



EUROPEAN COMMISSION

***CASE DMA.100109 – Apple - Online
Intermediation Services – app stores –
App Store – 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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EUROPEAN COMMISSION

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

Subject: Case DMA.100109 – Apple - Online Intermediation Services – app stores – App Store – 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 Apple Inc., together with all legal entities directly or indirectly controlled by Apple Inc. (hereinafter referred to as “Apple”) 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 Apple and which individually constitute an important gateway for business users to reach end users: (i) Apple’s online intermediation service App Store; ⁽²⁾ (ii) Apple’s operating system iOS; and (iii) Apple’s web browser Safari. ⁽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

⁽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. 1–66.

⁽²⁾ According to recital 38 of the Designation Decision, “*The Commission further considers that, contrary to the views of Apple, the App Store constitutes a single online intermediation CPS, irrespective of the device through which that service can be accessed.*”

⁽³⁾ Decision C(2023) 6100 final.

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, Apple 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)
- (7) On 7 March 2024, Apple submitted to the Commission its compliance report pursuant to Article 11 of Regulation (EU) 2022/1925 (“Apple’s Compliance Report”). According to that report, to ensure compliance with Article 5(4) of

that Regulation, Apple has decided to implement ⁽⁴⁾ notably the following measures ⁽⁵⁾:

- (a) Apple will allow link-outs ⁽⁶⁾ within a business user’s software application (“app”) downloaded from the App Store by means of a tappable URL ⁽⁷⁾ but will charge a commission fee of 17% (10% for subscriptions after their first year) ⁽⁸⁾ on transactions for all purchases of digital content taking place within 7 days following a link-out, ⁽⁹⁾ throughout the entire lifetime of the user’s app use;
- (b) The link provided by the business user in its app can only direct the end user to the business user’s website, ⁽¹⁰⁾ which will be opened in a new window in the default browser on the device (i.e., no web view);
- (c) Apple provides business users with two mutually exclusive options for adhering to respective business terms in the EU. Business users should either adhere to the new business terms in force since 7 March 2024 (which allow for linking-out within the app under certain strict conditions) or adhere to the business terms pre-dating 7 March 2024 (which do not allow for linking-out within the app); ⁽¹¹⁾

⁽⁴⁾ Apple’s Compliance Report, pages 18 and 34-37.

⁽⁵⁾ See also the 12 March 2024 version of the Alternative Terms Addendum for Apps in the EU; https://developer.apple.com/contact/request/download/alternate_eu_terms_addendum.pdf, accessed on 18 March 2024 (hereafter “Alternative Terms Addendum for Apps in the EU”).

⁽⁶⁾ Apple’s Compliance Report, Annex 5 to Section 2 – Art. 5(4) DMA, paragraph 10, first bullet point. Apple defines “linking out” as using a link from a developer’s application that is distributed through the App Store to take end users to a website the developer owns or has responsibility for to purchase digital goods and services (see Alternative Terms Addendum for Apps in the EU, page 1).

⁽⁷⁾ Linking-out will not be possible on the tvOS App Store and the watchOS App Store as tappable URLs are technically not possible. [...]

⁽⁸⁾ Apple’s Compliance Report, Section 2 – Information on compliance with the obligations laid down in Arts. 5 to 7 of Regulation (EU) 2022/1925, paragraph 23.

⁽⁹⁾ Apple’s Compliance Report, Annex 5 to Section 2 – Art. 5(4) DMA, paragraph 10, fourth and ninth bullet points.

⁽¹⁰⁾ Apple’s Compliance Report, Annex 5 to Section 2 – Art. 5(4) DMA, paragraph 10, second and third bullet points.

⁽¹¹⁾ Apple’s Compliance Report, Annex 1 to Section 2 – Overview of Apple’s changes to its business practices in the context of the DMA, page 22. Apple clarified on its website that *“To help reduce the risk of unexpected business changes under the new terms, such as reaching massive scale more quickly than anticipated, or if you simply change your mind, we’ve created a one-time option to terminate the Addendum under certain circumstances and switch back to Apple’s standard business terms for their EU apps.”* See “Update on apps distributed in the European Union”, under “What if I change my mind about being under the new EU business terms and want to switch back?”, accessible here: <https://developer.apple.com/support/dma-and-apps-in-the-eu/#dev-qa> (accessed on 18 March 2024).

- (d) Apple limits the possibility of providing link-outs within a business user’s app only to those business users that have not opted to offer Apple’s in-app payment system mechanism. ⁽¹²⁾
- (8) Additionally, to offer its app through the App Store in the EU and benefit from the options offered by Regulation (EU) 2022/1925, including by Article 5(4) of that Regulation, a business user must agree to and not be in violation of the latest version of Apple’s Developer Program License Agreement (“DPLA”) ⁽¹³⁾, the separate Apple Developer Agreement, ⁽¹⁴⁾ which, *inter alia*, require enrolment in the Apple Developer Program ⁽¹⁵⁾ and sign up to the Alternative Terms Addendum for Apps in the EU. Apple also reserves the right to terminate enrolment in its Developer Program, which would thereby exclude any business user from offering an app through App Store.
- (9) Following an initial examination of Apple’s Compliance Report and of the available information, the Commission has decided to examine whether the measures referred to in recitals (7) and (8) of this Decision in relation to Apple’s App 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 those measures comply with the requirement under Article 5(4) of Regulation (EU) 2022/1925 to allow business users “*free of charge*” (i) to communicate and promote offers to end users acquired via the gatekeeper’s CPS or through other channels and (ii) to conclude contracts with those end users. Second, on whether Apple’s decision to charge certain business users a recurrent fee after such a contract is concluded complies with the requirements of that provision, insofar as the remuneration goes beyond a possible fee for facilitating the initial acquisition of the end user by the business user. ⁽¹⁶⁾ Third, on whether maintaining two parallel sets of business terms and requiring business users to choose between the linking-out functionality and Apple’s in-app payment system mechanism is in line with the requirements of Article 5(4) of Regulation (EU) 2022/1925 and whether such behaviour is capable of undermining 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. Fourth, on the absence of transparency and predictability for developers concerning the process regarding termination of their enrolment in Apple’s Developer Program.
- (10) Finally, the Commission notes that Apple is keeping in place the pre-existing business model for those business users (i.e., app developers) that choose not to

⁽¹²⁾ Apple’s Compliance Report, Annex 5 to Section 2 – Art. 5(4) DMA, paragraph 10, eighth bullet point.

⁽¹³⁾ See the DPLA version of 22 December 2023, accessible here: <https://developer.apple.com/support/downloads/terms/apple-developer-program/Apple-Developer-Program-License-Agreement-20231222-English.pdf> (accessed on 18 March 2024).

⁽¹⁴⁾ See the Apple Developer Agreement of 5 June 2023, accessible here: <https://developer.apple.com/support/downloads/terms/apple-developer-agreement/Apple-Developer-Agreement-20230605-English.pdf> (accessed on 18 March 2024).

⁽¹⁵⁾ Apple’s Compliance Report, Annex 12 to Section 2 – Art. 6(4) DMA, paragraph 21, subparagraph a).

⁽¹⁶⁾ See, in this regard, recital (40) of Regulation (EU) 2022/1925.

sign up to the new business terms to distribute their apps through the App Store. As of 7 March 2024, all business practices of gatekeepers, including pre-existing business practices, must comply with Regulation (EU) 2022/1925. Consequently, in addition to investigating whether the measures referred to in recitals (7) and (8) of this Decision comply with Article 5(4) of Regulation (EU) 2022/1925 in relation to Apple's App Store CPS, the Commission will also investigate whether Apple's pre-existing business model for app distribution in the EU complies with the requirements of that provision.

- (11) In light of the above, the Commission has decided to open a proceeding *vis-à-vis* Apple 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 Apple with Article 5(4) of that Regulation with respect to its App Store CPS, alone or in conjunction with Article 13(4) and/or Article 13(6) of that Regulation.
- (12) 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..
- (13) 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 Apple's conduct referred to in recitals (7) and (8) of this Decision with Article 5(4) of that Regulation on their respective territories, or ends it where it is already ongoing.
- (14) In accordance with Article 5(2) of Commission Implementing Regulation (EU) 2023/814, ⁽¹⁷⁾ the Commission will make public this opening of proceedings.

Done at Brussels,

For the Commission

Margrethe Vestager
Executive Vice-President

⁽¹⁷⁾ 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.