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NEWSLETTER

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QUICK LINKS

European Commission issues first non-compliance decisions under Digital Markets Act

On 23 April 2025, the European Commission announced that it has fined Apple and Meta under the Digital Markets Act (DMA).

Following a year-long investigation, the Commission has fined Apple €500 million for breaching the DMA's anti-steering obligations, and Meta €200 million for breaching its obligation under the DMA to give consumers the choice of a service that uses less of their personal data. On the same day, the Commission announced that it has closed its investigation into Apple's user choice obligations, and that Meta's Facebook Marketplace should no longer be designated as a gatekeeper.

Apple's steering terms

The DMA requires that app developers distributing their apps via Apple's App Store must be able to inform users about alternative offers available outside the App Store. They should be able to direct customers to those external offers and allow them to make purchases there.

The Commission has found that, due to various technical and commercial restrictions imposed by Apple, app developers are unable to benefit fully from alternative distribution channels, with the result that consumers may miss out on alternative and cheaper offers. The Commission considers that Apple failed to demonstrate that the restrictions in question are objectively necessary and proportionate. As a result, it has fined Apple €500 million and ordered Apple to remove the restrictions and refrain from equivalent conduct in the future.

The same day, the Commission announced that, "*following a constructive dialogue*" and "*early and constructive engagement by Apple on a compliance solution*", it has closed its investigation into Apple's user choice obligations. According to the Commission's press release, Apple has changed its browser choice screen, streamlining the user experience of selecting and setting a new default browser on iPhones. Apple has also introduced a new menu enabling users to adjust default settings for various other services in one centralised location, and made changes which mean users can now uninstall several pre-installed Apple apps, including Safari.

The Commission has also informed Apple of its preliminary view that Apple's contract terms regarding alternative app distribution breach the DMA. While, according to the Commission, the DMA requires Apple to allow third party app stores on iOS, and for apps to be downloaded to iPhones directly from the web, the Commission's preliminary view is that Apple imposes conditions on app and app store developers which breach this obligation, and makes it "*overly burdensome*" for end users to install apps from alternative app distribution channels. Apple now has the opportunity to respond to these preliminary findings.

For further information on any EU or UK Competition related matter, please contact the Competition Group or your usual Slaughter and May contact.

Square de Meeûs 40
1000 Brussels
Belgium
T: +32 (0)2 737 94 00

One Bunhill Row
London EC1Y 8YY
United Kingdom
T: +44 (0)20 7600 1200

Meta's 'consent or pay' model

The DMA requires gatekeepers to seek users' consent before combining their personal data across different services. Users who do not consent must have access to a less personalised but equivalent alternative.

In November 2023, to comply with these obligations, Meta launched a 'Consent or Pay' model, whereby European users of Facebook and Instagram could choose between consenting to personal data combination for personalised ads or paying a monthly fee for an ad-free service. The Commission found that this model was not compliant with the DMA, as it did not give users the ability to opt for a service that uses less of their personal data but is otherwise equivalent, and did not allow them to freely consent to the combination of their personal data. After ongoing conversations with the Commission, Meta introduced another version of the free, personalised ads model in November 2024, which is currently being assessed by the Commission. The €200 million fine imposed last week therefore relates to the period before this new model was introduced.

Conclusion

The Commission press release notes that the fines reflect the gravity and duration of the companies' non-compliance, "*while noting that [the] decisions […] are the first non-compliance decisions adopted under the DMA*".

OTHER DEVELOPMENTS

MERGER CONTROL

Keysight Technologies fined for failing to provide documents to the CMA during Phase 1 investigation

On 15 April 2025, the UK Competition and Markets Authority (CMA) fined Keysight Technologies £25,000 for failing to provide documents in response to an information request in the context of a Phase 1 investigation into its acquisition of Spirent Communications plc. The CMA found that Keysight unreasonably failed to comply with the requirements imposed on it by a request for information issued on 4 September 2024 under section 109 of the Enterprise Act 2002.

The CMA had issued the notice for the purpose of investigating the acquisition and deciding whether it gave raise to competition concerns in the UK. The CMA required Keysight to produce all internal documents produced between 28 June 2022 and 29 May 2024 which discussed specific issues identified by the CMA. Keysight only produced 11 documents by the deadline set out in the first notice, which the CMA considered to be insufficient. The CMA therefore issued a second information notice for documents covering the same issues but spanning a longer period of 28 June 2020 to 29 May 2024. This time Keysight provided 115 documents, 66 of which the CMA considered should have been provided in response to the first request.

When considering aggravating and mitigating factors, the CMA considered amongst other things that the documents that had not been provided were highly pertinent to the CMA's merger inquiry, and that as a result of the documents not having been provided, the CMA had had to proceed with its investigation based on incomplete information for around 1.5 months.

The CMA concluded that there was no reasonable excuse for Keysight's failure to comply in full with the first notice. The CMA further concluded that the fine of £25,000 was appropriate in that it reflects the seriousness of Keysight's failure to comply in full with the first notice, would act as a deterrent to Keysight and others in the future, and is not disproportionate by reference to Keysight's financial resources.

ANTITRUST

Annual Report by PRC courts showed increasing number of competition-related cases

China's Supreme Court has released its annual report showing Chinese courts are reviewing more competition cases, with a significant increase in court decisions finding conduct constituting monopolistic practices. The courts accepted 10,567 competition-related cases in 2024, up 3.3 per cent from 2023, and ruled in 31 cases that the relevant conduct constituted monopolistic practices, a 2.1-fold increase from 2023. The Chinese courts also concluded 10,000 cases of unfair competition, including infringement of trade secrets and bid-rigging, an increase of 0.7 per cent from the 2023 figure.

The Chinese Anti-Monopoly Law (AML) and the Anti-Unfair Competition Law constitute the main legal framework in China in relation to competition-related issues. The two laws have some degree of overlap, but the Anti-Unfair Competition Law covers a broader range of conduct, and it is easier to establish an infringement than under the AML. In China, standalone private enforcement by the Chinese courts plays a particularly important role in competition law enforcement, as parties do not need to rely on the competition authority, the State Administration for Market Regulation (SAMR), to commence an investigation and claimants tend to be active in bringing claims directly before the Chinese courts. The annual report also pointed to examples of cooperation and coordination of standards for administrative enforcement and judicial adjudication between SAMR and the courts. For example, it is reported that the Beijing High People's Court has developed a collaborative alignment mechanism with SAMR and the Beijing Comprehensive Administrative Law Enforcement Unit for Market Regulation for timely referral of any information regarding monopolistic and unfair competitive practices discovered during case trials for further investigation.

SUBSIDY CONTROL

CMA consults on effectiveness and impact of Subsidy Control Act 2022

On 15 April 2025, the CMA's Subsidy Advice Unit (SAU) launched a call for inputs to inform its review of the effectiveness of the Subsidy Control Act 2022 and its impact on competition and investment in the UK. In parallel, the CMA has published a blog on the SAU's experience and background to the call for inputs. This follows a consultation launched by the SAU in February 2024, requesting views on the SAU's proposed approach to carrying out its monitoring function.

In its call for inputs, which is open until 24 June 2025, the SAU is asking for views on: (i) how well the UK subsidy control regime is meeting its policy intentions; (ii) experiences of the practical arrangements that support the subsidy control regime and how well public authorities are equipped to operate under the regime; (iii) whether the process is sufficiently transparent; (iv) how effectively the SAU carries out its statutory role to help achieve the objectives of the subsidy control regime; (v) whether the assistance, guidance and other materials published by the Department for Business and Trade and the SAU are effective and helpful; and (vi) the effectiveness of the practical arrangements involved in challenging a subsidy decision before the Competition Appeal Tribunal. In addition, the call for inputs is requesting stakeholders to provide examples where subsidies may have had effects (positive and negative) on competition and investment within the UK; and how the regime could be improved to achieve a more beneficial impact on competition and innovation.

The SAU plans to publish its final report by summer 2026.

London
T +44 (0)20 7600 1200
F +44 (0)20 7090 5000

Brussels
T +32 (0)2 737 94 00
F +32 (0)2 737 94 01

Hong Kong
T +852 2521 0551
F +852 2845 2125

Beijing
T +86 10 5965 0600
F +86 10 5965 0650