



EUROPEAN COMMISSION

CASE DMA.100022 Apple - number-independent interpersonal communications services

(Only the English text is authentic)

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

Article 17 Regulation (EU) 2022/1925

Date: 12/02/2024

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Brussels, 12.2.2024
C(2024) 785 final

PUBLIC VERSION

COMMISSION IMPLEMENTING DECISION

of 12.2.2024

**closing the market investigation opened by Decision C(2023)6077, pursuant to Article 17
of Regulation (EU) 2022/1925 of the European Parliament and of the Council on
contestable and fair markets in the digital sector**

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COMMISSION IMPLEMENTING DECISION

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closing the market investigation opened by Decision C(2023)6077, pursuant to Article 17 of Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector

Case DMA.100022 Apple - number-independent interpersonal communications services

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THE EUROPEAN COMMISSION,

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

Having regard to 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), and in particular Article 17 thereof,¹

After consulting the Digital Markets Advisory Committee,

Whereas:

1. INTRODUCTION

- (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, that Apple Inc., together with all legal entities directly or indirectly controlled by Apple Inc. (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 (“CPS”): (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.²
- (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 Regulation, this service exceptionally does not satisfy the requirements listed in Article 3(1) of that Regulation, due to circumstances in which it operates.
- (3) On 5 September 2023, the Commission adopted a decision designating Apple as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925 in relation to its online intermediation service App Store, its operating system iOS and its web browser Safari (the “Designation Decision”).³ In that decision, the Commission also found that Apple had presented sufficiently substantiated arguments manifestly

¹ OJ L 265, 12.10.2022, p. 1.

² Notification pursuant to Article 3 of Regulation (EU) 2022/1925, Form for Gatekeeper Designation (GD), notified by Apple on 3 July 2023 (“Form GD”).

³ Decision C(2023) 6100 final.

calling into question the presumptions laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to its NIICS CPS iMessage.

- (4) On 5 September 2023, the Commission opened a market investigation pursuant to Articles 16(1) and 17(3) of Regulation (EU) 2022/1925 to assess whether Apple should be designated as a gatekeeper in relation to its NIICS CPS iMessage, following the arguments presented by Apple pursuant to Article 3(5) of that Regulation.⁴

2. PROCEDURE

- (5) In the framework of the market investigation into iMessage, the Commission sent a number of requests for information (“RFIs”) pursuant to Article 21(2) of Regulation (EU) 2022/1925 to Apple and to third parties, as explained below.

- (6) On 25 August 2023, the Commission sent Apple an RFI, to which Apple replied on 7 September 2023.⁵

- (7) On 14 September 2023, the Commission sent Apple an RFI, to which Apple replied in full on 6 October 2023.⁶

- (8) On 21 November 2023, the Commission sent Apple an RFI, to which Apple replied in full on 28 November 2023.

- (9) On 3 October 2023, Apple submitted a paper addressing a number of technical questions on iMessage.

- (10) On 3 November 2023, Apple provided a supplementary paper to elaborate further on the reasons why it considers that iMessage does not constitute an important gateway for business users to reach end users (“Apple’s Paper of 3 November 2023”).

- (11) In September and October 2023, the Commission also sent RFIs to a variety of stakeholders as follows:

- corporate users of iPhone (hereinafter referred to as “RFI to corporate users of iPhone”)⁷;
- messaging service providers (hereinafter referred to as “RFI to MSPs”)⁸;
- users of Messages for Business (hereinafter referred to as “RFI to MfB users”)⁹;
- other providers of interpersonal communication services (hereinafter referred to as “RFI to other interpersonal communication services providers”)¹⁰; and
- associations of small and medium enterprises (“SME”)¹¹.

⁴ Decision C(2023) 6077 final.

⁵ On 19 September 2023, Apple submitted an updated version of the responses to that RFI further to a follow-up request by the Commission on 12 September 2023 concerning Question 3 of that RFI.

⁶ The Commission had two follow-up requests concerning information submitted by Apple in response to the RFIs of 25 August and 14 September 2023, to which Apple replied respectively on 20 October 2023 and on 5 November 2023.

⁷ The Commission sent RFIs to 35 MSPs.

⁸ The Commission sent RFIs to 35 MSPs.

⁹ The Commission sent RFIs to 117 MfB users.

¹⁰ The Commission sent RFIs to 26 interpersonal communication services providers.

¹¹ The Commission sent RFIs to 4 SME associations active at the EU level.

- (12) On 28 November 2023, Apple waived its right to receive access to the file under Articles 8(2) and 8(3) of Commission Implementing Regulation (EU) 2023/814.¹²
- (13) On 29 November 2023, the Commission communicated its preliminary findings to Apple in accordance with Article 17(3) of Regulation (EU) 2022/1925 (“Commission’s Preliminary Findings”)¹³ and provided Apple with the opportunity of being heard on those preliminary findings pursuant to Article 34(1) of that Regulation. Based on evidence collected during the market investigation, both from Apple and from other market participants, the Commission took the provisional view in its preliminary findings that Apple’s iMessage NIICS CPS should not be listed in the Designation Decision, since that CPS is not an important gateway for business users to reach end users.
- (14) On 6 December 2023, Apple submitted its observations on those preliminary findings to the Commission (“Apple’s Response to the Commission’s Preliminary Findings”). In its response, Apple welcomed the Commission’s provisional conclusion and did not provide any additional evidence or arguments compared to those Apple had previously submitted to the Commission.¹⁴

3. ASSESSMENT PURSUANT TO ARTICLE 17(3) OF REGULATION (EU) 2022/1925

3.1. The Undertaking’s view

- (15) In order to seek to rebut the presumptions laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to iMessage, Apple put forward the following main arguments pursuant to Article 3(5), first subparagraph, of that Regulation.
- (16) Apple submits that iMessage does not constitute an important gateway for business users to reach end users in the Union due to its relatively small scale, considering the overall scale of similar services.¹⁵ Apple provides a number of elements and data from studies and surveys to substantiate its claim.
- (17) First, Apple provides data indicating that, in general, iMessage is a relatively unimportant messaging service in the Union¹⁶. 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,

¹² Commission Implementing Regulation of 14 April 2023 on detailed arrangements for the conduct of certain proceedings by the Commission pursuant to Regulation (EU) 2022/1925 of the European Parliament and of the Council (OJ L 102, 17.4.2023, p. 6–19).

¹³ Decision C(2023) 8391 of 29 November 2023.

¹⁴ In Apple’s Response to the Commission’s Preliminary Findings, Apple restated its position that iMessage is not a NIICS and, therefore, not a CPS within the meaning of Articles 2(2) and 2(9) of Regulation (EU) 2022/1925. This is because, according to Apple, iMessage is not provided for remuneration. In addition, Apple reiterated that its dedicated B2C messaging service Messages for Business is an entirely separate service to iMessage.

¹⁵ Annex 4, paragraphs 8 and 26 *et seq* to Form GD.

¹⁶ According to data provided by Apple (Form GD, Annex 4, paragraphs 8 and 26 *et seq*), WhatsApp and Messenger are by far the main applications for respondents across all Union countries included in the surveys referred to in footnote 18 below. iMessage is consistently among the least used messaging services, [...]. The survey referred to by Apple also revealed that most European consumers would fall back on WhatsApp if their main messaging application (other than WhatsApp) stopped working for even a short period of time.

in its view, indicate that the scale and intensity of usage of iMessage is considerably lower than that of other messaging services¹⁷.

- (18) Second, Apple notes that iMessage is only available on Apple devices. Apple provides internal estimates which indicate that even on Apple devices, the usage of iMessage is negligible compared to other messaging services in the Union¹⁸.
- (19) 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 enhance B2C communications¹⁹. According to Apple, iMessage is therefore not generally perceived as an important communication channel for business users in the Union²⁰. To support iMessage’s alleged lack of importance for B2C communications, Apple also puts forward quantitative evidence²¹.
- (20) 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 effects²², that Apple does not benefit from any data-driven advantages in relation to iMessage²³, and that iMessage is integrated within Apple’s messaging app together with SMS/MMS services²⁴.
- (21) Apple has further substantiated the above-mentioned arguments through a number of submissions during the market investigation as mentioned in recitals 7 to 10 above which demonstrate, according to Apple, the relative limited use of iMessage both in the B2C and C2C channels and elaborated further on the reasons why Apple considers that iMessage does not amount to an important gateway for business users to reach end users.
- (22) In particular, Apple presented additional elements²⁵ to the Commission aiming to show that iMessage is not designed, marketed or used as a B2C service.
- (23) In Apple’s view the lack of B2C features and functions, compared to what it considers actual B2C services such as Apple’s Messages for Business and other

¹⁷ 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).

¹⁸ [...].

¹⁹ [...].

²⁰ Form GD, Annex 4 paragraphs 7 and 23 *et seq.*

²¹ [...].

²² Form GD, Annex 4, paragraphs 44 to 46.

²³ 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.

²⁴ 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. [...].

²⁵ [...]. Apple explained for example that iMessage does not support (i) broadcast messaging (possibility to send the same message to a large group of people simultaneously which is typically used by businesses and organizations to send out important updates and announcements); (ii) formatted pickers (such as time pickers which allow customers to schedule an appointment or list pickers which allow the customer to choose from a list of items); (iii) verified accounts and (iv) multi-user, i.e. the possibility for multiple employees to use the same business account.

third-party services, such as WhatsApp, proves that iMessage is not a B2C service²⁶. Additionally, Apple provided data indicating, in its view, that, in general, iMessage is a relatively unimportant messaging service in the Union by referring to three additional reports published by, respectively, the Austrian Regulatory Authority for Broadcasting and Telecommunications (“RTR”)²⁷, the Spanish National Commission on Markets and Competition (“CNMC”)²⁸ and the National Institute for Statistics and Economic Studies of Luxembourg²⁹, all of which, in its view, confirm that iMessage is used only by very few end users as their main messaging services in the relevant Member States covered by the respective reports, namely, Austria, Spain and Luxembourg thus further corroborating the surveys mentioned in recital 18 above.

3.2. The Commission’s assessment

- (24) For the following reasons the Commission finds that, while iMessage meets the quantitative thresholds of Article 3(2) of Regulation (EU) 2022/1925,³⁰ the arguments presented by Apple pursuant to Article 3(5) of that Regulation, considered together, in light of the results of the market investigation, demonstrate that, exceptionally, the requirements laid down in Article 3(1)(b) of Regulation (EU) 2022/1925 are not satisfied due to the circumstances in which iMessage operates.
- (25) First, based on the information made available to the Commission during the market investigation, the overall usage of iMessage – which can only be used on Apple’s devices³¹ – appears to be relatively low in the Union, in terms of a much lower number of users and in particular a significantly lower intensity of use as compared to other NIICs, namely the two most popular messaging services, WhatsApp and Messenger, both of which are provided by Meta.

²⁶ Meeting of 11 October 2023.

²⁷ The RTR Report shows, according to Apple, that iMessage has the lowest usage of the nine messaging services assessed and ranked by the Austrian regulator. It also addresses the different types of communications targeted by messaging services, including communication with businesses (Unternehmen), showing, in Apple’s view, that iMessage is not considered as a messaging service used to communicate with businesses (see Apple’s Paper of 3 November 2023, paragraphs 18 and 19, pp. 8-9 and 12).

²⁸ In Apple’s view, based on the CNMC Panel data for Q4 2022, WhatsApp is frequently used by 93.6% of the users, against 3.5% for iMessage. Due to its very limited usage, iMessage is not mentioned in the 26 May 2023 press release of the CNMC Panel data, contrary to the five most popular services in Spain. (Apple’s Paper of 3 November 2023, paragraph 18, p. 10).

²⁹ According to Apple, the survey published by National Institute for Statistics and Economic Studies shows the eight most used messaging services in Luxembourg. WhatsApp is by far the most popular messaging service in Luxembourg with 91% of users logging into the service, ahead of Messenger, which comes second with 65%. Apple indicated that iMessage is not even listed. (Apple’s Paper of 3 November 2023, paragraph 18, p. 11). On 10 November 2023, the Commission reached out to the National Institute for Statistics and Economic Studies which indicated that in the specific question of the survey about the use of instant messaging by the individual users, Apple’s iMessage was not given as an option in the response categories. Therefore, the Commission considered that this study is not relevant.

³⁰ Cf. section 5.4.2 of the Designation Decision. Between 2020 and 2022, the number of monthly active end users of iMessage, as reported by Apple, was [>45] million. With respect to yearly active business users, although Apple indicated that it cannot provide the Commission with a reasonable estimate, Apple did not dispute that the number of unique active business users established in the Union in each of its last three financial years is likely to have exceeded 10 000.

³¹ iMessage is accessed through the Messages software application (“Messages App”) developed and provided by Apple, which is pre-installed on Apple devices (Designation Decision, Recital 131). In order to use iMessage, users must activate the service in the settings of the Messages App.

- (26) In this regard, the Commission observes that the number of monthly active end users (“MAUs”) for iMessage between 2020 and 2023 is significantly below the number of MAUs of Meta’s WhatsApp and Messenger respectively³². Even amongst Apple devices’ users, WhatsApp has, on average, more MAUs in the Union than iMessage³³. With respect to daily active users, the difference with respect to the number of users between the above-mentioned Meta services and iMessage is even more significant, which suggests that, on average, users of iMessage use this service less frequently than users of WhatsApp or Messenger. With respect to other messaging services, and while the data is not available for several of the most popular non-Meta messaging services, the Commission notes that among those other messaging services, while iMessage has slightly more monthly active users than Snapchat, the number of daily active users is more significant for the latter³⁴. Similarly, the Commission finds that the intensity of iMessage usage is relatively low compared to other messaging services. On average, active users of WhatsApp and Messenger on Apple devices send, per user, several times more messages than active users of iMessage³⁵. Furthermore, data provided by Apple shows that active users of other messaging services tend to engage longer and more frequently with these respective services than the active users of iMessage³⁶. The Commission finds that the evidence collected during the market investigation supports Apple’s claim that Apple users spend significantly more time using other messaging services compared to iMessage³⁷.
- (27) Publicly available data, including data published by various national regulators, also show that other messaging services are used considerably more often and intensively than iMessage. Data published by national regulatory authorities from Germany,³⁸ Spain,³⁹ and Austria⁴⁰ show that, in none of these Member States, iMessage was reported amongst the most frequently used messaging services. Furthermore, data published by the website Statista indicate that in most Member States for which data on the most frequently used messaging services is available, iMessage ranks in the fifth or sixth position.⁴¹

³² Calculations based on Annex 1 to Apple’s response to the RFI of 14 September 2023, question 4, and Meta’s response to question C1 of the RFI to other providers of interpersonal communication services.

³³ Calculations based on Annex 1 to Apple’s response to the RFI of 14 September 2023, question 4, and Meta’s response to question C1 of the RFI to other providers of interpersonal communication services providers.

³⁴ The figures provided by Snap Inc refer to (monthly or daily) active users who either sent or viewed a chat message in the relevant period. Snap’s Inc reply to the eRFI, question C.1 to C.5.

³⁵ Calculations based on Annex 1 to Apple’s response to the RFI of 14 September 2023, question 4, and Meta’s response to questions C1 and C2 of the RFI to other providers of interpersonal communication services.

³⁶ Annex 1 to Apple’s response to the RFI of 14 September 2023, table 12.

³⁷ See in particular recital (19) and footnote 18 above.

³⁸ BNetzA Nutzung von Online Kommunikationsdienste 2021, figure 5, p. 13.

³⁹ CNMC Panel Data 4th Trimester 2022.

⁴⁰ RTR, Nutzung von Kommunikationsdiensten, 2022, p 36.

⁴¹ <https://www.statista.com/global-consumer-survey/surveys>, period from October 2022 to September 2023, last accessed on 27 November 2023. iMessage is the third most frequently used messaging service in France and Sweden, the fifth in Poland, Italy and Finland, and the sixth in Germany, Netherlands, Spain and Austria. The reported usage of iMessages is from 2.9 (Sweden) to 15.3 (Spain) times lower as compared to the most-used messenger service at the national level. These calculations do not include communication services that are not primarily messaging services, such as audioconferencing or videoconferencing services.

- (28) The user numbers and the usage data analysed by the Commission indicate that the importance of iMessage is low as compared to other messaging services⁴². This finding, however, refers only to the (relative) size and importance of iMessage as a messaging service for communication between end-users. To assess whether iMessage constitutes an important gateway between business users and end-users, its scale as a means of communication between business users and end-users in the particular the context within which such communication takes place should be considered.
- (29) In that regard, in relation to the absolute and relative business usage of iMessage, the results of the market investigation suggest that iMessage is of limited importance as a B2C communication channel.
- (30) As a preliminary remark, with respect to Apple’s argument that iMessage is not primarily designed as a B2C channel, nor marketed as such, the fact that a service also intermediates between end-users does not preclude it from being an (important gateway) for business users to reach end-users; nor, *a fortiori*, does it preclude it from being a CPS within the meaning of Article 2, point (2), of Regulation (EU) 2022/1925. Furthermore, as noted in the Designation Decision, Apple’s “Messages for Business” service enables end-users of iMessage to communicate directly with business users and vice versa in a seamless way through the pre-installed Messages app.⁴³
- (31) As regards specifically Messages for Business, the data available to the Commission indicates that it has an extremely limited user base in the Union (less than [...] business users each year between 2020 and 2023). [...].⁴⁴ Messages for Business is particularly small, both in terms of the number of business users⁴⁵ and volume of messages⁴⁶, when compared with the B2C tools provided by Meta, such as WhatsApp API, WhatsApp Business App, Messenger Chat Plugin and automated responses.
- (32) The results of the market investigation indicate that business users who use Messages for Business generally consider this service to be of limited importance to reach end-users. A large majority of the surveyed users of Messages for Business considered Messages for Business as not relevant or of low relevance for their businesses to reach existing or potential customers. Only a small minority indicated that Messages for Business is an important tool to reach customers.⁴⁷
- (33) In order to communicate with end-users via Messages for Business, businesses generally use the services provided by Messaging Service Providers (“MSPs”). MSPs are intermediaries which are approved by Apple to integrate with Messages for Business and provide tools for businesses to communicate with their customers.

⁴² Form GD, Annex 4, paragraphs 8 and 26 et seq.

⁴³ Designation Decision, Recitals 145 and 146.

⁴⁴ Annex 1 to Apple’s response to the RFI of 14 September 2023, question 7.

⁴⁵ Meta’s reply to question C5 of the eRFI and Apple’s reply to the second RFI, Table 3. See also the Commission decision of 5 September 2023 designating Meta as gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector, C(2023) 6105 final, Recital 203.

⁴⁶ Meta’s reply to question C7 of the eRFI and Apple’s reply to the second RFI, Annex 1, Table 5.

⁴⁷ See responses to question B2 of the RFI to MfB users according to which 9 respondents considered it not relevant, 6 respondents of lower importance, 2 respondents of medium relevance and 3 considered it important.

A small majority of the MSPs surveyed considered Messages for Business to be important or of medium relevance, a large minority considered it not relevant or of lower relevance, but none of them considered it crucial.⁴⁸ Although the sample of MSPs covered only those having Messages for Business in their offer, a large majority of the MSPs surveyed indicated that only a small minority of MSP clients (business users) used Messages for Business⁴⁹ and that the usage in terms of number of messages sent and received is very low in comparison to other messaging services.⁵⁰

- (34) The results of the market investigation set out above with respect to Messages for Business are in line with the findings of the Commission in the assessment of the Meta/Kustomer merger of 2022.⁵¹ In that case, the Commission found that Apple Business Chat (the previous denomination of Messages for Business) had a very low penetration rate in the EEA, with less than 50 000 daily conversations in 2020, representing less than 0.2% of the total volume of conversations of EEA over-the-top (“OTT”)⁵² B2C messaging, while Meta’s share was [40-50%].⁵³
- (35) Irrespective of Messages for Business and based on iMessage as a means of communication between business users and end-users, as well as the overall penetration of Apple devices in the Union, it is plausible that a number of users are using iMessage in a professional or commercial capacity for the purpose of or in the course of providing goods or services to end-users – hence as business users – to communicate with them. However, the evidence collected by the Commission suggests that overall, such business users do not consider iMessage as an important, or a fortiori crucial, channel to reach their customers. None of the respondents to the RFI to corporate users of iPhone considered iMessage to be a crucial or important service to reach their customers and a clear majority of respondents indicated that iMessage is not of any importance to reach their customers.⁵⁴
- (36) While a small minority of the surveyed corporate users of iPhone stated that they use iMessage to connect with customers,⁵⁵ the replies from these respondents suggest that the use of iMessage is generally not part of a deliberate business strategy but

⁴⁸ See responses to question E7 of the RFI to MSP according to which 6 out of 11 respondents considered it important or of medium relevance and 5 out of 11 considered it not relevant or of lower relevance.

⁴⁹ See responses to questions E4 and E5 of the RFI to MSPs according to which the vast majority of respondents provided a total number of users of MSP and a total number of business customers using messaging services. Dividing the number of MSP users by the total number of business customers using messaging services results in percentages below 6% for all respondents.

⁵⁰ See responses to questions E12 and E13 of the RFI to MSPs according to which a number of respondents responded “much lower”, “low use in comparison”, “very low compared to other messaging services” and “significantly less” and on average percentages far below 6% were reported.

⁵¹ Commission Decision in Case M.10262 – META (FORMERLY FACEBOOK) / KUSTOMER of 27/01/2022.

⁵² OTT refers to technology that delivers streamed content over the internet.

⁵³ Commission Decision in Case M.10262 – META (FORMERLY FACEBOOK) / KUSTOMER of 27/01/2022, paragraph 267 according to which Meta’s share in the EEA OTT B2C messaging (including WhatsApp and Messenger) was between [40-50%] in 2020.

⁵⁴ See responses to Question C9 of the RFI to corporate users.

⁵⁵ See responses to Questions C1 and C3 of the RFIs to corporate users. Respondents represented a range of economic sectors ranging from manufacturing to services in both basic and hi-tech as well as digital and non-digital industries and included small and medium enterprises (fewer than 250 employees) as well as organisations with over 5000 employees. While the response rate to this RFI has been relatively low, it is worth noting that some businesses indicated that they did not reply because they didn’t use iMessage.

rather the result of the use of iMessage as a personal communication tool of their employees. Some of the corporate users even reported a corporate prohibition on the use of tools such as iMessage as business communication tools.⁵⁶ Moreover, all corporate users that use iMessage to communicate with customers indicated that they also use other messaging services and often emphasised that this tool is secondary compared to other communication tools.⁵⁷ Finally, some respondents pointed out that, because iMessage is provided together with the SMS/MMS service, the use of iMessage is often unintentional, and takes place where both parties to the communication happen to use Apple devices and have activated iMessage.⁵⁸

- (37) In light of the above, the Commission concludes that the NIICS CPS iMessage does not constitute an important gateway for business users to reach end users within the meaning of Article 3(1)(b) of Regulation (EU) 2022/1925.

4. CONCLUSION

- (38) In light of the foregoing considerations, the Commission concludes the market investigation opened pursuant to Article 17(3) of Regulation (EU) 2022/1925 into Apple's NIICS CPS iMessage and finds that that CPS should not be listed as an important gateway for business users to reach end users in the Designation Decision.
- (39) That conclusion is without prejudice to the possibility that the Commission may reconsider or amend this Decision, pursuant to Article 4(1) of Regulation (EU) 2022/1925, should there be any substantial change in any of the facts on which it is based, or if this Decision was based on incomplete, incorrect or misleading information.

HAS ADOPTED THIS DECISION:

Article 1

Apple shall not be designated as a gatekeeper pursuant to Article 3(4) of Regulation (EU) 2022/1925 in relation to its number independent interpersonal communication core platform service iMessage.

Article 2

This Decision is addressed to:

- (a) Apple Inc., One Apple Park Way, Cupertino, California, United States of America; and
- (b) Apple Distribution International Ltd., Hollyhill Industrial Estate, Hollyhill, Cork, Ireland

⁵⁶ See responses to Questions C5 and C6 of the RFI to corporate users.

⁵⁷ Responses to Questions C1, C3, C6 and C10 of the RFI to corporate users.

⁵⁸ As a result of this integration when both the business users and end users deploy an Apple device, the Message app sends the message automatically via iMessage instead of via SMS/MMS. See in this respect one of the respondents to Question C10 of the RFI to corporate users.

Done at Brussels, 12.2.2024

*For the Commission
Margrethe VESTAGER
Executive Vice-President*