The Consumer Voice in Europe

NOVEMBER 2024 UPDATE ON IMPLEMENTATION BY APPLE, GOOGLE & META OF THEIR OBLIGATIONS UNDER THE DIGITAL MARKETS ACT

BEUC analysis of non-compliance #2

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Why it matters to consumers

While the Digital Markets Act (DMA) is a vital law to enable consumers to get greater choice and protection in digital markets, Meta, Apple and Google still need to make improvements to meet their obligations under the DMA on several points, and the European Commission must ensure they do so rapidly.

Summary

Despite several gatekeepers recently making positive changes to comply with the Digital Markets Act (DMA), we consider that they are still not complying in full with their obligations. This is harming both markets and consumers as it is harder for competitors to the gatekeepers to emerge and thrive, and for consumers to reap the rewards of greater innovation and choice.

In this paper, we summarise some ongoing issues with Apple, Alphabet (Google) and Meta which the Commission should take onboard to assess the compliance of these gatekeepers with their DMA obligations.[1]

This paper updates some areas we previously addressed in our broader analysis of possible non-compliance by the gatekeepers with the DMA in September 2024, to reflect the changes Apple announced in August 2024 to default browser and app choices[2] and Meta's plans announced in September 2024 on interoperability for instant messaging, and should be seen as a complement to our September 2024 report in the area of self-preferencing by Google.

This report, like our previous analysis, is not an assessment of compliance with every provision of the DMA, nor every instance of potential non-compliance, but covers some issues that are of most direct relevance to consumers (i.e. "end users" under the DMA).

Meta *has announced what seem to be several, positive user interface design choices to comply with its obligations to make WhatsApp and Messenger interoperable with third-party instant messaging services. However, to be able to fully assess how positive these changes are, Meta must:*

- *Demonstrate that it has carried out live testing on users of its interfaces to ensure that they effectively enable consumers to easily make genuine informed choices on interoperability.*

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[1] This summary is based on more detailed submissions BEUC made to the European Commission on Meta, Apple and Google in September/October 2024.
[2] Together with further changes subsequently published by Apple in October 2024 as mentioned in a new version of Apple's Non-Confidential Summary of DMA Compliance Report dated 1 November 2024- see: Apple, 'Apple's Non-Confidential Summary of DMA Compliance Report' (1 November 2024, accessed 12 November 2024).

- *Provide information and screen shots for all of the steps in the user journey.*

- *Demonstrate that several of the design choices it has made support the consumer's ability to choose messaging interoperability, for example in relation to how, when and what type of information on interoperability is presented to consumers.*

__Apple__ seems to be making improvements towards DMA compliance as regards enabling users to change their default browsers and apps, and to make it easier to uninstall (delete) apps on their Apple devices. However, issues remain which may amount to non-compliance which the Commission needs to investigate, notably:

- *Apple still provides too little information to fully assess whether its proposed user journey for changing default apps is compliant with Articles 6(3) and 6(4) of the DMA.*

- *For instance, when users receive a third party prompt asking them whether they would like to set the third party app as their default, for effective compliance, Apple should provide a one-step-one-click option to enable this default change. This choice should then be the default app through all access points.*

- *Apple provides too little information about the user journey to determine if users can "easily un-install" Apple apps.*

- *Apple should show the browser choice screen immediately after the iOS update, rather than when the user next launches Safari to access the web. This timing is likely to discourage users from engaging with choice screens as they have another task in mind, and seeing Safari just before making a choice is likely to influence this choice.*

__Google__ should, in order to comply with the DMA prohibition on self-preferencing on its search results pages, observe five principles to ensure that consumers have the best choices in response to their search queries in the short and the long term though the creation of a level playing field for all service providers online.

All three gatekeepers – __Meta, Apple and Google__ – should __test their proposed user interface designs__ to demonstrate that end users are enabled to make genuine choices which are essential for effective compliance with the DMA obligations. The test results should be shared with the Commission and third parties, including end user representatives such as BEUC to enable them to analyse whether the user interfaces amount to effective compliance.

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1. Meta: interoperability of WhatsApp and Messenger

The Digital Markets Act Article 7 requires designated gatekeepers to provide interoperability for their instant messaging services with those of third parties, should the latter wish to make use of them.

In September 2024, Meta published its user experience design choices to implement the interoperability obligations on its WhatsApp and Messenger services.[3]

BEUC recognises that, at first sight, these design choices seem reasonable - subject to seeing the full details and to the comments below. However, it is essential for Meta to demonstrate that it has tested its user interfaces to ensure that they effectively enable consumers to easily make genuine informed choices on interoperability.

This testing should involve "live" testing of the user flow to see how end users react to the different steps in the user journey to determine whether this leads to negative friction or steering or involves other elements which would make the exercise of choices unduly difficult, or non-neutral, or subvert the end user's autonomy or decision-making. Meta has not yet provided information and screen shots of all of the steps in the user journey. These would be necessary to carry out effective testing.

If the interface and overall messaging experience of WhatsApp and Messenger end users who are considering using interoperability with alternative messaging services are not appropriately designed, there is a real risk that end users will be steered away from interoperability functionalities. This in turn would reduce opportunities for alternative providers to convince end users to use their service, thereby creating barriers to market entry/expansion for alternative service providers and negatively affecting contestability, one of the key objectives of the DMA.

The guiding principle in user interface design must be that (absent an unavoidable technical issue) the user experience is equivalent for messaging with the gatekeeper's service and across different services making use of interoperability.

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[3] Meta, Blog post 'Messaging interoperability' (6 September 2024, accessed 6 November 2024).

1.1. WhatsApp

In the following, and based on the principles set out above, we highlight some issues of user interface design that we consider raise non-compliance concerns or where it is unclear.

Meta's user interface designs suggest that interoperability will be disabled by default on WhatsApp. Users must therefore opt into this functionality. Meta will inform users that connecting with users of third party services is available by displaying a small green badge on the "Settings" button (see figure 1 below).[4] Only after clicking on the "Settings" button and going to the respective menu will end users see a pop-up informing them that interoperability is available. The user then has to click on a "set up" link to reach a third-party chat page. What happens after that is not explained.

It is questionable why this pop-up does not appear directly on the home screen. Meta should provide testing results proving that this design choice is the most effective in guaranteeing neutrality and contestability i.e. that more users see the information and go to the interoperability settings with the proposed design, compared to a design where the pop-up is shown on the home screen. It is also unclear why a link is used on the pop-up rather than a button as is used elsewhere and what the potential impact of this could be.

Based on the screenshots provided in Meta's blog post, it appears that the text shown on the pop-up in WhatsApp (figure 1) differs from the text shown on a similar pop-up in Messenger (figure 2). It would appear logical to expect that the formulation that has been proven by behavioural testing to be the most effective and neutral, in the sense of the DMA, would be the same for both applications. Meta should be able to provide testing evidence as to why the most effective option is to have a different text for each of WhatsApp and Messenger.

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[4] The screenshots included here are those provided for iOS, Meta provides equivalent screenshots for Android.
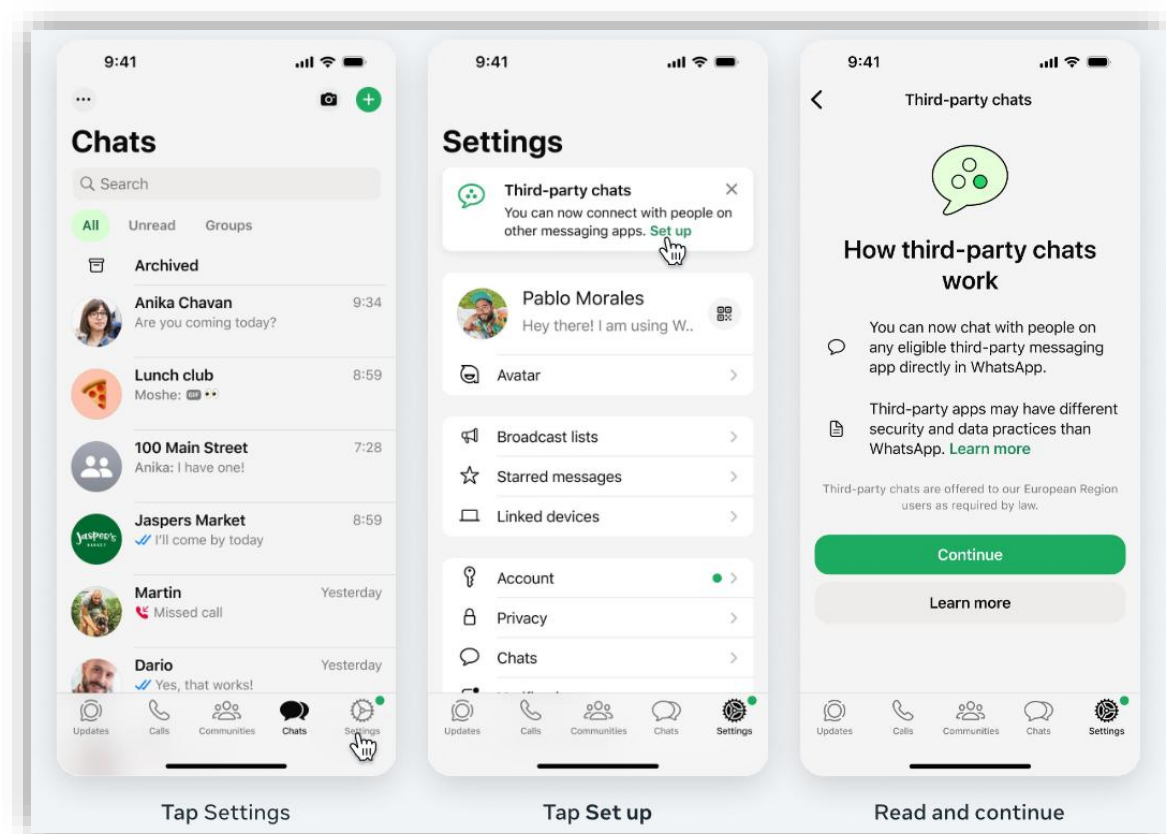
Figure 1: in-app notice informing users on WhatsApp of messaging interoperability.[5]

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[5] Meta, <u>WhatsApp Messaging Interoperability User Experience – iOS</u> (accessed 6 November 2024).
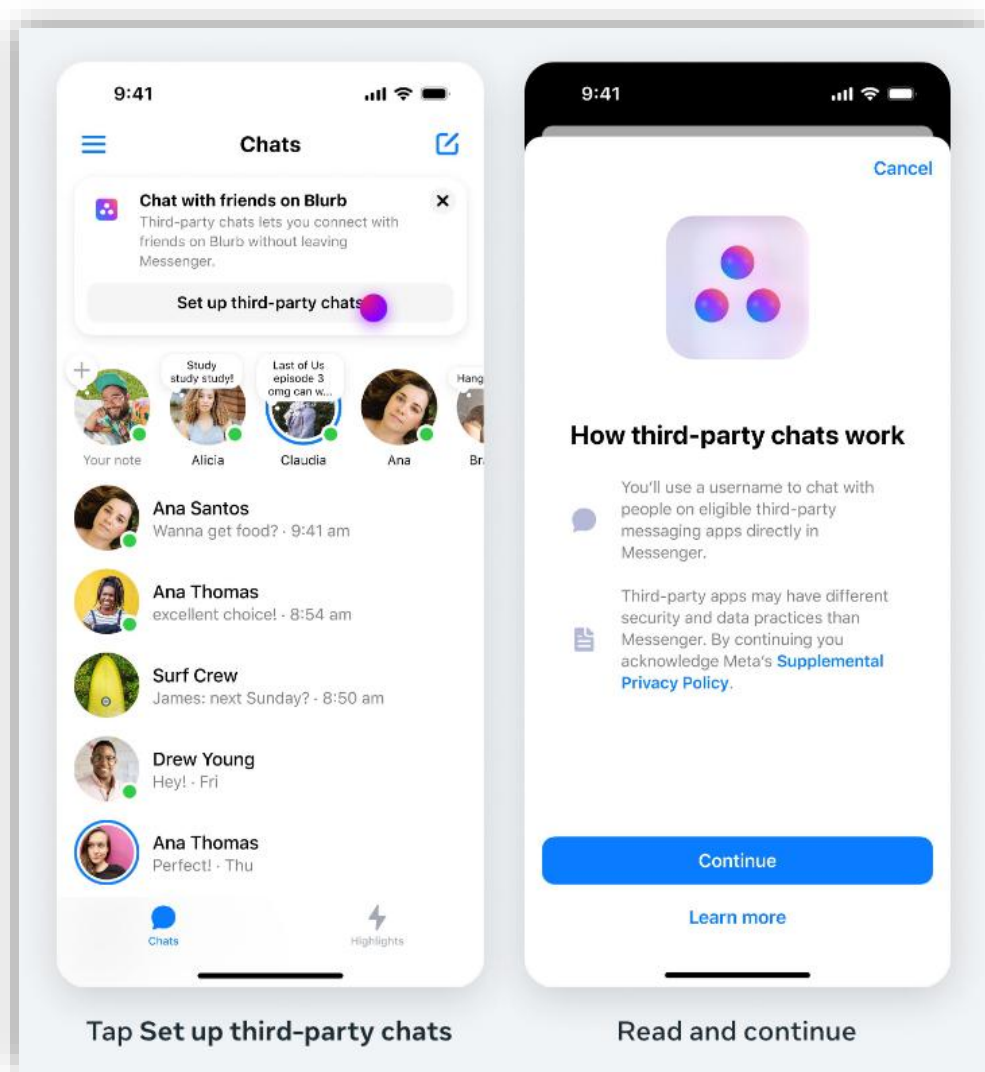
Figure 2: in-app notice informing users on Messenger of messaging interoperability.[6]

It is unclear from the screenshots for how long the information about the availability of interoperability will be shown i.e., if the badge and pop-up are shown until the end user opens the respective interoperability settings, or if they are shown only once and disappear automatically. It appears intuitive that displaying the pop-up continuously until the end user clicks on it, thereby keeping them reminded that the possibility of interoperability exists, while at the same time letting them choose the most suitable moment to set it up, would significantly increase contestability.

The screenshots provided imply (see figure 3) that when a new third party app is available, end users will again see a green badge on the "Settings" button followed by a pop-up in the settings menu, which will direct the user via a link to the "Manage apps" sub-settings. It is again unclear why a link is used here rather than a button as is used elsewhere and what the potential impact of this could be. In this menu, the user can enable or disable interoperability for each third-party app separately but it is unclear if the option is enabled or disabled by default.

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[6] Meta, Messenger Messaging Interoperability User Experience - iOS (accessed 6 November 2024).
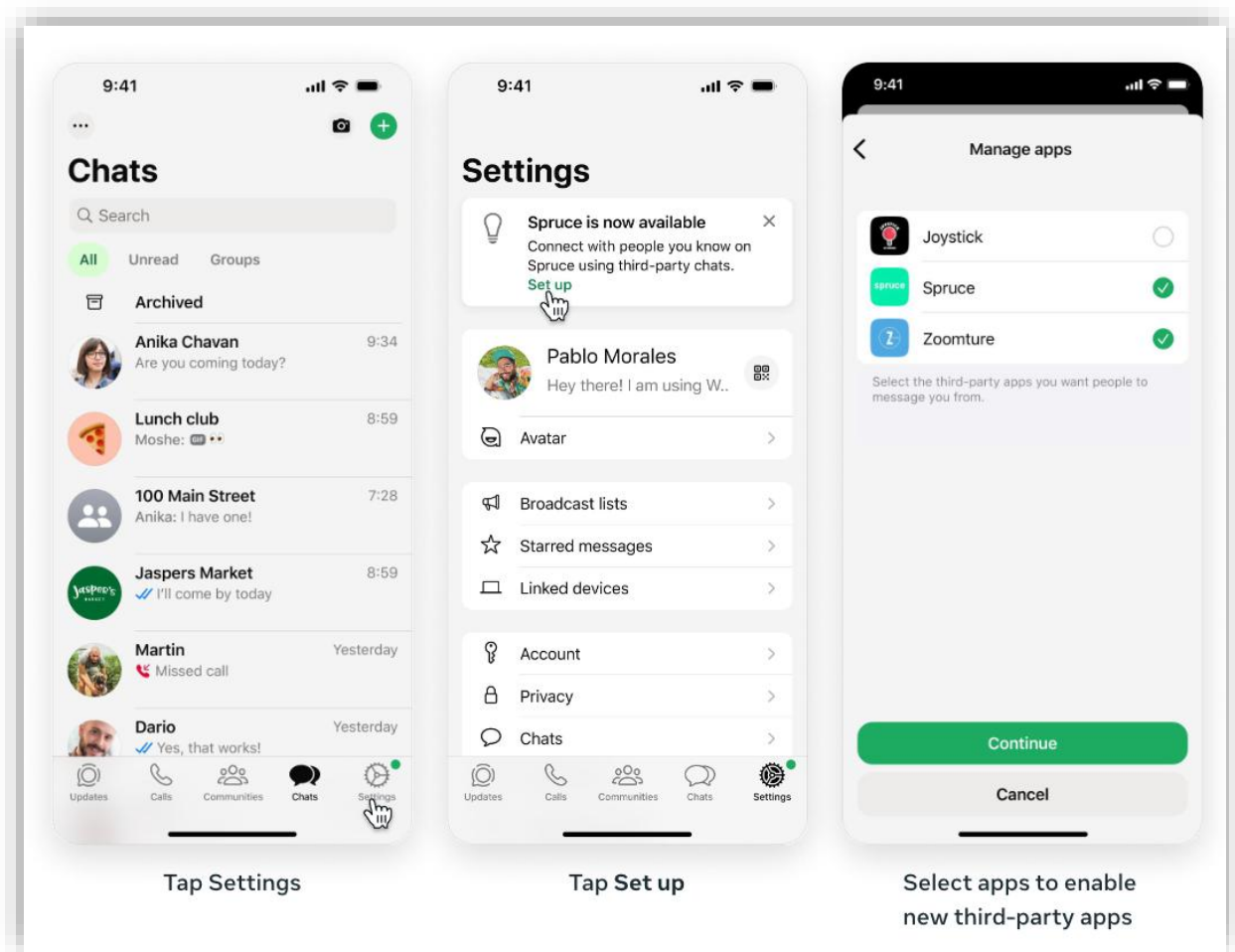
Figure 3: in-app notice informing users on WhatsApp when a new third-party messaging app is available.[7]

Another way that WhatsApp informs end users of the option to enable interoperability is via a push notification in case of a chat request by a third-party user (figure 4). While these push notifications are apparently enabled by default it is not clear whether this happens directly when interoperability becomes available in WhatsApp, or only after the end user has enabled interoperability (see the last screen of figure 4).

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[7] Meta, <u>WhatsApp Messaging Interoperability User Experience – iOS</u> (accessed 6 November 2024).
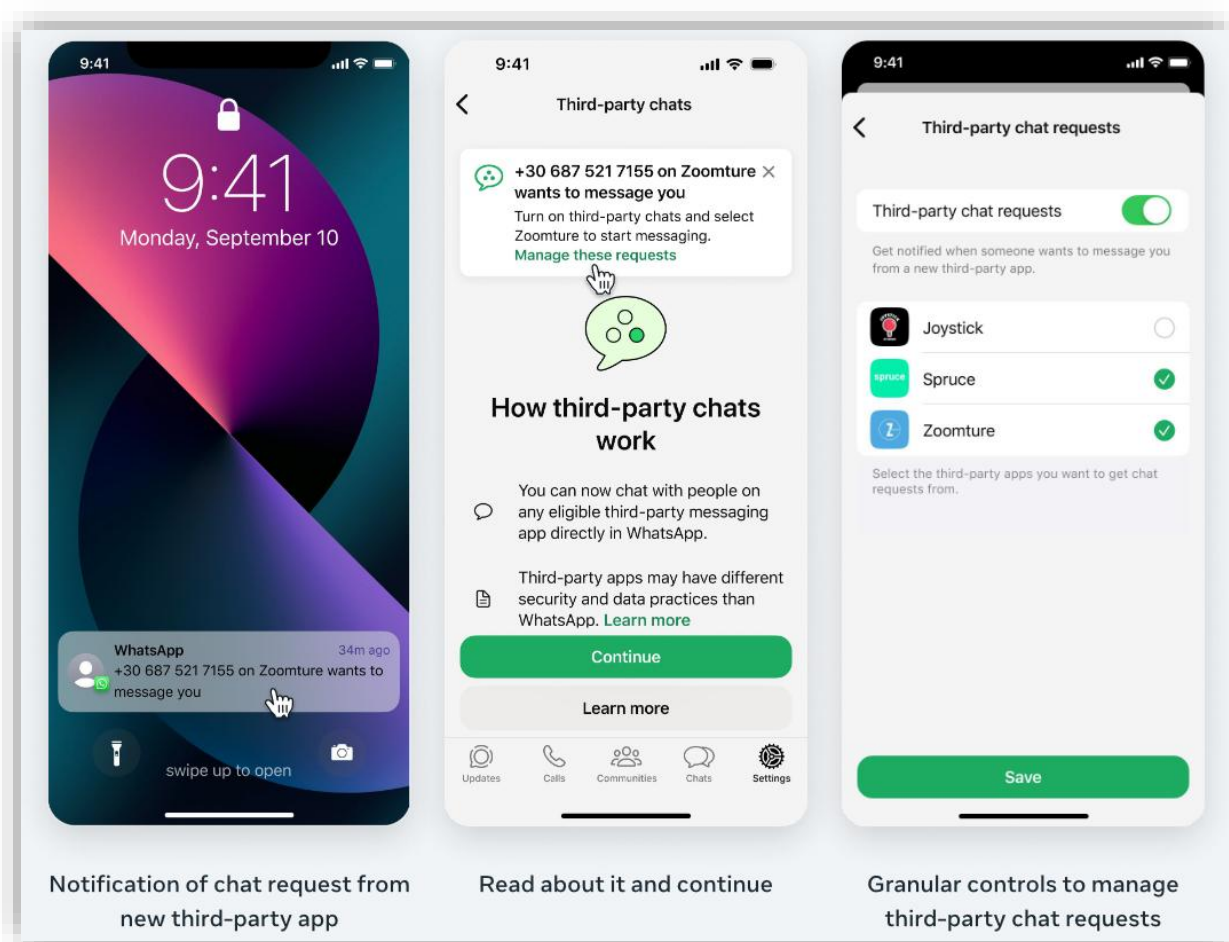
Figure 4: WhatsApp user notified of a chat request from a new third-party app.[8]

The push notification shows only the phone number used by the third-party user. It appears from the notification screen that this information is not linked with the information in the end user's phone's address book. Most end users will not recognise a phone number by heart. It therefore appears more intuitive to clearly inform end users, if they have given WhatsApp access to their phone's address book, that the person trying to contact them is someone they already know, by informing them that the contact is already saved in their phone's address book.

It appears from figure 4 that Meta is not planning to make profile pictures of third-party users available. However, this could be useful information which can help WhatsApp users more quickly identify who is trying to reach them. Not providing profile pictures or status messages would also seem to amount to a degraded service. Interoperability for instant messaging within the meaning of the DMA must be understood as the messaging experience as a whole, which, from the perspective of both WhatsApp and third-party end users would also include support for profile pictures and status messages.

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[8] Meta, <u>WhatsApp Messaging Interoperability User Experience – iOS</u> (accessed 6 November 2024).

1.2. Messenger

The overall design principles set out with regard to WhatsApp should also apply to Messenger.

2. Apple: ease of changing app defaults, app deletions, browser choice screen

Apple announced changes[9] in August 2024, and again in October 2024[10] to the way it would enable end users to change their default browsers and apps, and to make it easier to un-install (delete) apps on their Apple devices, in order to meet its obligations under the DMA.

Apple seems to have made improvements towards compliance. However, there remain issues which may amount to non-compliance under Articles 6(3) and 6(4) and which the Commission needs to investigate to determine if Apple is in compliance with its obligations under the DMA.

2.1. Ease of changing app defaults and app deletions

Apple is required under Article 6(3) to "allow and technically enable end users to **easily un-install** any software applications on the operating system of the gatekeeper" and to "allow and technically **enable end users to easily change default settings on the operating system** [...] or web browser of the gatekeeper that direct or steer end users to products or services provided by the gatekeeper".

Under Article 6(4), Apple "shall, where applicable, **not prevent the downloaded third-party software applications or software application stores from prompting end users to decide whether they want to set that downloaded software application or software application store as their default.** The gatekeeper shall "**technically enable end users** who decide to set that downloaded software application or software application store as their default to **carry out that change easily**". [emphasis added]
Apple still provides too little information to fully assess whether its proposed user journey for changing default apps is compliant with Articles 6(3) and 6(4) of the DMA.

Apple does not provide detailed information on what display rules, if any, it will apply to prompts from third party software apps, including browsers, nor on what the user journey for activating that third party software app as the default will look like. For example, it is unclear if users will have to go to the "Settings" menu and manually change the default, among various options. This is crucial information to assess whether users will be enabled to "easily change default settings," as required under the DMA.

When users receive a third-party prompt asking them whether they would like to set the app as their default on iOS or iPadOS, Apple should provide a one-step-one-click option to allow users to activate that choice. The app should then be the default app through all access points (where

[9] Apple, News update 'Upcoming changes to the browser choice screen, default apps, and app deletion for EU users' (22 August 2024, accessed 6 November 2024).
[10] Apple, 'Expanded default app controls and app deletion for users in the EU' (accessed 12 November 2024).

relevant) and replace the current default app in the dock on the home screen. The burden of making the change cannot be on the end user for this change to be made "easily".

In addition, Apple does not provide complete information about what the user interface for changing default apps in "Settings" will look like. Previously Apple published figure 5 below but this seems to have been deleted in Apple's October 2024 update. From the information provided, it is for example unclear whether the default app chosen would apply across all access points (where relevant), including through Spotlight, what happens to the previous default app, and what the next step is after the screen shots shown below? The default selection should not involve more than one further click.

Figure 5: Apple's planned changes for default apps through the "Settings" menu (no longer visible online)

In all cases, Apple must provide further details (including any testing data) to enable the assessment of whether users are able to change their default apps "easily," as required under Article 6 (3) and (4), and that its user interfaces do not fall foul of Article 13, in particular Article 13(4) and Article 13(6). It must do this before implementing its proposed changes to enable any adjustment necessary for "effective compliance."

Regarding app un-installation (deletion), Apple states that "The App Store, Messages, Camera, Photos, and Safari apps will be deletable for users in the EU. Only Settings and Phone will not be deletable." It does not specify the steps required for deletion. In order to ensure that users can "easily un-install" Apple apps as required by Article 6(3), the process for this should not require any more steps or complexity than for the deletion of third party apps.

2.2. Browser choice screen

Apple has adapted its browser choice screen design.[11] This addresses many of BEUC's initial concerns regarding Apple's compliance with the choice screen requirement Article 6(3).[12] The

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[11] Apple, News update 'Upcoming changes to the browser choice screen, default apps, and app deletion for EU users' (22 August 2024, accessed 6 November 2024).
[12] See section 3.3 of: BEUC, Report on 'Implementation By Meta, Apple, Google, Amazon, Bytedance and Microsoft of their Obligations under the Digital Markets Act' (2 September 2024).

latest changes[13] appear to include BEUC's feedback on the need to ensure that users who select an alternative default browser should benefit from this choice being placed in the home screen dock, including users who changed their default prior to the rollout of this latest version browser choice screen. Apple now appears to include a prompt to users to enable them to choose if they would like their chosen browser to replace Safari in the dock.[14] BEUC welcomes this positive development for consumers. However, there continue to be non-compliant elements.

Apple still proposes to show the browser choice screen on launching Safari, rather than on set-up after the iOS update introducing the new version of the choice screen. This will cause negative user friction. Research into browser choice screen design has shown that consumers who have activated their device to try to find something online are unlikely to wish to engage reflectively in that moment with a choice screen.[15]

Furthermore, the fact that users will have just seen Safari will likely have a priming effect. The priming effect – i.e. users' decision-making being influenced by what they have just seen, has been demonstrated in research. [16] This means that users are more likely to choose Safari again rather than an alternative. This would undermine the effectiveness of the choice screen and thus Apple's effective compliance and amount to circumvention under Article 13.

It is also essential that Apple informs relevant third parties well in advance of the new choice screen launch to enable them to carry out awareness campaigns to counter Apple's general brand and priming advantage.

2.3. Testing

Apple should test its new user interface designs on consumers prior to implementation and must provide the Commission with this data as well as data on the choices made/actions taken by users under the new version of the browser choice screen and the default/deletion user interfaces. This data must also be provided to third parties.

3. Google: self-preferencing

Under Article 6(5), Google must **not treat its services and products more favourably than similar services** or products of a third party. Recitals 51 and 52 further clarify gatekeepers' obligations.

For effective compliance with Article 6(5) and with the DMA's objectives of contestability and fairness, BEUC proposes that Google's search engine results pages (SERP) observe the following five principles:

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[13] Update as of October 2024, see About the browser choice screen in the EU - Support - Apple Developer.

[14] Apple, 'About the browser choice screen in the EU' (accessed 12 November 2024): "*If Safari is currently in the user's Dock or on the first page of the Home Screen and the user had previously selected another other browser as their default from the choice screen before updating to iOS 18.2, they will be prompted once upon first launch of Safari about whether they want to swap Safari's icon with the icon of their default browser. This is only if their default browser is not on the first page of the home screen or the Dock.*"

[15] See: Mozilla research (Can browser choice screens be effective? - Mozilla Research) and Architecture for end users in the DMA, Amelia Fletcher, December 2023 (Report Covers (cerre.eu),in particular Section 4.1.1). See also Google's approach which follows the research on this issue.

[16] CERRE (Amelia Fletcher), Issue paper 'Choice architecture for end users in the DMA' (December 2023).

1. Consumers should have free unbiased choices in the short and long term.

This requires that Google's implementation of Article 6(5) allows other vertical search services (comparison services) than Google's to have a fair chance to compete for consumers' business and allows all service providers to compete on a level playing field to give consumers choices both today and in the future.

2. Consumers could in principle be asked to make an initial choice on the search engine results pages between comparison services and merchants.

However, this choice:

- Must be transparent to users.
- The user interface must not involve self-preferencing, but see also principle 3.

3. Information that is important to consumers when searching should not be eliminated from the search engine results pages.

The elimination of self-preferencing should not lead to information that is essential to assist consumer choices being removed. This information may vary by vertical (shopping/travel/hospitality/other) and cannot be misleading. Therefore, a 'one size fits all' solution may not be appropriate.

4. The financials of the solution adopted in terms of which company is shown on the search engine results pages and in what position should not lead to upward pricing pressure which will be passed on to consumers.

This underlines the importance of retaining visible organic search results and any auction mechanism must be carefully considered.

5. Google's designs must be tested to ensure compliance.

Testing should be carried out before the search engine results pages presentation is finalised in relation to the above principles, in particular in relation to the level playing field, transparency and information required to enable effective consumer choices. Where different design choices could be made, such testing should permit the identification of the alternative that effectively enables end users to make genuine, unbiased and informed choices. The solution chosen must furthermore be reviewed and adjusted as necessary based on user response data. It is essential to have an evidence base to assess effective compliance.