



Summary of decision on abuse of dominant position by Apple

Chapter 1 of the decision of the Netherlands Authority for Consumers and Markets (ACM) within the meaning of Section 56 of the Dutch Competition Act and Section 5:32(1) of the Dutch General Administrative Law act (Awb) regarding the imposition of an order subject to periodic penalty payments on Apple Inc. and Apple Distribution International Ltd for the violation of section 24 of the Dutch Competition Act and article 102 TFEU. (ACM/UIT/559984).

Our reference : ACM/UIT/568584
Case number : ACM/19/035630
Date : 24 august 2021

1. In this decision, the Netherlands Authority for Consumers and Markets (ACM) imposes an order subject to periodic penalty payments on Apple for abusing its dominant position. As such, Apple violates Section 24 of the Dutch Competition Act (Mw) and Article 102 of the Treaty on the Functioning of the European Union (TFEU). Apple abuses its dominant position by imposing unreasonable conditions on dating-app providers. The order subject to periodic penalty payments mandates Apple to change the conditions regarding access to the Dutch Store Front of the App Store in such a way that dating-app providers are also able to use an alternative payment system other than Apple's (IAP service). The existing conditions prohibit this. In addition, dating-app providers must be given the opportunity to refer in their apps to payment options outside the app. **[suspended]**.

Apple's App Store and the unreasonable conditions

2. Apple's App Store is a digital distribution platform on which app providers are able to offer their apps to users of Apple's smart mobile devices (iPhone or iPad). Using apps, app providers are able to offer, among other things, digital content and services within the app (for example, news, entertainment, or dating services), but also to offer goods and services outside the app (for example, hotels or transportation services). App providers can offer their goods and services within the app or outside the app, either for free or for a fee. All app providers pay Apple an annual fee of 99 US dollars for using the App Store.
3. However, if an app provider offers digital content or services within the app for a fee, the app provider is required to agree to additional contractual conditions set by Apple. These conditions mandate the app provider to use Apple's IAP system for the processing of payments. **[suspended]**. In addition, app providers are not allowed to refer within their own apps to payments options outside the app, for example to alternative payments options that app providers offer on their websites (anti-steering).
4. As a result of these conditions, app providers are limited in their freedom of choice. They must use Apple's IAP service, and cannot have payments be processed in any other way.

5. Apple does not apply these conditions to all app providers. These conditions do not apply to app providers that do not offer paid digital content or services within their apps. **[suspended]**.
6. This decision concerns dating-app providers that offer apps in the App Store. For these providers, offering an app is critical since consumers use dating services primarily on their smart mobile devices, and consumers prefer using apps: apps are appealing because, in that way, several functionalities specific to smart mobile devices can be used that are available in apps, but that are not available (or available to a lesser degree) on mobile websites. For example, think of push notifications, data storage, GPS, the speed of the service. For dating app, this is very important.
7. Virtually all dating-app providers use a business model (the freemium model) in which they offer the app for free in the App Store, and subsequently generate revenue by offering premium functionalities, content, and services within the app. This often concerns combinations of subscriptions and expendable items (such as likes and superlikes). For these services within the app, dating-app providers are required to use Apple's payment system, and comply with Apple's additional conditions.

Dominant position

8. Before being able to establish any abuse, ACM first needs to determine whether Apple has a dominant position and, as such, has the thereto-related special responsibilities.
9. For the assessment, it is important to answer the question of whether dating-app providers have any substitutes for Apple's appstore service. The answer to that question is that such substitutes do not exist to a sufficient degree. As a result, Apple is, to a high degree, able to act independently from dating-app providers.
10. In its assessment, ACM took into account that most Dutch only have access to one mobile operating system with that system's appstore (single-homing): Apple's operating system iOS with the App Store or Google's operating system Android with the Google Play Store. In order to widen the reach of the dating app, app providers must be present in both the App Store and the Google Play Store (multi-homing).
11. Multi-homing is critical to dating-app providers, because dating apps heavily rely on network effects: the greater the odds of a successful match are, the more appealing it becomes to use the app. Consumers that use dating services assume that the reach of their dating app is not limited to the mobile operating system on which the app has been downloaded. Dating-app providers are therefore forced, even more so than the average app provider, to be present in the both the App Store and the Google Play Store.
12. Apple does not allow alternative appstores on its smart mobile devices. Websites (mobile and desktop), too, are not alternatives for dating-app providers because, on those channels, the same functionalities cannot be offered as within an app.
13. That is why ACM establishes that Apple enjoys a dominant position on the relevant market for appstore services on the mobile operating system iOS for dating-app providers. On this market, Apple is, to a high degree, able to act independently from dating-app providers, and to dictate the

conditions regarding access to the App Store. After all, dating-app providers have no realistic alternative to the App Store, and consumers do not take into consideration the conditions for dating-app providers when selecting a smart mobile device.

14. Having a dominant position is not illegal in and of itself. Abusing one, however, is. Apple's dominant position means that Apple bears a special responsibility for preventing such abuse. This special responsibility sets limits to its freedom of action with regard to the conditions it uses vis-à-vis dating-app providers. Apple must weigh the effects of its conduct on its buyers against the objectives that it pursues with that conduct.

Apple's abuse

15. ACM comes to the conclusion that Apple abuses its dominant position by imposing unreasonable contractual conditions on dating-app providers. The conditions with regard to the IAP service and anti-steering, which only apply to providers that, within their apps, offer digital content or services, for a fee, result in harm to these dating-app providers, in two ways.
16. First, with those conditions, Apple restricts the dating-app providers' freedom of choice with regard to the processing of the payments for the digital content and services they sell. Dating-app providers are not able to have these services handled by another payment system, nor are they able to refer in their apps to payment options outside the app. **[suspended]**. Moreover, since Apple does not give access to data about customers that have made purchases, app providers are also not able to contact their app users directly for customer service purposes. Dating-app providers are unable to handle any issues regarding invoicing, cancellations, and refunds directly with their customers because they do not have access to the necessary data. In addition, it becomes much harder for dating-app providers to do background checks, which is of significant importance to dating-app providers, considering safety, age checks, and malevolent users.
17. **[suspended]**
18. ACM has also assessed the objectives that Apple says it pursues with these conditions, and whether the conditions are necessary and proportional in that pursuit. These objectives are the ability to exploit commercially the App Store, **[suspended]**, and safeguarding quality, privacy, and safety. ACM establishes that Apple can also achieve these objectives in other less harmful ways.
19. Since the conditions are harmful to dating-app providers and are not necessary for the objectives Apple says it pursues, ACM comes to the conclusion that the conditions are unreasonable, and that Apple thus abuses its dominant position.

The order subject to periodic penalty payments

20. ACM orders Apple to put an end to the violation established by ACM. Apple must adjust its conditions in such a way that, with regard to their dating apps that they offer in the Dutch App Store, dating-app providers are able to choose themselves what market participant they want to process the payments for digital content and services sold within the app. **[suspended]**, and, in addition, they must have the ability to refer within the app to other payment systems outside the app.

21. Apple must execute this order, no later than two months after the date of this decision. If it fails to do so, it must pay a periodic penalty of 5,000,000 euros per week, up to a maximum of 50,000,000 euros.