

[NL] Authority for Consumers and Markets (ACM) starts investigation into abuse of dominance by Apple in its App Store

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On 11 April 2019, in response to its market study into mobile-app stores, the Netherlands Authority for Consumers and Markets (Autoriteit Consument & Markt, ACM), announced that it will investigate whether Apple abuses its dominant position in its App Store. Under competition law, if a business enjoys a dominant position, this should not undermine competition, and businesses should be able to compete fairly with each other.

ACM's remit is to ensure that markets work well for businesses and their consumers. Since Apple and Google have attained strong positions in the market of mobile app stores, ACM resolved to gain greater insight into this market. Accordingly, ACM launched its market study into mobile app stores on 25 June 2018 and published its findings in a report dated 11 April 2019. In it, ACM analysed the relationship between the mobile app stores of Apple and Google on the one hand and app providers on the other. As a result, ACM was able to understand better how app providers get their apps into the Google Play Store and the App Store, and what influence these tech companies have on the availability and functioning of apps.

ACM received several reports from app providers that appear to indicate that Apple was abusing its dominant position in its App Store. These app providers indicated that they did not always have a fair chance to compete, because Apple and Google are able to determine and control what apps are available in their mobile app stores. In this way, they favour their own apps or apps that are pre-installed on smartphones. Nor can app providers always use the technical facilities of an iPhone.

Furthermore, the study demonstrated that there is a lack of realistic alternatives available for numerous app providers to offer their apps to Dutch consumers. In order to reach consumers, it is almost inevitable that a company's app is present in the App Store or Google Play Store. Since app providers are largely dependent on Apple and Google, the latter companies are, at least in theory, able to set unfair terms and conditions for their app stores. For example, app providers are obliged to use the in-app purchases payment system of Apple and Google. These app providers are not allowed to link to other payment systems, and this could

deter consumers from purchasing an app. According to app providers, which sell digital content or services, another example of the unfair terms and conditions is that they are obliged to pay a 30% commission to Apple and Google during the first year in which they offer an app. In addition to these “unfair” terms and conditions, several app providers stated that it is difficult to communicate with Apple and Google about these terms and conditions. In the light of all the findings of the market study, ACM decided that it is necessary to conduct further research regarding the question of whether Apple abuses its dominant position in its App Store.

As for the investigation, given the great importance of app stores for app providers, ACM stated in its market study report that Apple and Google are required to enable fair competition and to be transparent, for instance in procedures by which they approve and select apps to be displayed in their stores. ACM will, therefore, investigate whether Apple has violated article 102 of the Treaty on the Functioning of the European Union (which prohibits the abuse of a dominant position) by, for example, favouring their own apps over apps made by competing companies.

The investigation will initially focus on Apple, because ACM received the most concrete reports from app providers (in particular Dutch news media companies) about the conduct of Apple in its App Store. Therefore, the investigation will focus on Dutch apps that offer news through Apple’s App Store. According to ACM, the received reports could indicate a violation of antitrust legislation. Furthermore, ACM calls on app providers to report whether they experience problems in Apple’s App Store. They also have the option of anonymously reporting issues or problems in Google’s Play Store. ACM will use any such data received during the course of the investigation.

ACM start onderzoek misbruik machtspositie Apple in App Store, Autoriteit Consument & Markt, 11 april 2019

<https://www.acm.nl/nl/publicaties/acm-start-onderzoek-misbruik-machtspositie-apple-app-store>

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Autoriteit Consument en Markt, “Marktstudie appstores”, 11 april 2019

<https://www.acm.nl/sites/default/files/documents/market-study-into-mobile-app-stores.pdf>

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