



05.05.2024

NOTICE TO MEMBERS

Subject: Petition No 0491/2023 by Álex Román (Spanish) on the anti-competitive practices caused by hardware and software attestations on devices running Google's Android

1. Summary of petition

The petitioner explains that Android is, at its core, an open-source software (the Android Open Source Project (AOSP)), which would imply, in his opinion, that everybody could produce their own version of AOSP and launch it as a competitor to Google's Android. He considers nevertheless that this is often both legally and technically challenging, due to the safety provisions Google has built on top of AOSP, such as the "SafetyNet service" (soon to be replaced by the Play Integrity API), which checks if the Android in use on a phone is a Google Android. Applications that include SafetyNet do not work on any other Android version than Google's version, which forces consumers to use Google's Android version to use even common applications, such as banking applications. The petitioner's opinion is that allowing users to install different operating systems, would ensure a fair competition and would provide for more modern versions of these systems, with improved safety and performance features. He considers that the current limitations are artificial and monopolistic, preventing the entrance of new mobile operating systems on the market.

2. Admissibility

Declared admissible on 30 August 2023. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 6 December 2023

In July 2018, the Commission found that Google had infringed EU antitrust rules, notably by preventing manufacturers from selling smart mobile devices running on competing operating systems based on the Android open-source code (case AT.40099 - Google Android). The

Commission imposed a fine of EUR 4.34 billion and required that Google bring effectively to an end its infringement. Among others, Google waived these restrictions with respect to devices shipped in the EEA. Therefore, in the EEA, manufacturers can now sell both smart mobile devices with Google Android as the operating system which may include Google's proprietary apps, such as Google Play, and smart mobile devices with an operating system based on a different version of Android. The Commission is monitoring the effectiveness of these remedies. In September 2022, the General Court largely confirmed the Commission's decision and fine.

According to the petition, Google has found a way to, in effect, impose the use of the Google Android operating system in smart mobile devices through a software component, which is allegedly justified to ensure the security of the smart mobile devices.

The Commission remains committed to ensuring that all companies compete on their merits, for the benefit of EU consumers. The Commission will treat these allegations as market information and will take them into account in its ongoing monitoring of digital markets. This does not prejudge the outcome of these allegations. The Commission has limited resources and is unable to pursue every alleged infringement of the Union competition rules which is brought to its attention. Therefore, the Commission must set priorities, in accordance with the principles set out notably at points 41 to 45 of the Notice on the handling of complaints under Articles 81 and 82 of the EC Treaty (now: Articles 101 and 102 of the Treaty on the Functioning of the European Union). In particular, the Commission would have to verify the factual accuracy of these allegations and assess the likelihood of finding an infringement of antitrust rules and the impact on the functioning of the internal market.

Conclusion

The Commission will treat these allegations as market information and will take them into account in its ongoing monitoring of the digital markets.

4. Commission reply (REV I), received on 5 May 2024

The Commission's observations

In July 2018, the Commission found that Google had infringed EU antitrust rules, notably by preventing manufacturers from selling smart mobile devices running on competing operating systems based on the Android open-source code (case AT.40099 - Google Android). The Commission imposed a fine of EUR 4.34 billion and required that Google bring effectively to an end its infringement. Among others, Google waived these restrictions with respect to devices shipped in the EEA. Therefore, in the EEA, manufacturers can now sell both smart mobile devices with Google Android as the operating system which may include Google's proprietary apps, such as Google Play, and smart mobile devices with an operating system based on a different version of Android. In September 2022, the General Court largely confirmed the Commission's decision and fine.

According to the petition, applications that rely on the Google Play Integrity software component do not work on any other Android version than Google's Android version. According to the petition, Google has found a way to, in effect, impose the use of the Google Android operating system in smart mobile devices through a software component, which is

allegedly justified to ensure the security of the smart mobile devices.

The Commission remains committed to ensuring that all companies compete on their merits, for the benefit of EU consumers, and is carefully monitoring the digital markets.

The Commission is also enforcing the Digital Markets Act,¹ which entered into force on 1 November 2022 and whose rules started to apply on 2 May 2023. The Digital Markets Act establishes several obligations which gatekeepers must comply with in their daily operations. On 6 September 2023, the Commission designated six undertakings as gatekeepers under the Digital Markets Act, including Alphabet with respect to its operating system Google Android, which constitutes a core platform service under the DMA. Following their designation, gatekeepers have six months to comply with the set of obligations laid down in the DMA.

As a designated gatekeeper for its operating system Google Android, Alphabet has to comply with a number of obligations under the DMA, *inter alia* to allow and technically enable the installation and effective use of third-party software applications or software application stores using, or interoperating with, its operating system and to allow those software applications or software application stores to be accessed by means other than the relevant core platform services of that gatekeeper. At the same time, under the DMA, the gatekeeper shall not be prevented from taking, to the extent that they are strictly necessary and proportionate, measures to ensure that third-party software applications or software application stores do not endanger the integrity of the hardware or operating system provided by the gatekeeper, provided that such measures are duly justified by the gatekeeper (Article 6(4) DMA). Against that backdrop the Commission takes note of the petitioner's concerns and will treat them as market information.

Conclusion

The Commission will treat the petitioner's concerns as useful market information and will take them into account in its ongoing monitoring of the digital markets. The Commission uses market information to refine its understanding of the markets and of the practices that might be the most harmful to competition, and to set its priorities in terms of antitrust enforcement.

¹ Regulation (EU) 2022/1925 on contestable and fair markets in the digital sector.