

Commission [Spotify] v. Apple: 1.84 billion fine ... and it's just the beginning

Last Monday, March 4, the European Commission fined Apple for abusing its dominant position in the market for the distribution of music apps on iPhones and iPads. The fine stems from a complaint by Spotify six years ago regarding the *anti-steering provisions* that Apple imposes to prevent developers from directing users to distribution channels alternative to the Apple Store. These obstacles relate to the tasty 30 percent commission that Apple takes from the revenue generated by third-party apps. The anti-steering provisions are hard to resist because, in the iOS environment, there is no viable alternative to the Apple Store (similar to what happens with the Google Store in the Android environment).

Apple has already made some public statements indicating its displeasure with the Commission's decision and its intention to appeal it; and pointing out that the only beneficiary is Spotify, a company that has met with the Commission up to sixty-five times.

The anti-steering provisions issue has its immediate precedent in the litigation between Apple and Epic Games in the United States: Epic Games tried to direct users to its own website to download games there while circumventing the 30% "toll". Apple excluded Epic Games from the Apple Store, which led Epic to sue Apple in the United States, where a judge prohibited the latter from using the aforementioned anti-steering provisions.

The European Commission understands that Apple's abusive practices may have led to an increase in the prices paid by iPhone and iPad users. This heralds new damages litigation, in which both end users and app developers are potential claimants. Moreover, the aforementioned practices have lasted for ten years, so the claims Apple may face are substantial. The statute of limitations for this type of civil claims is of five years counting from the time the cause of the damage has ceased, interrupting this period in case of an administrative investigation and up to one year after Decision is final (*i.e.*, until the administrative Decision or judgment in judicial review is no longer subject to further appeal).

The prohibition of anti-steering clauses by companies designated as large platforms has been codified in the Digital Markets Regulation (RMD, see [here](#)), and Apple is obliged to eliminate such clauses as of March 7, 2024. Therefore, in addition to the aforementioned fine, and an order to cease the conduct, Apple is bound going forward by the provisions of the RMD. They are different legal bases, but compatible (one fining for past conduct or *ex post*; the other a regulatory provision contemplating, *ex ante*, future conduct). However, it seems that Apple is not resigned to losing its Apple Store monopoly, as news in recent days indicate that Apple is threatening to exclude Epic Games from the Apple Store (although news in recent hours indicate that Apple would have backed down under pressure from the regulator, despite which, it seems that Apple will maneuver to resist, see Spotify's message [here](#)).

The RMD has direct effect, so that its violation by large platforms will also be subject to redress through compensation to those harmed by practices contrary to the RMD (in addition to the administrative liability derived from the RMD).

According to the European Commission, the amount of the fine under the Commission's Fining Guidelines would have been EUR 40 million. However, given Apple's size and resources, the Commission considers it appropriate to increase the fine to 1.84 billion, which seems a more "deterrent" amount for Apple. This procedure is *a priori* a little surprising at first glance.

As a final note, the sanctioning Resolution is adopted by the Commission on its own behalf and on behalf of the UK authorities, as the investigation was initiated prior to the Brexit. Once the fine is final, the Commission will compensate the UK with its share.

The fine is one of the largest imposed on a company in the EU, with the permission of Google's in the *Google Shopping*, *Android* and *AdSense* cases. However, as we have seen, Apple remains defiant, and the sword of Damocles of the Commission pend.

