹¹⁵⁷ In its response, Apple explained [...].¹¹⁵⁸
- (950) Finally, the Commission requested Apple to provide.¹¹⁵⁹ In its response, Apple referred the Commission to the previous response i.e., [...].¹¹⁶⁰
- (951) Following Apple's response, the Commission carried out a further review of [...] and found that [...]”¹¹⁶¹ [...]”¹¹⁶² [...]”¹¹⁶³ [...]”¹¹⁶⁴ ¹¹⁶⁵

¹¹⁵¹ Point 28 of the Guidelines on Fines.

¹¹⁵² Case T-384/06 *IBP Ltd and International Building Products v Commission*, EU:T:2011:113, paragraph 109.

¹¹⁵³ Question 18(a) of the Commission's request for information (2022/004722) to Apple, ID 2212.

¹¹⁵⁴ Apple's response to question 18(a) of the Commission's request for information (2022/004722), ID 2232.

¹¹⁵⁵ Namely, questions 18(b) and 18(c) of the Commission's request for information (2022/004722) to Apple, ID 2212.

¹¹⁵⁶ Apple's responses to questions 18(b) and 18(c) of the Commission's request for information (2022/004722), ID 2232.

¹¹⁵⁷ Apple's response to Question 18(d) of the Commission's request for information (2022/004722), ID 2212.

¹¹⁵⁸ Apple's response to question 18(d) of the Commission's request for information (2022/004722), ID 2232.

¹¹⁵⁹ Apple's response to Question 18(e) of the Commission's request for information (2022/004722), ID 2212.

¹¹⁶⁰ Apple's response to question 18(e), referring to Apple's response to question 18(d) of the Commission's request for information (2022/004722), ID 2232.

17.3.1.3.1.3. Assessment of Apple’s arguments

- (952) In its Response to the Statement of Objections of 28 February 2023, Apple claims that its response was not misleading, nor “obstructive” as interpreted under the case law, and that the present situation is different from previous cases where the Commission found aggravating circumstances to be present.
- (953) Apple claims that, in this case, the Commission was already in possession of certain of the documents requested “for several years”; that it had provided them “willingly and in full cooperation with the Commission”¹¹⁶⁶ and that its responses in relation to [...] were not incorrect as “[confidential quote]”.¹¹⁶⁷
- (954) In addition, according to Apple, the issue concerned by the request of information, i.e., [...], “related to a peripheral issue in the Commission’s investigation”,¹¹⁶⁸ “in no way relates to the scope of the infringement” and, in Apple’s view, the Commission should have rather asked “[Music Streaming Service] providers for a breakdown of their actual costs and their own [...]”¹¹⁶⁹ instead of relying on [...].
- (955) Apple’s claims¹¹⁷⁰ do not affect the Commission’s conclusion that, in this case, aggravating circumstances are present.
- (956) First, Apple has not justified the submission of incorrect information in response to a request for information of the Commission (see recital (947)). The information requested was relevant for the Commission as it allowed it to calculate Apple’s [...] (see Section 9.3.2.1.4).
- (957) In the first place, Apple’s statement mentioned in recital (948) according to which it “[confidential quote]” amounts to incorrect information in response to a Commission’s request for information because other [...] clearly contradicts the alleged *ad hoc* nature of [...].
- (958) In the second place, the use of [...] ¹¹⁷¹ [...] ¹¹⁷² [...]. Apple therefore also submitted incorrect information in response to a Commission’s request for information pursuant to Article 18(2) of Regulation (EC) No 1/2003 with regard to [...].
- (959) Second, as outlined in Section 9.3.2.1.4, the application of [...] is relevant for the investigation in so far as it confirms that music streaming service providers are compelled to pass on the commission fee, to the detriment of iOS users.
- (960) Finally, the submission to the Commission of incorrect information in response to a request for information pursuant to Regulation (EC) No 1/2003 is one of the numerous factors that the Commission can take into account as aggravating circumstance when setting the fine, in respect of which the Commission has a wide

1161 [...]

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1163 [...]

1164 [...]

1165 [...]

1166 Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 403.

1167 Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 399.

1168 Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 398.

1169 Apple’s Response to the Statement of Objections of 28 February 2023, ID 2800, paragraph 403.

1170 See Apple’s Response to the Letter of Facts, ID 3330, paragraph 331 and footnote 422.

1171 See footnotes 1164 and 1165.

1172 See footnotes 1164 and 1165.

discretion and which is consistent with the Commission's task of ensuring compliance with the competition rules.¹¹⁷³

(961) In light of the above, the Commission concludes that the aforementioned circumstances leading to the provision by Apple of incorrect information in response to a request for information of the Commission as well as in response to follow up questions by the Commission should be considered as aggravating circumstances.

(962) These aggravating circumstances justify an increase in the basic amount of the fine of 20 %.

17.3.1.4. Mitigating factors

(963) The Commission concludes that there are no mitigating circumstances in this case.

17.3.1.5. Specific increase for deterrence

(964) In determining the amount of the fine, the Commission pays particular attention to the need to ensure that fines are sufficiently deterrent. To that end, it may increase the fine to be imposed on undertakings which have a particularly large turnover beyond the sales of goods or services to which the infringement relates.¹¹⁷⁴

(965) In the present case, in light of the reasons set out in Section 17.3.2, the Commission decided to add to the adjusted basic amount an additional lump sum. In accordance with point 37 of the Guidelines on Fines, this lump sum will ensure that the overall fine imposed on Apple is sufficiently deterrent.

(966) The Commission therefore concludes that there is no need for a specific increase for deterrence under point 30 of the Guidelines on Fines in addition to the imposition of such lump sum.

17.3.1.6. Conclusion on the application of the general methodology

(967) In light of the above, the Commission concludes that the fine to be imposed on Apple on the basis of the application of the general methodology should amount to EUR 40 984 000.

17.3.2. *Application of Point 37 of the Guidelines on Fines*

17.3.2.1. The particularities of the present case and the need to achieve deterrence justify a departure from the general methodology set out in the Guidelines on Fines.

(968) The Commission considers that both the particularities of the present case as well as the need to achieve deterrence justify a departure from the general methodology for determining the amount of the fine,¹¹⁷⁵ in accordance with point 37 of the Guidelines on Fines.¹¹⁷⁶

(969) First, with regard to the particularities of the present case as described in Sections 9.3.2.1 and 9.3.2.2, a significant part of the harm caused by the infringement consists of non-monetary harm, in particular in the form of degraded user experiences and frustration of iOS users.

¹¹⁷³ Case T-384/06 *IBP Ltd and International Building Products v Commission*, EU:T:2011:113, paragraphs 112 et seq.

¹¹⁷⁴ Point 30 of the Guidelines on Fines.

¹¹⁷⁵ See Sections 17.1.1 and 17.3.1.

¹¹⁷⁶ See Section 17.1.2.

- (970) As set out in Table 12, for example, more than [...] Spotify users had to go through an inferior user experience outside the Spotify app to subscribe to Spotify's premium music service. Furthermore, almost [...] Spotify users were unable to find out where and how to purchase their preferred music streaming subscription outside the iOS app and, as a result, ended up either not subscribing to their preferred music streaming service or not subscribing at all.
- (971) Apple's relevant value of sales, namely the turnover 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 FY 2023 and in the UK in Apple's FY 2020 (see Section 17.3.1) only relates to the monetary harm caused by the infringement, as those fees were passed-on to consumers through higher prices (see Section 9.3.2.1). Moreover, the subscribers of the largest music streaming service provider in the EEA, namely Spotify, currently do not subscribe through Apple's IAP and have not been able to do so since Spotify disabled IAP in May 2016. The non-monetary harm accrued by these users is not properly reflected in the general methodology under the Guidelines on Fines.
- (972) Therefore, the general methodology under the Guidelines on Fines does not properly take into account the non-monetary harm caused by the infringement. Accordingly, calculating the fine on the basis of Apple's value of sales in terms of App Store commission fees does not sufficiently reflect all the harm caused by the infringement.
- (973) Second, with regard to the need to achieve deterrence, the fine imposed by the Commission must be sufficient (i) to deter Apple from repeating the present or a similar infringement and (ii) to deter other undertakings of a similar size and with similar resources from committing the same or a similar infringement.¹¹⁷⁷
- (974) In this regard, it should be considered that Apple has a particularly large economic size and strength. Apple's total worldwide turnover in FY 2023 amounted to EUR [...].¹¹⁷⁸ Apple had an estimated market capitalisation of USD 3 000 000 000 000 in June 2023,¹¹⁷⁹ making it the largest company in the world in terms of market capitalisation in 2023.¹¹⁸⁰
- (975) As set out in Section 17.3.1, the fine to be imposed under the standard methodology amounts to EUR 40 984 000. This represents approximately a mere 0.01 % of Apple's worldwide turnover in its FY 2023. Consequently, this fine would not have a sufficient deterrent effect.
- (976) In light of the above, the Commission concludes that the particularities of the present case as well as the the need to achieve deterrence justify departing from the general methodology set out in the Guidelines on Fines.
- (977) In accordance with the principles set out in Section 17.1.2, the Commission decided to increase the fine to be imposed on Apple under the general methodology by an additional lump sum.

¹¹⁷⁷ Case C-408/12 P *YKK v Commission*, EU:C:2014:2153, paragraph 93.

¹¹⁷⁸ Apple's Response to the Commission's request for information of 1 December 2023, ID 3312, paragraph 5.

¹¹⁷⁹ See <https://www.forbes.com/sites/dereksaul/2023/06/30/apple-hits-3-trillion-market-value-and-could-soar-another-800-billion/?sh=a968d7952b17>, accessed on 10 October 2023, ID 3119.

¹¹⁸⁰ Microsoft briefly surpassed Apple's market capitalisation in January 2024.

17.3.2.2. Determination of the additional lump sum

- (978) When determining the amount of the lump sum to be imposed in the present case, the Commission has taken into account the nature, gravity and duration of the infringement as well as the need to achieve sufficient deterrence.¹¹⁸¹
- (979) In addition, the Commission has taken into account that the overall fine to be imposed must be proportionate to the infringement as well as to the size and economic strength of the undertaking concerned.
- (980) More specifically, in the present case, the Commission has taken into account the following aspects.
- (981) First, the Commission has taken into account the long duration of the infringement which has started in 2015 and continues at the date of the adoption of this Decision, as set out in Sections 12 and 17.3.1.1.3.
- (982) Second, as set out in Section 17.3.1.1.2, the Commission considers that Apple's conduct amounts to an infringement of a high gravity. Notably, that conduct has *directly* harmed a very large number of iOS users of music streaming apps, namely around 5 % of the population of the European Union, which is unprecedented.
- (983) Third, as set out in recital (796), Apple's App Store has a [...] operating margin of [...] % in FY [...] and of [...] % FY [...]. This shows the [...] financial benefits that Apple draws from the operation of the App Store.
- (984) The Commission observes that the Union courts in the past explicitly confirmed that the Commission has the power to impose a lump sum under point 37 of the Guidelines on Fines of just below 10 % of the total worldwide turnover of the undertaking concerned.¹¹⁸²
- (985) The Commission considers that, in order to reflect the nature, gravity and duration of the infringement and be sufficiently deterrent, taking into account Apple's size and economic strength, the lump sum by which the adjusted basic amount as determined in Section 17.3.1 is to be increased in accordance with point 37 of the Guidelines on Fines should amount to EUR 1 800 000 000 which represents around 0.5 % of Apple's worldwide turnover in FY 2023.
- (986) The Commission notes that the overall fine imposed in the present case (adding the above lump sum to the basic amount as determined in Section 17.3.1) is lower than the fine that would have been imposed by the Commission under the general methodology of the Guidelines on Fines as described in Section 17.1.1, had the Commission also taken into account the turnover of Apple Music for the purposes of determining the value of sales, as envisaged in the Statement of Objections of 28 February 2023.

¹¹⁸¹ Section 17.1.2.

¹¹⁸² Case COMP/38589 – *Heat Stabilisers*, paragraphs 744 et seq., Article 2(17) and (38), confirmed in Case T-27/10 *AC-Treuhand AG*, EU:T:2014:59, paragraphs 222, 263 and Case C-194/14 P *AC-Treuhand*, EU:C:2015:717. In that case, the Court of Justice also confirmed that the Commission was entitled to impose two lump sum fines under point 37 of the Guidelines on Fines for two parallel infringements, which together amounted to more than 10 % of AC-Treuhand AG's worldwide turnover in the year preceding the adoption of the decision in Case COMP/38589 – *Heat Stabilisers*, paragraph 753.

- (987) The Commission also notes that this overall fine is lower, in proportion, compared to fines imposed in previous antitrust decisions adopted by the Commission against other large technology companies.¹¹⁸³
- (988) In those previous decisions, the overall fine imposed consistently amounted to up to several percentage points of the respective undertaking's total worldwide turnover in the financial year preceding the adoption of the Commission's decision.¹¹⁸⁴
- (989) Therefore, the Commission considers that the overall fine imposed in the present case is proportionate, considering the nature, duration and gravity of the infringement, and sufficiently deterrent.

17.3.2.3. Assessment of Apple's arguments

- (990) Apple submits that “[t]here is no justification for imposing an additional lump sum unrelated to the gravity and duration of the alleged infringement.”¹¹⁸⁵
- (991) First, Apple argues that none of the factors brought forward by the Commission in the Letter of Facts to justify the application of point 37 of the Guidelines on Fines came to light between the Statement of Objections of 28 February 2023 and the Letter of Facts and thus justify the alleged departure from the Statement of Objections of 28 February 2023 and the imposition of a lump sum.¹¹⁸⁶
- (992) Second, Apple submits that point 37 of the Guidelines on Fines can only be relied on by the Commission in exceptional circumstances in light of the particularities of the specific case.¹¹⁸⁷ Moreover, the Commission should take into consideration that the present Decision narrows the scope of the infringement in comparison to the Statement of Objections of 28 February 2023, which should lead to a reduction of the gravity of the infringement and be reflected in the calculation of the fine.¹¹⁸⁸
- (993) Third, Apple takes the view “that the [Statement of Objections of 28 February 2023] had already addressed the specifics of Apple's conduct, including in relation to alleged non-monetary harm to consumers”¹¹⁸⁹ and that any non-monetary harm would be the consequence of Spotify's strategic business decision to disable IAP, not of Apple's conduct.¹¹⁹⁰ In any event, the Commission should consider the use of proxies in order to reflect non-monetary harm in the fines calculation, such as a portion of the alleged monetary harm to consumers that do use IAP and therefore pay

¹¹⁸³ See e.g., Case AT.40099 – *Google Android*, paragraphs 1480 et seq.; Case AT.39740 – *Google Search (Shopping)*, paragraphs 754 et seq.; Case AT.40411 *Google Search (AdSense)*, paragraphs 751 et seq.

¹¹⁸⁴ In Case AT.40099 – *Google Android*, the Commission imposed a fine of EUR 4 300 000 000 amounting to 4.43 % of Google's worldwide turnover in the financial year preceding the adoption of the decision. In Case AT.39740 – *Google Search (Shopping)*, the Commission imposed a fine of EUR 2 400 000 000 on Google amounting to 2.97% of Google's worldwide turnover in the financial year preceding the adoption of the decision. In Case AT.40411 – *Google Search (AdSense)*, the Commission imposed a fine of EUR 1 490 000 000 representing 1.29% of Google's worldwide turnover in the financial year preceding the adoption of the decision. In Case AT.40220 – *Qualcomm (exclusivity payments)*, annulled by the General Court for other reasons in Case T-235/18 *Qualcomm Inc.*, EU:T:2022:358, the Commission imposed a fine of EUR 997 000 000 which represented 4.94% of Qualcomm's worldwide turnover in the financial year preceding the adoption of the decision.

¹¹⁸⁵ Apple's Response to the Letter of Facts, ID 3330, Section I.

¹¹⁸⁶ Apple's Response to the Letter of Facts, ID 3330, paragraph 307.

¹¹⁸⁷ Apple's Response to the Letter of Facts, ID 3330, paragraphs 308-313.

¹¹⁸⁸ Apple's Response to the Letter of Facts, ID 3330, paragraph 314.

¹¹⁸⁹ Apple's Response to the Letter of Facts, ID 3330, paragraph 316.

¹¹⁹⁰ Apple's Response to the Letter of Facts, ID 3330, paragraph 317.

higher subscription prices set by music streaming service providers. There would be no basis to assume that the per-consumer non-monetary harm could exceed the per-consumer monetary harm.¹¹⁹¹

- (994) Fourth, Apple contends that, contrary to the Commission’s observation at paragraph 81 of the Letter of Facts, no considerable number of iOS subscribers of music streaming services suffered monetary harm and that any alleged monetary harm is already fully reflected under the standard methodology in the context of which the Commission relies on Apple’s IAP commission billings for the calculation of the value of sales.¹¹⁹²
- (995) Fifth, Apple submits that according to *Musique diffusion française*,¹¹⁹³ deterrence considerations cannot result in the Commission disproportionately taking into account the global turnover of the undertakings in question¹¹⁹⁴ and that according to *Steel Abrasives*,¹¹⁹⁵ general deterrence considerations cannot justify the imposition of a lump sum completely unconnected from the gravity and duration.¹¹⁹⁶ In any event, specific deterrence towards Apple cannot justify the imposition of a lump sum.¹¹⁹⁷
- (996) Sixth, Apple argues that the lump sum contemplated by the Letter of Facts is disproportionate. In particular, an overall fine of up to several percentage points of Apple’s worldwide turnover as referred to in the Letter of Facts would be disconnected from the gravity and duration of the alleged infringement and would dwarf the part of the fine that is based on Apple’s value of sales. According to Apple, any hypothetical fine could not exceed around EUR 50 000 000.¹¹⁹⁸
- (997) In addition, Apple submits that the contemplated lump sum would likely represent a multiple of the fine that the Commission could have calculated under the approach set out in the Statement of Objections of 28 February 2023 which included Apple Music’s revenues. Apple would be punished for having exercised its rights of defense with regard to the theory of harm as set out in the Statement of Objections of 28 February 2023 which, according to Apple, had resulted in the Commission reducing the scope of its case.
- (998) Seventh, Apple states that the departure from the Commission’s own Guidelines on Fines would be unprecedented and contrary to the general EU law principle of legitimate expectations.¹¹⁹⁹ In past cases, the Commission has applied point 37 of the Guidelines on Fines only either to reduce the fine for in cases in which “*it would either not have been possible or inappropriate, given the objective of the infringement, to apply the standard fining methodology*” because there was no reasonable value of sales, such as in cases in which the undertaking concerned either was not active in the relevant market or in which the agreement served to limit the value of sales.¹²⁰⁰

¹¹⁹¹ Apple’s Response to the Letter of Facts, ID 3330, paragraph 319.

¹¹⁹² Apple’s Response to the Letter of Facts, ID 3330, paragraphs 320-324.

¹¹⁹³ Joined Cases 100 to 103/80 *Musique Diffusion française*, EU:C:1983:158, paragraph 121.

¹¹⁹⁴ Apple’s Response to the Letter of Facts, ID 3330, paragraph 325.

¹¹⁹⁵ Case AT.39792 – *Steel Abrasives*, paragraph 221.

¹¹⁹⁶ Apple’s Response to the Letter of Facts, ID 3330, paragraph 328.

¹¹⁹⁷ Apple’s Response to the Letter of Facts, ID 3330, paragraph 329.

¹¹⁹⁸ Apple’s Response to the Letter of Facts, ID 3330, paragraph 331.

¹¹⁹⁹ Apple’s Response to the Letter of Facts, ID 3330, paragraph 333.

¹²⁰⁰ Apple’s Response to the Letter of Facts, ID 3330, paragraph 337.

- (999) Furthermore, Apple maintains that point 37 of the Guidelines on Fines can only be adopted “*instead*” of the general methodology set out in the Guidelines on Fines, not in addition to it.
- (1000) Apple’s views have to be rejected.
- (1001) First, with regard to Apple’s argument that the application of point 37 of the Guidelines on Fines must be justified as set out in Section 17.3.2.1, both the specific particularities of the present case as well as the need to achieve deterrence justify a departure from the general methodology for determining the amount of the fine, in accordance with point 37 of the Guidelines on Fines. The imposition of a fine based on the general methodology would neither accurately reflect the nature of the infringement, which affected an unprecedented number of users, in particular in the form of non-monetary harm. Such non-monetary harm is not sufficiently reflected under the general methodology set out in the Guidelines on Fines.
- (1002) Moreover, the imposition of a fine under the general methodology would not be even close to sufficient to achieve deterrence in the present case. In this context, the fine of EUR 40 984 000 under the general methodology would represent approximately a mere 0.01 % of Apple’s worldwide turnover in FY 2023. Such a fine would not be deterrent, neither in respect of Apple nor in respect of any other undertaking in a similar position.
- (1003) In addition, the application of point 37 of the Guidelines on Fines as communicated to Apple by the Commission in the Letter of Fact does not require a change of facts between the issuance of the Statement of Objections of 28 February 2023 and the sending of the Letter of Facts. As set out in Section 5.1, the Commission was entitled by means of the Letter of Facts to specify *vis-à-vis* Apple its intention to make use of point 37 of the Guidelines on Fines.
- (1004) Second, with regard to Apple’s argument that point 37 of the Guidelines on Fines can only be applied in exceptional circumstances in light of the particularities of the specific case¹²⁰¹ and that the Commission should take into consideration that the present Decision narrowed the scope of the infringement in comparison to the Statement of Objections of 28 February 2023,¹²⁰² the Commission notes the following.
- (1005) In the first place, as set out in Section 17.3.2.1 as well as in recitals (1001) to (1003), the application of point 37 of the Guidelines can be justified *either* by the particularities of the case *or* by the need to achieve deterrence. Both alternative criteria are met in the present case.
- (1006) In the second place, Apple is correct in pointing out that the Commission must take into account that, as set out in the Letter of Facts, the present Decision does no longer, compared to the Statement of Objections of 28 February 2023, find that the Anti-Steering Provisions also constitute unfair trading conditions *vis-à-vis* developers of music streaming apps within the meaning of Article 102(a) of the Treaty. As set out in Section 17.3.2.2, the Commission took this fact into account when determining the amount of the lump sum and ensured that the overall fine imposed is lower than the fine that would have been imposed by the Commission under the general methodology of the Guidelines on Fines as described in Section

¹²⁰¹ Apple’s Response to the Letter of Facts, ID 3330, paragraphs 308-313.

¹²⁰² Apple’s Response to the Letter of Facts, ID 3330, paragraph 314.

17.1.1, had the Commission also taken into account the turnover of Apple Music for the value of sales, as envisaged in the Statement of Objections of 28 February 2023.

- (1007) Third, regarding Apple’s argument that the Statement of Objections of 28 February 2023 had already accounted for the non-monetary harm caused by Apple to consumers,¹²⁰³ that any non-monetary harm would be the consequence of Spotify’s strategic business decision to disable IAP,¹²⁰⁴ that the Commission should consider the use of proxies to calculate non-monetary harm such as a portion of the alleged monetary harm to consumers that do use IAP and that the per-consumer non-monetary harm could not exceed the per-consumer monetary harm,¹²⁰⁵ the Commission notes the following.
- (1008) In the first place, the methodology for setting the fines as described in the Statement of Objections of 28 February 2023 was based on a different value of sales taking into account Apple Music revenues which generally reflected detriment to developers and consumers but which the Commission decided to drop in the Letter of Facts. The non-monetary harm caused solely to consumers by the infringement cannot be properly reflected in the value of sales based on App Store commission fees under the general methodology of the Guidelines on Fines.
- (1009) In the second place, as set out in recital (508), the disabling of IAP by Spotify was a reaction to Apple’s Anti-Steering Provisions and therefore a consequence of the infringement.
- (1010) In the third place, the Commission chose not to use point 37 of the Guidelines on Fines to modify the value of sales, e.g. through adding a portion of the alleged monetary harm to consumers that do use IAP, in order to account for non-monetary harm. The use of such proxies, which has been duly considered by the Commission, would encounter a number of difficulties and be likely not to sufficiently capture the nature and gravity of the infringement, in particular as the setting of the relevant proxies would have no clear basis and would need to rely on unsubstantiated assumptions. Rather, as set out in detail in Section 17.3.2.2, the Commission relied on a number of factors that, taken together, justify the determination of the lump sum, in line with point 37 of the Guidelines on Fines, the case law of the Union courts and Article 23(3) of Regulation (EC) No. 1/2003.
- (1011) In the fourth place, it is an unsubstantiated assertion by Apple that the monetary harm caused by the infringement must be higher than the non-monetary harm caused by it. In any event, the Commission notes that non-monetary harm is a subjective notion involving aspects such as time waste, inconvenience, frustration or other forms of inferior usage experiences the impact of which may differ among users. There is no indication that such harm cannot exceed the monetary harm caused by the infringement, in particular in light of the fact that the non-monetary harm affected around 19 million iOS users, as set out in recital (704). Furthermore, contrary to Apple’s claim, non-monetary harm does not only arise at the subscription stage but throughout the entire subscription period, for instance in the form of continued misinformation about alternative subscription plans.

¹²⁰³ Apple’s Response to the Letter of Facts, ID 3330, paragraph 316.

¹²⁰⁴ Apple’s Response to the Letter of Facts, ID 3330, paragraph 317.

¹²⁰⁵ Apple’s Response to the Letter of Facts, ID 3330, paragraph 318.

- (1012) Fourth, with regard to Apple’s argument that no considerable number of iOS subscribers of music streaming services suffered monetary harm and that any alleged monetary harm is already fully reflected under the standard methodology,¹²⁰⁶ the Commission notes the following.
- (1013) In the first place, as set out in Section 17.3.2.1, the imposition of a lump sum is justified by two aspects, namely that the calculation of the fine based on the general methodology set out in the Guidelines on Fines would (i) neither accurately reflect the nature of the infringement which affected an unprecedented number of users, in particular in the form of non-monetary harm, (ii) nor would it achieve a sufficiently deterrent effect. Therefore, the fact that the infringement also caused monetary harm to iOS users is not a reason in itself for the Commission’s decision to impose a lump sum in the present case.
- (1014) In the second place, the Commission observes that, by abstaining from applying (i) an additional amount pursuant to point 25 of the Guidelines on Fines (see recital (940)) as well as (ii) a deterrence multiplier (Section 17.3.1.5), the Commission ensured that deterrence is achieved exclusively by the lump sum and not also under the general methodology, thereby avoiding double-counting.
- (1015) In the third place, the need to achieve deterrence under point 37 of the Guidelines on Fines relates not only to the non-monetary harm but also to the monetary harm caused to iOS users by the infringement. As set out in recital (632), the Commission has calculated that, as of July 2023, more than 1.4 million iOS subscribers in the EEA of the main music streaming services other than Apple Music have been charged monthly subscription prices exceeding those of their chosen music streaming service provider outside the iOS app (for an individual plan). As music streaming service providers are compelled to pass-on the commission fee to iOS users, the Anti-Steering Provisions cause monetary harm to a considerable number of iOS users, contrary to Apple’s view.
- (1016) Sixth, with respect to Apple’s argument that an overall fine of up to several percentage points of Apple’s worldwide turnover would be disproportionate, dwarf the part of the fine that is based on Apple’s value of sales and punish Apple for having exercised its rights of defence with regard to the theory of harm as set out in the Statement of Objections of 28 February 2023,¹²⁰⁷ the Commission notes the following.
- (1017) In the first place, as explained in Section 17.3.2.2, the Commission determined the lump sum amount of the fine in accordance with the criteria set out in Article 23(3) of Regulation (EC) No. 1/2003, namely the gravity and duration of the infringement, considering also the need to achieve deterrence in accordance with point 37 of the Guidelines on Fines, in line with the case law of the Union courts. On this basis, the Commission arrived at the lump sum stated in recital (1026).
- (1018) The Commission established the gravity of the infringement on the basis of a number of factors (see Section 17.3.1.1.2), and took into account Apple’s total worldwide turnover in FY 2023 in order to ensure that the fine is (i) sufficiently deterrent as well as (ii) proportionate, both with regard to Apple as well as when compared to

¹²⁰⁶ Apple’s Response to the Letter of Facts, ID 3330, paragraphs 320-324.

¹²⁰⁷ Apple’s Response to the Letter of Facts, ID 3330, paragraph 331.

other fines decisions adopted by the Commission under Article 102 of the Treaty against large technology companies.

- (1019) In the second place, the fact that the lump sum represents a considerably higher proportion of the overall fine than the amount determined under the general methodology of the Guidelines on Fines is owed to the particularities of the case. As described in recital (508), given that the largest provider of music stream services, (Spotify) has disabled IAP, the number of iOS users that have suffered non-monetary harm is considerably higher (more than 19 million (15.6 + 3.9) users, if considering Spotify alone; see recital (704)) than the number of iOS users that have suffered monetary harm (approx. 1.4 million, see recital (632)). This, as well as the fact that the Commission decided to achieve deterrence through the lump sum under point 37 of the Guidelines on Fines and not by way of an additional amount or a deterrence multiplier (Sections 17.3.1.1.4 and 17.3.1.5), explains why the lump sum represents a considerably higher proportion of the overall fine than the amount determined under the general methodology of the Guidelines on Fines.
- (1020) In the third place, as explained in Section 17.3.2.2, the Commission ensured that the amount of the lump sum imposed in accordance with point 37 of the Guidelines on Fines reflected the Commission’s finding that the Anti-Steering Provisions are detrimental to the interests of iOS music streaming users (consumers) and the fact that the Commission did not find in the present Decision that the Anti-Steering Provisions were also abusive to the detriment to the interests of developers of music streaming apps.
- (1021) Seventh, with regard to Apple’s argument that the fine imposed would be unprecedented, contrary to the general EU law principle of legitimate expectations and that point 37 of the Guidelines on Fines can only be adopted “*instead*” of the general methodology,¹²⁰⁸ the Commission notes the following.
- (1022) In the first place, the case law relied on by Apple with regard to the principle of legitimate expectations in the context of the Guidelines on Fines¹²⁰⁹ does not relate to point 37 of the Guidelines on Fines but to the questions whether the Commission was entitled (i) to increase the fine despite the short duration of the infringement¹²¹⁰ or (ii) in breach of the principle of non-retroactivity.¹²¹¹
- (1023) Rather, the Court of Justice has specifically addressed the issue whether the Commission can depart from the Guidelines on Fines under point 37 in *Icap*. It stated that the Commission has “*adopted, in the interests of transparency, the 2006 Guidelines, in which it indicates the basis on which it will take account of one or other aspect of the infringement and what this will imply as regards the amount of the fine*”.¹²¹² The Court also found that “[h]owever, that method may sometimes prove unsuited to the particular circumstances of a case” and that in such situations “*the Commission was justified in using a calculation method other than that described in the 2006 Guidelines and, in accordance with paragraph 37 of those*

¹²⁰⁸ Apple’s Response to the Letter of Facts, ID 3330, paragraphs 333-337.

¹²⁰⁹ Case C-70/12 P *Quinn Barlo v Commission*, EU:C:2013:351, paragraph 53; Case C-189/02 P *Dansk Rorindustri v Commission*, EU:C:2005:408, paragraph 211.

¹²¹⁰ See Case C-70/12 P *Quinn Barlo v Commission*, EU:C:2013:351, paragraph 44.

¹²¹¹ Case C-189/02 P *Dansk Rorindustri v Commission*, EU:C:2005:408, paragraph 198.

¹²¹² Case C-39/18 P *Icap*, EU:C:2019:584, paragraph 25

*Guidelines, in setting a lump sum basic amount of the fine imposed on the undertaking.*¹²¹³

(1024) In the second place, the Union Courts have repeatedly held that point 37 of the Guidelines on Fines not only allows for the imposition of a lump sum but that it can be applied both on a stand-alone basis¹²¹⁴ as well as in combination with the general methodology set out in the Guidelines on Fines.¹²¹⁵ This interpretation is in line with the “*broad discretion as regards the calculation of fines in relation to infringement of the EU competition rules*”.¹²¹⁶ In addition, it is also in line with the wording of point 37 of the Guidelines on Fines which allows the Commission to depart from the general methodology of the Guidelines on Fines (“*departing from such methodology*”) and to impose a lump sum, without limiting the Commission’s discretion to depart from the general methodology and to impose a lump sum to cases where the general methodology is not applied as a starting point.

17.3.3. Application of Article 23(2) of Regulation (EC) No 1/2003

(1025) Pursuant to Article 23(2) of Regulation (EC) No 1/2003, the fine for an infringement must not exceed 10 % of the undertaking’s total turnover in the preceding business year.

17.3.4. Conclusion: final amount of the fine

(1026) The Commission concludes that the final amount of the fine to be imposed on Apple amounts to EUR 1 840 984 000. This amount consists of EUR 40 984 000, determined on the basis of the general methodology set out in the Guidelines on Fines, as well as an additional lump sum of EUR 1 800 000 000 in accordance with point 37 of the Guidelines on Fines.

(1027) Apple’s total worldwide turnover in FY 2023 was EUR 359 674 644 000. As the final amount of the fine set is below 10 % of that figure, no adaptation pursuant to Article 23(2) of Regulation (EC) No 1/2003 is necessary.

18. CONCLUSION

(1028) In light of the considerations set out in this Decision, the Commission:

- (1) finds that Apple committed a single and continuous infringement of Article 102 of the Treaty and Article 54 of the EEA Agreement since 30 June 2015, resulting in the imposition by Apple, through the Anti-Steering Provisions, of unfair trading conditions within the meaning of Article 102(a) of the Treaty upon music streaming service providers which are detrimental to the interests of iOS users;
- (2) requires Apple to bring the identified infringement of Article 102 of the Treaty to an end without undue delay, and refrain from repeating the infringement, and from any act or conduct having the same or equivalent object or effect as that infringement.

¹²¹³ Case C-39/18 P *Icap*, EU:C:2019:584, paragraph 27.

¹²¹⁴ Case T-180/15 *Icap*, EU:T:2017:795, paragraphs 286 et seq.; Case C-39/18 P *Icap*, EU:C:2019:584, paragraph 27; Case T-27/10 *AC-Treuhand*, EU:T:2014:59, paragraph 305; Case C-194/14 P *AC-Treuhand*, EU:C:2015:717, paragraph 67.

¹²¹⁵ Case T-240/17 *Campine*, EU:T:2019:778, paragraphs 333, 336 and 349.

¹²¹⁶ Case C-39/18 P *Icap*, EU:C:2019:584, paragraph 25.

HAS ADOPTED THIS DECISION:

Article 1

Apple Inc. and Apple Distribution International Limited have committed a single and continuous infringement of Article 102 of the Treaty and Article 54 of the EEA Agreement by imposing the Anti-Steering Provisions on music streaming service providers to the detriment of consumers. The single and continuous infringement has been taking place since 30 June 2015 and is continuing at the date of adoption of this Decision.

Article 2

For the single and continuous infringement referred to in Article 1, a fine of EUR 1 840 984 000 is imposed on Apple Inc, jointly and severally with Apple Distribution International Limited.

The fine shall be credited, in euros, within three months of the date of notification of this Decision, to the following bank account held in the name of the European Commission:

BANQUE CENTRALE DU LUXEMBOURG
2, Boulevard Royal
L-2983 Luxembourg

IBAN: LU27 9990 0001 1400 100E
BIC: BCLXLULL
Ref.: EC/BUFI/AT.40437

After the expiry of that period, interest shall automatically be payable at the interest rate applied by the European Central Bank to its main refinancing operations on the first day of the month in which this Decision is adopted, plus 3.5 percentage points.

Where the undertaking referred to in Article 1 lodges an application for annulment, that undertaking shall cover the fine by the due date, either by providing an acceptable financial guarantee or by making a provisional payment of the fine in accordance with Article 108 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council.¹²¹⁷

Article 3

Apple Inc. and Apple Distribution International Limited shall bring to an end the infringement referred to in Article 1 without undue delay.

Apple Inc. and Apple Distribution International Limited shall refrain from repeating the infringement described in Article 1, and from any act or conduct having the same or equivalent object or effect as that infringement.

Article 4

If the addressees of this Decision fail to comply with the order set out in Article 3, they shall incur a daily periodic penalty payment of 5 % of the average daily turnover of the undertaking to which they belong in the business year preceding such a failure to comply.

¹²¹⁷ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the European Union (OJ L 193, 30.7.2018, p. 80).

Article 5

This Decision is addressed to Apple Inc., One Apple Park Way, Cupertino, CA 95014, United States of America and to Apple Distribution International Limited, Hollyhill Industrial Estate, T23 YK84 Hollyhill, Cork, Ireland.

This Decision shall be enforceable pursuant to Article 299 of the Treaty and Article 110 of the EEA Agreement.

Done at Brussels, 4.3.2024

For the Commission

(Signed)
Margrethe Vestager
Executive Vice-President