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Judgment of the General Court in Joined Cases T-1079/23, T-1080/23 | Apple v Commission and T-214/24 Apple and Apple Distribution International v Commission

Digital services: the General Court dismisses Apple's actions regarding its designation as a gatekeeper in relation to the App Store and iOS

The General Court also rules that the actions regarding the iMessage service are inadmissible

Apple is an innovative technology company which has developed devices such as the iPhone and iPad, along with their proprietary mobile operating systems (iOS and iPadOS, respectively). It operates five software application stores, namely iOS App Store (for iPhone mobile phones), iPadOS App Store (for iPad electronic tablets), watchOS App Store (for Apple Watches), macOS App Store (for Mac computers) and tvOS App Store (for Apple TV television devices).

On 5 September 2023, pursuant to the Regulation on digital markets (Digital Markets Act, DMA), [1] the European Commission designated Apple as a 'gatekeeper' in relation to the App Store, the operating system iOS and the web browser Safari. That designation may be conferred upon certain large digital undertakings that provide core platform services – that is, services which play an indispensable role as an intermediary between businesses wishing to offer their services online and end users – when they satisfy certain conditions relating, *inter alia*, to their size and market influence. Undertakings designated in this way are subject to specific obligations intended to ensure fair competition.

The Commission's decision also classified the iMessage service as a number-independent interpersonal communications service (NIICS) constituting a core platform service (CPS).

On the same date, the Commission opened a market investigation to examine whether the arguments put forward by Apple in relation to the iMessage service were capable of calling into question the presumptions laid down by the DMA, according to which the undertaking fulfilled the three criteria required for it to be designated as a gatekeeper. On 12 February 2024, it ultimately decided not to designate Apple as a gatekeeper in relation to iMessage. However, both the decision opening the investigation and the decision closing it retained the classification of iMessage as an NIICS constituting a CPS.

Apple then brought proceedings before the General Court of the European Union in order to challenge, first, its designation as a gatekeeper in relation to the App Store and iOS as well as certain classifications adopted by the Commission; second, the decision opening the investigation regarding iMessage; and, lastly, the decision closing that investigation.

The General Court dismisses all the actions brought by Apple. It confirms the designation of Apple as a gatekeeper in relation to the App Store and iOS, and finds the actions concerning the iMessage service to be inadmissible.

In the first place, the General Court rules inadmissible the plea of illegality raised by Apple against the provision of the DMA relating to the interoperability obligations imposed on undertakings which are designated as gatekeepers. It holds that that provision constitutes neither the legal basis of the designation decision nor a rule having a direct legal connection with that decision, and therefore its alleged illegality cannot be pleaded in support of an application to have

that decision annulled.

In the second place, the General Court confirms the Commission's assessment that the different versions of the App Store constitute a single CPS. It finds that, irrespective of the devices in question, those stores have the same purpose, namely to connect app developers with end users in order to facilitate the distribution of software applications. The differences alleged by Apple for the purpose of claiming that each of those stores constituted a distinct CPS, and that therefore only the iOS App Store met the thresholds required for designation as a gatekeeper, relate primarily to the specific characteristics of the devices used and do not justify distinguishing between several core platform services.

In the third place, the General Court rules inadmissible the complaints relating to the classification of iMessage as an NIICS constituting a CPS. It considers that that classification does not, by itself, produce binding legal effects that bring about a change in Apple's legal position. In particular, none of the obligations laid down by the DMA applies to iMessage since that service has not been listed in a designation decision as an important gateway. For the same reasons, the General Court also dismisses the actions directed against the decisions opening and closing the market investigation regarding iMessage.

NOTE: An action for annulment seeks the annulment of acts of the institutions, bodies, offices or agencies of the European Union that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

The full text and, as the case may be, an abstract of the judgment is published on the CURIA website on the day of delivery.

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Pictures of the delivery of the judgment are available from "Europe by Satellite" ✆ (+32) 2 2964106.

[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).