



EUROPEAN COMMISSION

CASE DMA.100206
Apple new business terms

(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: 24/06/2024

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EUROPEAN COMMISSION

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Apple Inc.
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Cupertino, CA 95014
USA

Subject: Case DMA. 100206 – Apple – new business terms

**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) On 29 April 2024, the Commission adopted a decision closing its market investigation into Apple’s operating system CPS iPadOS pursuant to Article 17(1) of Regulation (EU) 2022/19 and listing iPadOS in the Designation Decision as a CPS which individually is an important gateway for business users to reach end users within the meaning of Article 3(1)(b) of that Regulation.

⁽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.

- (3) 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.
- (4) 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.
- (5) 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 Articles 5(4), 5(7), 6(4), and 6(7) of Regulation (EU) 2022/1925 in relation to the CPSs listed in the Designation Decision.
- (6) According to Article 5(4) of Regulation (EU) 2022/1925 the gatekeeper shall allow business users, free of charge, to communicate and promote offers, including under different conditions, to end users acquired via its core platform service or through other channels, and to conclude contracts with those end users (hereinafter, “steering”), regardless of whether, for that purpose, they use the core platform services of the gatekeeper.
- (7) According to Article 5(7) of Regulation (EU) 2022/1925 the gatekeeper shall not require end users to use, or business users to use, to offer, or to interoperate with, an identification service, a web browser engine or a payment service, or technical services that support the provision of payment services, such as payment systems for in-app purchases, of that gatekeeper in the context of services provided by the business users using that gatekeeper’s core platform services (hereinafter, the “use of ancillary services”).
- (8) According to Article 6(4) of Regulation (EU) 2022/1925, the gatekeeper shall allow and technically enable the installation and effective use of third-party software applications (“apps”) or software application stores (“app stores”) using, or interoperating with, its operating system and allow those apps or app stores to be accessed by means other than the relevant core platform services of that gatekeeper (hereinafter, the “use of alternative distribution channels”). The gatekeeper shall not be prevented from taking, to the extent that they are strictly necessary and proportionate, measures to ensure that third-party apps or app stores do not endanger the integrity of the hardware or operating system provided by the gatekeeper, provided that such measures are duly justified by the gatekeeper. Furthermore, the gatekeeper shall not be prevented from applying, to the extent that they are strictly necessary and proportionate, measures and settings other than default settings, enabling end users to effectively protect security in relation to third-party apps or app stores, provided

that such measures and settings other than default settings are duly justified by the gatekeeper.

- (9) According to Article 6(7) of Regulation (EU) 2022/1925, the gatekeeper shall allow providers of services and providers of hardware, free of charge, effective interoperability with, and access for the purposes of interoperability to, the same hardware and software features accessed or controlled via the operating system, as are available to services or hardware provided by the gatekeeper. Furthermore, the gatekeeper shall allow business users and alternative providers of services provided together with, or in support of, core platform services, free of charge, effective interoperability with, and access for the purposes of interoperability to, the same operating system, hardware or software features, regardless of whether those features are part of the operating system, as are available to, or used by, that gatekeeper when providing such services.
- (10) According to Article 13(4) of Regulation (EU) 2022/1925, the gatekeeper shall not engage in any behaviour that undermines effective compliance with the obligations of Articles 5, 6, and 7 regardless of whether that behaviour is of a contractual, commercial or technical nature, or of any other nature, or consists in the use of behavioural techniques or interface design.
- (11) According to Article 13(6) of Regulation (EU) 2022/1925, the gatekeeper shall not degrade the conditions or quality of any of the core platform services provided to business users or end users who avail themselves of the rights or choices laid down in Articles 5, 6, and 7, or make the exercise of those rights or choices unduly difficult, including by offering choices to the end user in a non-neutral manner, or by subverting end users' or business users' autonomy, decision-making, or free choice via the structure, design, function or manner of operation of a user interface or a part thereof.
- (12) 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"). Additionally, on 14 May 2024, Apple submitted to the Commission a compliance plan in relation to alternative distribution under Article 6(4) of Regulation (EU) 2022/1925 ("Apple's compliance plan of 14 May 2024"). Finally, on 23 May 2024, Apple submitted its reply to a request for information by the Commission of 25 March 2024. From the aforementioned documents and the available information it appears that Apple has implemented and/or applied ⁽⁴⁾ inter alia the following measures ⁽⁵⁾:
 - (a) Apple allows third-party app stores to operate as native apps on iOS and to be downloaded from a website owned by the third-party app store provider. The provision of a third-party app store is subject to the requirement of the Alternative App Marketplace Entitlement which is granted by Apple if several requirements are fulfilled by the provider of such third-party app store (*e.g.*, to be enrolled in the Apple Developer

⁽⁴⁾ Apple's Compliance Report, pages 20 and 59-67.

⁽⁵⁾ See also the 2 May 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 03 June 2024.

Program as an organisation incorporated, domiciled, and or registered in the EU; to provide and maintain a stand-by letter of credit in the amount of EUR 1,000,000 from a financial institution that's at least A-rated or be a member of good standing in the Apple Developer Program for two continuous years or more and have an app that had more than one million first annual installs on iOS in the EU in the prior calendar year).⁽⁶⁾

- (b) Also, Apple enables developers to distribute third-party apps from their own developer account via their own website or website they have responsibility for provided that, in addition to fulfilling the specific criteria for third-party app stores to be authorised to distribute applications on iOS⁽⁷⁾, they have been a member of the Apple Developer Program in good standing for at least 2 years, and have had at least one third-party iOS app in their developer account with more than 1 million first annual installs in the EU in the past calendar year.⁽⁸⁾
 - (c) Apple subjects end users' installation of third-party app stores from the third-party app store provider's website to a multi-step process including the end user's approval to install the third-party app store in Settings on their iPhone. Likewise, for end users to install third-party iOS apps directly from the developer's registered website domain, they will need to undertake a multi-step process including approving the developer in Settings on their iPhone. In both situations, before executing the installation of the third-party apps, a new system sheet will display information developers have submitted to Apple for review, like the third-party app name, developer name, third-party app description, screenshots, and system age rating.⁽⁹⁾
- (13) Additionally, to avail itself of the rights and choices laid down in Regulation (EU) 2022/1925, including the use of the possibility to, free of charge, communicate and promote offers to end users acquired via Apple's App Store or through other channels, and to conclude contracts with those end users (Article 5(4) of Regulation (EU) 2022/1925), the possibility to use alternative payment services and technical services that support the provision of payment services (Article 5(7) Regulation (EU) 2022/1925) and the possibility to use alternative distribution on iOS (Article 6(4) of Regulation (EU) 2022/1925), a business user must agree to and not be in violation of the latest version of Apple's Developer Program License Agreement ("DPLA")⁽¹⁰⁾, the separate Apple Developer Agreement⁽¹¹⁾ which, *inter alia*, requires enrolment in the Apple Developer

⁽⁶⁾ Apple's Compliance Report, Annex 12 to Section 2, paragraphs 4, 10, and 19-21.

⁽⁷⁾ Except those specifically applicable to third-party app stores only.

⁽⁸⁾ Apple's compliance plan of 14 May 2024, paragraphs 11-12.

⁽⁹⁾ Apple's Compliance Report, Annex 12 to Section 2, paragraph 5; Apple's compliance plan of 14 May 2024, paragraphs 8-9.

⁽¹⁰⁾ 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 3 June 2024).

⁽¹¹⁾ 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 3 June 2024).

Program⁽¹²⁾ and sign up to the Alternative Terms Addendum for Apps in the EU (hereinafter referred to as the “New Business Terms”).⁽¹³⁾ At the same time, business users may also choose to remain under the App Store business terms and conditions pre-dating 7 March 2024, where the aforementioned rights and choices laid down in Regulation (EU) 2022/1925 are not made available to business users (hereinafter referred to as the “Original Business Terms”).

- (14) Finally, Apple’s New Business Terms provide for a new fee structure⁽¹⁴⁾, including a Core Technology Fee (“CTF”) which subjects developers of third-party app stores and third-party apps to a requirement to pay EUR 0.50.⁽¹⁵⁾ In the case of third-party app stores, this obligation applies for each first annual install⁽¹⁶⁾ of their third-party app store. For developers of third-party apps, the CTF applies to first annual installs over a one million threshold irrespective of whether such third-party apps are distributed from the App Store and/or alternative distribution channels. The CTF does not apply to small developers (less than EUR 10 million in global annual business revenue) and other categories of developers⁽¹⁷⁾.
- (15) Following an initial analysis of the aforementioned documents and of the available information, the Commission has decided to examine whether the measures referred to in recitals (12) to (14) in relation to Apple’s iOS CPS and App Store CPS in the EU comply with Articles 5(4), 5(7), 6(4), and 6(7) of Regulation (EU) 2022/1925. The Commission’s investigation will focus on the following issues.
- (16) First, on whether both Apple’s Original Business Terms and New Business Terms comply with the requirement under Article 6(4) of Regulation (EU) 2022/1925 to enable the effective use of alternative channels of distribution by business users (i.e. app developers) and end users. This should include in particular an investigation of whether Apple’s Original Business Terms allow for alternative channels of distribution of third party app stores and apps, which does not appear to be the case. In addition, this should also include an investigation of whether the fee structure that Apple has imposed as part of the New Business Terms, and in particular the CTF, effectively complies with Article 6(4) and whether this fee structure, and in particular the CTF, in itself

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

⁽¹³⁾ See the Alternative Terms Addendum for Apps in the EU of 2 May 2024, accessible here: https://developer.apple.com/contact/request/download/alternate_eu_terms_addendum.pdf (accessed on 3 June 2024).

⁽¹⁴⁾ See the Alternative Terms Addendum for Apps in the EU of 2 May 2024, accessible here: https://developer.apple.com/contact/request/download/alternate_eu_terms_addendum.pdf (accessed on 3 June 2024), in particular Sections 3.5. and 4.1. thereof.

⁽¹⁵⁾ The scope of the new fee structure (including the exact elements composing it) is to be further assessed as part of the present proceedings.

⁽¹⁶⁾ According to Apple, “The first time an app is installed by an account in the EU in a 12-month period. After each first annual install, the app may be installed any number of times by the same account for the next 12 months with no additional charge.” Apple’s Compliance Report, Section 2, paragraph 23, footnote 6.

⁽¹⁷⁾ Apple’s Compliance Report, Section 2, para 23. See also the Core Technology Fee Support Page, accessible here: <https://developer.apple.com/support/core-technology-fee/> (accessed on 3 June 2024).

unduly restricts the use of alternative distribution channels and therefore undermines effective compliance with Article 6(4) within the meaning of Article 13(4) or 13(6) of that Regulation.

- (17) Second, as far as Apple’s Original Business Terms prevent steering, the use of ancillary services (payment services or technical services that support the provision of payment services, such as payment systems for in-app purchases) and the use of alternative distribution channels, which are allowed under certain conditions by the New Business Terms, the Commission will examine whether the fee structure foreseen by the New Business Terms, and in particular the CTF, could deter business users from availing themselves of the rights and choices afforded by Articles 5(4) and 5(7), and 6(4) of Regulation (EU) 2022/1925, thereby undermining effective compliance with those provisions, read in conjunction with Article 13(4), and/or 13(6) of that Regulation.
- (18) Third, on whether the requirement of the Alternative App Marketplace Entitlement⁽¹⁸⁾ that Apple imposes on third-party app stores and on developers who request access to web distribution, in particular the conditions referred to in the above paragraphs [13(a)] and [13(b)] which subject the possibility to distribute third-party app stores and apps downloaded directly from the web to certain requirements, undermine effective compliance with Article 6(4) and Article 13(4) or Article 13(6), of Regulation (EU) 2022/1925 and whether they are strictly necessary and proportionate within the meaning of second and third sub-paragraphs of Article 6(4) of that Regulation.
- (19) Fourth, on whether the steps and displayed screens for users to install third-party app stores or to authorise a developer to make available apps for download directly from the web undermine effective compliance with Article 6(4) and Article 13(4) or 13(6) of Regulation (EU) 2022/1925 and whether Apple has duly justified that they are strictly necessary and proportionate within the meaning of the second and third sub-paragraphs of Article 6(4) of that Regulation.
- (20) Fifth, on whether the CTF charged by Apple on developers distributing third-party apps outside of the Apple App Store and on third-party app stores providers, insofar as it could be considered as a condition for granting access to certain software features necessary to provide third-party apps and app stores on Apple’s operating system iOS, complies with Apple’s obligation under Article 6(7) of Regulation (EU) 2022/1925 to allow providers of services effective interoperability with hardware and software features accessed or controlled via the operating system, as are available to services or hardware provided by the gatekeeper, “free of charge”.
- (21) 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

(18) See Section 2.1. ‘Alternative App Marketplaces (EU) and Website Distribution’ of the the Alternative Terms Addendum for Apps in the EU of 2 May 2024, accessible here: https://developer.apple.com/contact/request/download/alternate_eu_terms_addendum.pdf (accessed on 3 June 2024).

Apple with Articles 5(4), 5(7), 6(4), and/or 6(7), of that Regulation, each of them alone or in conjunction with Article 13(4), and/or 13(6) of that Regulation.

- (22) 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.
- (23) The present decision is without prejudice to the possibility for the Commission to open proceedings on *inter alia* the notarization system put in place by Apple⁽¹⁹⁾ as well as other conditions relating to how third-party apps can be distributed through alternative distribution channels including the process for their installation and update.
- (24) 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 (12) to (13) of this Decision with Article 5(4), 5(7), 6(4), and 6(7) of that Regulation on their respective territories, or ends it where it is already ongoing.
- (25) In accordance with Article 5(2) of Commission Implementing Regulation (EU) 2023/814,⁽²⁰⁾ the Commission will make public this opening of proceedings.

Done at Brussels, 24.6.2024

For the Commission

Thierry Breton
Commissioner

⁽¹⁹⁾ As described in Apple's Compliance Report, Annex 12 to Section 2, paragraphs 13-18, Apple subjects the distribution of third-party apps on both the third-party app stores and the web to the requirement of a notarization exclusively carried out by Apple, that applies to all third-party apps regardless of the distribution channel. According to Apple, this notarization process consists of a combination of automated checks and manual human review of the accuracy, functionality, safety, security, and privacy, of the reviewed app. Once notarized by Apple, each third-party app is digitally signed by Apple.

⁽²⁰⁾ 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.