



EUROPEAN COMMISSION

***CASE DMA.100075 – Alphabet – Online
Intermediation Services – app stores –
Google Play – Article 5(4)***

(Only the English text is authentic)

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

Article 20(1) Regulation (EU) 2022/1925

Date: 25.03.2024

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PUBLIC VERSION

Alphabet Inc.
251 Little Falls Drive
Wilmington, DE, 19808
USA

Subject: Case DMA.100075 – Alphabet – Online Intermediation Services – app stores – Google Play – Article 5(4)

**Commission decision opening a proceeding pursuant to Article 20(1) of Regulation (EU) 2022/1925 ⁽¹⁾ 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 5 September 2023, the Commission adopted a decision designating Alphabet Inc., together with all legal entities directly or indirectly controlled by Alphabet Inc. (hereinafter referred to as “Alphabet”) as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925 (the “Designation Decision”). The Designation Decision lists the following core platform services (“CPSs”) that are provided by Alphabet and which individually constitute an important gateway for business users to reach end users: (i) Alphabet’s online intermediation service Google Shopping; (ii) Alphabet’s online intermediation service Google Play; ⁽²⁾ (iii) Alphabet’s online intermediation service Google Maps; (iv) Alphabet’s online search engine Google Search; (v) Alphabet’s video-sharing platform service YouTube; (vi) Alphabet’s operating system Google Android; (vii)

⁽¹⁾ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (Text with EEA relevance), OJ L 265, 12.10.2022, p. 1..

⁽²⁾ According to recital 56 of the Designation Decision, “*The Commission also considers that Google Play constitutes a single online intermediation CPS, irrespective of the device through which that service can be accessed (e.g., smartphones, tablets, laptops, smart TVs)*”.

- Alphabet's web browser Google Chrome; and (viii) Alphabet's online advertising services. ⁽³⁾
- (2) Pursuant to Article 20(1) of Regulation (EU) 2022/1925, where the Commission intends to open proceedings with a view to the possible adoption of decisions pursuant to Articles 8, 29 and 30 of that Regulation, it shall adopt a decision opening proceedings.
 - (3) Pursuant to Article 29(1), point (a), of Regulation (EU) 2022/1925, where the Commission finds that a gatekeeper does not comply with any of the obligations laid down in Article 5, 6 or 7 of that Regulation, it shall adopt an implementing act setting out its finding of non-compliance. In such an implementing act, the Commission may also impose a fine pursuant to Article 30(1), point (a) of Regulation (EU) 2022/1925. The Commission may also impose periodic penalty payments pursuant to Article 31(1), point (h) of Regulation (EU) 2022/1925 in order to compel a gatekeeper to comply with such an implementing act.
 - (4) Pursuant to Article 3(10) of Regulation (EU) 2022/1925, within six months after a CPS has been listed in its designation decision, the gatekeeper shall comply with the obligations laid down in Articles 5, 6 and 7 of that Regulation. Consequently, within six months from the Designation Decision, Alphabet shall comply, *inter alia*, with the obligations laid down in Article 5(4) of Regulation (EU) 2022/1925 in relation to the CPSs listed in the Designation Decision.
 - (5) According to Article 5(4) of Regulation (EU) 2022/1925, a gatekeeper shall allow business users, free of charge, to communicate and promote offers, including under different conditions, to end users acquired via its CPS or through other channels, and to conclude contracts with those end users, regardless of whether, for that purpose, they use the CPSs of the gatekeeper. The measures implemented by the gatekeeper to ensure compliance with that obligation must be effective in achieving the objectives of the referred Regulation and of the relevant obligation.
 - (6) Recital 40 of Regulation (EU) 2022/1925 explains that “[t]he business users of those gatekeepers should be free to promote and choose the distribution channel that they consider most appropriate for the purpose of interacting with any end users that those business users have already acquired through core platform services provided by the gatekeeper or through other channels. This should apply to the promotion of offers, including through a software application of the business user, and any form of communication and conclusion of contracts between business users and end users. An acquired end user is an end user who has already entered into a commercial relationship with the business user and, where applicable, the gatekeeper has been directly or indirectly remunerated by the business user for facilitating the initial acquisition of the end user by the business user. Such commercial relationships can be on either a paid or a free basis, such as free trials or free service tiers, and can have been entered into either on the core platform service of the gatekeeper or through any other channel.” (emphasis added)

⁽³⁾ Decision C(2023) 6101 final.

- (7) On 7 March 2024, Alphabet submitted to the Commission its compliance report pursuant to Article 11 of Regulation (EU) 2022/1925 (“Alphabet’s Compliance Report”). According to that report, to ensure compliance with Article 5(4) of that Regulation, Alphabet has decided to implement notably the following measures ⁽⁴⁾:
- (a) Alphabet will allow link-outs/external links ⁽⁵⁾ but subject to an initial acquisition fee. ⁽⁶⁾ Such initial acquisition fee will be applicable for a period of 2 years. For any transactions falling outside the 2-year initial acquisition period for a given end user, business users will not incur the initial acquisition fee;
 - (b) The initial acquisition fee will be equal to 5% for automatically-renewing subscriptions and 10% for other offers that are consumable in the software application (“app”) that has been downloaded via Google Play; ⁽⁷⁾
 - (c) The link provided by the business users must be accompanied by an information message. ⁽⁸⁾ Alphabet provides an API to render such an information message;
 - (d) Destination pages following a link-out can only be webpages and the business user must clearly state the URL of the destination page; ⁽⁹⁾
 - (e) Alphabet will not allow link-outs to pre-populate any fields on the destination page, including purchase flows, with data from the app; ⁽¹⁰⁾
 - (f) In addition to the initial acquisition fee, Alphabet will charge a fee for the ongoing services that Google Play provides, notably (but not limited to) its ongoing security and updating services. ⁽¹¹⁾ This fee will be charged for at least 2 years and until both the business user and the end user opt-out of Google Play’s ongoing services for a given app. Alphabet has set the fee

⁽⁴⁾ Alphabet’s Compliance Report, Google Play Chapter, pages 12 et seq.

⁽⁵⁾ Alphabet defines an external link as a “feature Developer offers users in the Territories that leads users outside the app, including to promote offers for Developer’s Product.” See <https://support.google.com/googleplay/android-developer/answer/14539286>, last accessed on 21 March 2024.

⁽⁶⁾ Alphabet’s Compliance Report, Google Play Chapter, paragraph 41.

⁽⁷⁾ Alphabet’s Compliance Report, Google Play Chapter, paragraph 41.

⁽⁸⁾ See Section 2.2. of Developer Terms Of Service For External Offers Program at <https://support.google.com/googleplay/android-developer/answer/14539286>, last accessed on 21 March 2024. See “Enrolling in the external offers program” at <https://support.google.com/googleplay/android-developer/answer/14372887>, last accessed on 21 March 2024.

⁽⁹⁾ See “Enrolling in the external offers program” at <https://support.google.com/googleplay/android-developer/answer/14372887>, last accessed on 21 March 2024.

⁽¹⁰⁾ See “Enrolling in the external offers program” at <https://support.google.com/googleplay/android-developer/answer/14372887>, last accessed on 21 March 2024.

⁽¹¹⁾ Alphabet’s Compliance Report, Google Play Chapter, paragraph 41.

for ongoing services at 7% for automatically-renewing subscriptions and 17% for other offers that are consumable within the app.

- (8) Following an initial examination of Alphabet's Compliance Report and of the available information, the Commission has decided to examine whether the measures referred to in recital (7) of this Decision in relation to its Play Store CPS in the EU comply with Article 5(4) of Regulation (EU) 2022/1925. The Commission's investigation will focus, *inter alia*, on the following matters. First, on whether charging an initial acquisition fee (and a fee for ongoing services provided by Google Play) over a period of 2 years is incompatible with Article 5(4) of Regulation (EU) 2022/1925 insofar as that period may go beyond the initial acquisition of the end user by the business user (see recital 40 of Regulation (EU) 2022/1925). Second, on whether Alphabet complies with the requirement that business users must be "*free to promote and choose the distribution channel that they consider most appropriate*" in view of the restrictions imposed by Alphabet on the form and the content of the communication between business users and their end users within the app (e.g., restrictions on the landing page following link-outs from the app). Third, on whether the measures implemented by Alphabet can undermine effective compliance with the obligations of Article 5(4) of Regulation (EU) 2022/1925 within the meaning of Article 13(4) or Article 13(6) of that Regulation.
- (9) In light of the above, the Commission has decided to open a proceeding *vis-à-vis* Alphabet with a view to the possible adoption of a decision pursuant to Article 29 of Regulation (EU) 2022/1925 in relation to a potential non-compliance by Alphabet with Article 5(4) of that Regulation with respect to its Play Store CPS, alone or in conjunction with Article 13(4) and/or Article 13(6) of that Regulation.
- (10) The initiation of proceedings does not prejudice in any way the outcome of the Commission's assessment regarding compliance. It merely indicates that the Commission will further pursue the case.
- (11) Pursuant to Article 38(7), second subparagraph, of Regulation (EU) 2022/1925, this opening of proceedings relieves the national competent authorities of the Member States enforcing the rules referred to in Article 1(6) of that Regulation of the possibility to conduct an investigation into the possible non-compliance of Alphabet's conduct referred to recital (7) of this Decision with Article 5(4) of that Regulation on their respective territories, or ends it where it is already ongoing.

- (12) In accordance with Article 5(2) of Commission Implementing Regulation (EU) 2023/814, ⁽¹²⁾ the Commission will make public this opening of proceedings.

Done at Brussels,

For the Commission

Margrethe Vestager
Executive Vice-President

⁽¹²⁾ Commission Implementing Regulation (EU) 2023/814 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.