



EUROPEAN COMMISSION

***CASE DMA.100022 – Apple –  
NUMBER-INDEPENDENT  
INTERPERSONAL  
COMMUNICATION SERVICES***

(Only the English text is authentic)

**Digital Markets Act  
Regulation (EU) 2022/1925 of the European Parliament  
and of the Council**

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Article 16(1) and 17(3) Regulation (EU) 2022/1925

Date: 05/09/2023

Parts of this text have been edited to ensure that confidential information is not disclosed. Those parts are replaced by a non-confidential summary in square brackets or are shown as [...].



EUROPEAN COMMISSION

Brussels, 5.9.2023  
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## **PUBLIC VERSION**

Apple Inc.  
One Apple Park Way  
Cupertino, CA 95014  
USA

**Subject: DMA.100022 – APPLE – NUMBER-INDEPENDENT  
INTERPERSONAL COMMUNICATION SERVICES**

**Commission decision opening a market investigation into Apple’s  
iMessage pursuant to Articles 16(1) and 17(3) of Regulation (EU)  
2022/1925 of the European Parliament and of the Council on  
contestable and fair markets in the digital sector  
Only the English text is authentic**

Dear Sir or Madam,

- (1) On 3 July 2023, Apple Inc. and Apple Distribution International Ltd. notified the Commission, pursuant to Article 3(3), first subparagraph, of Regulation (EU) 2022/1925,<sup>1</sup> that Apple Inc., together with all legal entities directly or indirectly controlled by it, (hereinafter referred to as “Apple” or the “Undertaking”) meets the thresholds laid down in Article 3(2) of that Regulation in relation to the following core platform services (“CPSs”): (i) its online intermediation service iOS App Store; (ii) its operating system iOS; (iii) its web browser Safari; and (iv) its number-independent interpersonal communication service (“NIICS”) iMessage.<sup>2</sup>
- (2) Together with its notification, Apple presented arguments, pursuant to Article 3(5), first subparagraph, of Regulation (EU) 2022/1925, aimed at demonstrating that, although iMessage meets all the thresholds in Article 3(2) of that

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<sup>1</sup> OJ L 265, 12.10.2022, p. 1-66.

<sup>2</sup> Apple Inc. and Apple Distribution International Ltd., Notification pursuant to Article 3 of Regulation (EU) 2022/1925, Form for Gatekeeper Designation (GD), notified on 3 July 2023 (“Form GD”).

Regulation, this service exceptionally does not satisfy the requirements listed in Article 3(1) of that Regulation, due to circumstances in which it operates.

## **I. THE UNDERTAKING'S VIEW**

- (3) In order to seek to rebut the presumptions laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to iMessage, Apple puts forward the following main arguments pursuant to Article 3(5), first subparagraph, of that Regulation.
- (4) According to Apple, iMessage does not constitute an important gateway in the Union for business users to reach end users due to its small scale relative to other messaging services.<sup>3</sup> Apple provides a number of elements and data from studies and surveys to substantiate its claim.
- (5) First, Apple provides data indicating that, in general, iMessage is a relatively unimportant messaging service in the Union.<sup>4</sup> In this respect, Apple refers to the findings of three different surveys carried out by, respectively, the Body of European Regulators for Electronic Communications (“BEREC”), the German Federal Network Agency (“FNA”), and the German Federal Cartel Office (“FCO”), which in its view indicate that the scale and intensity of usage of iMessage is considerably lower than that of other messaging services.<sup>5</sup>
- (6) Second, Apple notes that iMessage is only available on Apple devices.<sup>6</sup> Apple provides internal estimates which indicate that, even on Apple devices, the usage of iMessage is negligible compared to other messaging services in the Union.<sup>7</sup>
- (7) Third, Apple argues that iMessage is not primarily designed as a business-to-consumer (“B2C”) channel, nor marketed as such, and it does not support application programming interfaces (“APIs”), among other functionalities, to

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<sup>3</sup> Form GD, Annex 4, paragraphs 8 and 26 *et seq.*

<sup>4</sup> According to data provided by Apple (Form GD, Annex 4, paragraphs 8 and 26 *et seq.*), WhatsApp and Facebook Messenger are by far the main applications for respondents across all Union countries included in the survey referred to in footnote 5 below. iMessage is consistently among the least used messenger services, [...]. The survey referred to by Apple also revealed that most European consumers would fall back on WhatsApp if their main application (other than WhatsApp) stopped working for even a short period of time.

<sup>5</sup> The survey conducted by BEREC shows that only 2.5% of Union-based citizens use iMessage as their main messaging service, compared to 61.3% who mainly use WhatsApp, and 23% who mainly use Messenger (Form GD, Annex 4, paragraphs 28 to 31). In the parallel surveys carried out by FNA and FCO, iMessage does not appear on the lists of the most relevant messaging services in Germany (Form GD, Annex 4, paragraphs 8 and 32 to 37).

<sup>6</sup> Form GD, Annex 4, paragraph 37.

<sup>7</sup> [...].

enhance B2C communication.<sup>8</sup> According to Apple, iMessage is therefore not generally perceived as an important communication channel for business users in the Union.<sup>9</sup> To support iMessage's alleged lack of importance for B2C communication, Apple also puts forward quantitative evidence.<sup>10</sup>

- (8) Finally, Apple puts forward a number of other arguments to substantiate the claim that business users do not depend on iMessage to reach end users, including the fact that iMessage does not exhibit strong network effects,<sup>11</sup> that Apple does not benefit from any data-driven advantages in relation to iMessage,<sup>12</sup> and that iMessage is integrated within Apple's messaging app together with SMS/MMS services.<sup>13</sup>

## II. THE COMMISSION'S ASSESSMENT

- (9) Pursuant to Article 3(5), first sub-paragraph, of Regulation (EU) 2022/1925, an undertaking providing a CPS may present, with its notification, sufficiently substantiated arguments to demonstrate that, exceptionally, although it meets all the thresholds laid down in Article 3(2) of that Regulation, due to the circumstances in which the relevant CPS operates, it does not satisfy the requirements listed in Article 3(1) thereof.
- (10) Pursuant to Article 3(5), third subparagraph, of Regulation (EU) 2022/1925, if the undertaking presents sufficiently substantiated arguments manifestly calling into question the presumptions laid down in Article 3(2) of that Regulation, the Commission may open a market investigation pursuant to Article 17(3) thereof.
- (11) The Commission takes the view that Apple has presented certain arguments which are sufficiently substantiated, so as, considered together, to manifestly call into question the presumptions laid down in Article 3(2)(b) and (c) of Regulation (EU) 2022/1925 in relation to Apple's NIICS CPS iMessage. In particular, Apple has supported its argument regarding iMessage's alleged limited scale with data on the relative low scale of iMessage compared to the overall scale of activity in the relevant CPS category and to other undertakings providing similar services in the Union, pointing to several studies and internal estimates.

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<sup>8</sup> [...]

<sup>9</sup> Form GD, Annex 4 paragraphs 7 and 23 *et seq.*

<sup>10</sup> [...].

<sup>11</sup> Form GD, Annex 4 paragraphs 44 to 46.

<sup>12</sup> Form GD, Annex 4 paragraphs 10 and 48, and Apple's reply of 1 August 2023 to the Commission's letter sent on 25 July 2023 concerning Apple's notification under Article 3(3) of Regulation (EU) 2022/1925, paragraph 159.

<sup>13</sup> Form GD, Annex 4, paragraphs 39 to 46. Apple indicates that, as a result of this integration within the Message App, when a user cannot be reached on iMessage, the Message app allows the same message to be automatically sent via SMS/MMS. [...].

- (12) Due to the need for further verification of the arguments submitted by Apple, and in the absence of apparent counterindications, the Commission considers that it is appropriate to open a market investigation pursuant to Article 17(3) of Regulation (EU) 2022/1925 in relation to Apple's NIICS CPS iMessage. The market investigation will aim to determine whether, in light of the arguments submitted by Apple pursuant to Article 3(5), first subparagraph, of Regulation (EU) 2022/1925, exceptionally, although Apple meets all the thresholds in Article 3(2) of that Regulation in relation to its NIICS CPS iMessage, due to the circumstances in which that CPS operates, Apple does not satisfy the requirements laid down in Article 3(1) of Regulation (EU) 2022/1925 in relation to that CPS.

### III. CONCLUSION

- (13) In light of the above, the Commission has decided to open a market investigation on 5 September 2023 pursuant to Articles 16(1) and 17(3) of Regulation (EU) 2022/1925, for the purpose of determining whether Apple should be designated as a gatekeeper in relation to its NIICS CPS iMessage.

Done at Brussels,

*For the Commission*  
*Margrethe VESTAGER*  
*Executive Vice-President*

