



EUROPEAN COMMISSION

CASE DMA.100204
SP – Apple - Article 6(7) - Process

(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: 19/09/2024

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EUROPEAN COMMISSION

Brussels, 19.9.2024
C(2024) 6661 final

PUBLIC VERSION

Apple Inc.
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Subject: Case DMA.100204 SP – Apple - Article 6(7) - Process

Commission Decision opening proceedings 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

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 (“CPS”) that are provided by Apple and which individually constitute an important gateway for business users to reach end users: (i) Apple’s online intermediation services App Store; (ii) Apple’s operating system (“OS”) iOS; and (iii) Apple’s web browser Safari. ⁽²⁾ On 29 April 2024, the Commission adopted a decision amending the Designation Decision by adding (iv) Apple’s OS iPadOS as a CPS which individually constitutes an important gateway for business users to reach end users. ⁽³⁾

⁽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⁾ Decision C(2023) 6100 final.

⁽³⁾ Decision C(2024) 2500 final.

- (2) Following the listing of Apple's iOS as an OS CPS in the Designation Decision, Apple had until 7 March 2024 to comply with the obligations laid down in Articles 5, 6 and 7 of Regulation (EU) 2022/1925.
- (3) Following the listing of Apple's iPadOS as an OS CPS in the Designation Decision, Apple has until 30 October to comply with the obligations laid down in Articles 5, 6 and 7 of Regulation (EU) 2022/1925.
- (4) Pursuant to Article 8(1) of Regulation (EU) 2022/1925, the gatekeeper should ensure and demonstrate compliance with the obligations laid down in Articles 5, 6 and 7 of that Regulation. The measures implemented by the gatekeeper should be effective in achieving the objectives of the Regulation and specifically of the relevant obligation.
- (5) Pursuant to Article 8(2) of Regulation (EU) 2022/1925, the Commission may, on its own initiative or at the request of a gatekeeper, open proceedings pursuant to Article 20 with a view to adopting an implementing act specifying the measures that the gatekeeper concerned should implement to effectively comply with the relevant obligation.
- (6) The implementing act referred to in Article 8(2) of Regulation (EU) 2022/1925 should be adopted within 6 months from the opening of proceedings. Such proceedings are without prejudice to the powers of the Commission to adopt a decision establishing non-compliance with any of the obligations laid down in Regulation (EU) 2022/1925 by a gatekeeper, including the possibility to impose fines or periodic penalty payments. Pursuant to Article 8(9) of Regulation (EU) 2022/1925, the Commission may decide to reopen the proceedings pursuant to Article 8(2) of that Regulation.
- (7) The second paragraph of recital 65 of Regulation (EU) 2022/1925 indicates that it may be appropriate for the Commission in certain cases, following a dialogue with the gatekeeper concerned and after enabling third-parties to make comments, to further specify some of the measures that the gatekeeper concerned should adopt in order to effectively comply with obligations that are susceptible of being further specified or, in the event of circumvention, with all obligations. In particular, such further specification should be possible where the implementation of an obligation susceptible to being further specified can be affected by variations of services within a single category of CPSs.
- (8) The Commission should have discretion as to whether and when such further specification should be provided. This process does not presuppose an assessment of the compliance by a gatekeeper with the obligations susceptible of being further specified. The Commission may therefore open proceedings with a view to the possible adoption of a specification decision pursuant to Articles 8 of Regulation (EU) 2022/1925 even before receiving the compliance report that a gatekeeper must submit pursuant to Articles 11 of Regulation (EU) 2022/1925.
- (9) In the implementing act specifying the measures that the gatekeeper concerned should implement to effectively comply with the relevant obligation, the Commission may also impose periodic penalty payments pursuant to Article 31(1), point (a), of Regulation (EU) 2022/1925 in order to compel a gatekeeper to comply with such an implementing act.

- (10) 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 should pursuant to Article 20(1) of Regulation (EU) 2022/1925 adopt a decision opening proceedings.
- (11) Gatekeepers that have been designated in relation to an operating system or a virtual assistant are subject to Article 6(7) of Regulation (EU) 2022/1925. According to that provision, gatekeepers should:
- (a) allow providers of services and 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 or virtual assistant listed in the designation decision pursuant to Article 3(9) of Regulation (EU) 2022/1925 as are available to services or hardware provided by the gatekeeper;
 - (b) allow business users and alternative providers of services provided together with, or in support of, CPSs, 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; and
 - (c) not be prevented from taking strictly necessary and proportionate measures to ensure that interoperability does not compromise the integrity of the operating system, virtual assistant, hardware or software features provided by the gatekeeper, provided that such measures are duly justified by the gatekeeper.
- (12) Article 6(7) of Regulation (EU) 2022/1925 is an obligation that is susceptible of being further specified pursuant to Article 8(2) of Regulation (EU) 2022/1925.
- (13) Ensuring that alternative service and hardware providers have access under equal conditions as the gatekeeper to the features accessed or controlled via the designated operating system that are available by to the gatekeeper in the provision of its own services or hardware avoids undermining innovation by such alternative providers and it also contributes to an increased choice for end users. Achieving effective interoperability under Article 6(7) of Regulation (EU) 2022/1925 is therefore key to ensuring contestability in relation to a broad range of services, software and hardware that are susceptible of being integrated with iOS.
- (14) On 7 March 2024, Apple submitted its compliance report to the Commission pursuant to Article 11 of Regulation (EU) 2022/1925 (“Apple’s Compliance Report”). In that report, Apple announced three measures it intended to take to comply with Article 6(7) of Regulation (EU) 2022/1925 in relation to Apple’s iOS CPS:
- (a) First, Apple is introducing an engineering team focused on ensuring that Apple provides third-parties with effective interoperability with newly released iPhone and iOS hardware and software features, at least to the extent required by Article 6(7) DMA of Regulation (EU) 2022/1925;

- (b) Second, Apple is introducing a new request form for developers to request additional interoperability with hardware and software features built into the iPhone and Apple's iOS CPS. Apple will review the submissions through three steps: (1) Initial assessment, (2) Tentative project plan, and (3) Development and release of the interoperability solution. Apple evaluates the requests on a case-by-case basis to assess whether they fall in scope of Article 6(7) of that Regulation.
 - (c) Third, Apple is introducing a new effective interoperability solution for third-party browser engines.
- (15) In the submission of 11 September 2024 regarding its compliance with Regulation (EU) 2022/1925 for its iPadOS Apple indicated that it will ensure that its compliance plan for iOS with respect to Article 6(7) of Regulation (EU) 2022/1925 also covers iPadOS. In particular, Apple indicated that its request form would be modified to encompass interoperability of iPad and iPadOS.
 - (16) As concerns the request form specifically, as of 31 August 2024, Apple had received 88 requests for effective interoperability with iOS under Article 6(7) of Regulation (EU) 2022/1925. These requests are diverse and concern a broad range of features and use cases⁽⁴⁾. The Commission has engaged with Apple on several occasions ⁽⁵⁾ regarding its compliance with Article 6(7) of Regulation (EU) 2022/1925, including specifically on the process to enable effective interoperability.
 - (17) While the goal of achieving effective interoperability is clearly set out in Article 6(7) of Regulation (EU) 2022/1925, gatekeepers may need guidance as to how best to achieve this goal. This includes aspects such as the exact interoperability solutions offered, their technical implementation, and the modalities of access to be provided to third-parties.
 - (18) The Commission notes that Article 6(7) of Regulation (EU) 2022/1925 does not require gatekeepers to introduce a request-based process, nor does it require the publication of a reference offer, as Article 7 of the same Regulation does.
 - (19) In that respect, as part of its compliance with Article 6(7) of Regulation (EU) 2022/1925, it is for the gatekeeper to ensure that hardware or software features which are accessed or controlled via a designated operating system are available to third parties as effectively as they are available to the gatekeeper's own services or hardware. Such a proactive approach to compliance and interoperability is particularly important with respect to new features. Recital 65 of Regulation (EU) 2022/1925 highlights in that regard that “[t]he gatekeepers should ensure the compliance with this Regulation by design. Therefore, the necessary measures should be integrated as much as possible into the technological design used by the gatekeepers.”

⁽⁴⁾ Apple's replies to RFI 6 of 2 April 2024 and RFI 7 of 27 June 2024.

⁽⁵⁾ The European Commission met Apple to discuss Apple's compliance with Article 6(7) of Regulation (EU) 2022/1925 on multiple occasions in 2023 and 2024, including recently on 17 July 2024 and 3 September 2024.

- (20) Unlike proactive approaches such as interoperability by design, a request based system (also referred to as a “ticketing system”) may present important limitations and difficulties for third parties. In particular, it may cause delays in the processing of requests and the implementation of solutions and it leads to associated transaction costs. It requires third parties to try to identify the hardware and software features available to or used by the gatekeeper. It may also necessitate the disclosure of third parties’ confidential information to the gatekeeper. Moreover, it enables the gatekeeper to maintain control over the request process and its outcome (i.e. whether, when and how interoperability will be provided).
- (21) Notwithstanding the previous paragraph, it might be challenging in practice for the gatekeeper to immediately ensure effective interoperability with all existing features for which interoperability was not foreseen by design. To that extent, and in order to guide the gatekeeper to provide effective interoperability to the benefit of third parties, it may be necessary to rely on a fast, transparent and predictable process leading to rapid results.
- (22) Therefore, to the extent that Apple’s compliance is for the time being mainly based on the introduction of a request based process for pre-existing features for which interoperability was not foreseen, and until interoperability by design is achieved, the Commission considers it appropriate to specify certain relevant aspects of Apple’s process for handling requests for interoperability to ensure effective compliance with Article 6(7) of Regulation (EU) 2022/1925 in relation to Apple’s designated operating systems CPS in the EU. In particular, such specifications are required to ensure that the overall process is effective, i.e. timely, transparent and predictable, objective, fair and non-discriminatory for all developers requesting access.
- (23) In light of the above, the Commission has decided to, on its own initiative, open proceedings in relation to Apple with a view to the possible adoption of an implementing act pursuant to Article 8(2) of Regulation (EU) 2022/1925 as regards a potential specification of measures that Apple is to implement to effectively comply with Article 6(7) of that Regulation with respect to the process used by Apple to handle requests from third parties seeking to obtain effective interoperability of existing features accessed or controlled via its designated operating systems.
- (24) The initiation of proceedings does not prejudice in any way the outcome of the Commission’s assessment regarding compliance.

- (25) In accordance with Article 5(2) of Commission Implementing Regulation (EU) 2023/814 ⁽⁶⁾, the Commission will make public this opening of proceedings.

Done at Brussels, 19.9.2024

For the Commission

Margrethe Vestager
Executive Vice-President

⁽⁶⁾ 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.