

EU official lifts lid on landmark €1.8 billion fine against Apple

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A senior official at the European Commission has fleshed out the decision to fine Apple €1.8 billion over abusive app store rules for music streaming providers, raising concerns that the tech giant's own music platform could have benefitted from the infringement.

Thomas Kramler, the head of the digital platforms unit within the EU's competition authority, said in Brussels today that the fine, which consisted of a €40 million penalty as well as a €1.8 billion lump sum to act as a deterrent, was "non-standard".

The fine is "not something we've seen before" from the commission, but it is justified since it was dealing with "the biggest company in the world", Kramler said. The EU enforcer's decision is not yet public, but will hopefully be published in a matter of weeks, he noted.

The agency **fined** Apple earlier this month after its investigation found the tech company had refused to allow third party music streaming apps, including Spotify, to advertise their own cheaper payment alternatives. The company has imposed a 30% fee on digital services app in-app payments since 2015.

The Commission said the conduct exploited consumers and constituted unfair trading practices, an assertion Apple refutes.

The tech company has vowed to appeal against the landmark penalty, accusing the agency of failing to uncover any evidence of consumer harm.

Speaking at the 139th Annual Lunch of the College of Europe, fellow panelist Thibault Schrepel, an associate professor at Amsterdam University, questioned whether antitrust enforcement should really be used in a case where consumers could simply go to a music streaming provider's website to access cheaper offers.

But Kramler rebutted that this is exactly the time that the commission should get involved. "We must not forget that Apple is also competing in this market" through Apple Music, he said.

If customers were unable to access Spotify, which left the app store in protest, they may have been scooped up by Apple's service, he claimed. However, he noted that this concern was not the subject of the decision.

According to Kramler, during the course of the probe, Apple claimed it was not dominant because it fiercely competes with Android. But he said that the enforcer found that customers won't switch to other devices due to lock in effects in Apple's digital ecosystem. A great deal of debate is dedicated to this in the decision, he noted.

He said that the agency did not use a counterfactual benchmark to calculate the proposed sanction. Given the highly concentrated nature of the market, it would have been very difficult to distill what competitive trading practices might have looked like, he said.

Kramler noted that the commission issued the landmark fine under its powers under Article 102(a) TFEU, which governs unfair trading practices. The commission has not used these powers very often, he noted, but it will be the subject of intense debates in the EU courts.

The agency opted to use this law in part because it only has to show consumer harm, and doesn't need to prove anticompetitive effects or foreclosure, he said.

Kramler added that using Article 102(a) allowed the commission to consider "aftermarkets", which are markets for the supply of parts or services used after a product has been purchased.

The conference concluded today.

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