

COMP N (Art 14) covering AM 78 and 683

Article 14

Opening of a market investigation

1. When the Commission intends to carry out a market investigation in view of the possible adoption of decisions pursuant to Articles 15, 16 and 17, it shall adopt a decision opening a market investigation.
2. The opening decision shall specify:
 - (a) the date of opening of the investigation;
 - (b) the description of the issue to which the investigation relates to;
 - (c) the purpose of the investigation.
3. The Commission may reopen a market investigation that it has closed where:
 - (a) there has been a material change in any of the facts on which the decision was based;
 - (b) the decision was based on incomplete, incorrect or misleading information provided by the undertakings concerned.

(ba) there have been ~~regular~~ alerts about unfair practices raised by national authorities through the reporting mechanism. (AM 78)

COMP O (Art 15) covering AMs 79-81, 685-698

Article 15

Market investigation for designating gatekeepers

1. The Commission may conduct a market investigation for the purpose of examining whether a provider of core platform services should be designated as a gatekeeper pursuant to Article 3(6), or in order to identify core platform services for a gatekeeper pursuant to Article 3(7). It shall ~~endeavour to~~ conclude its investigation by adopting a decision in accordance with the advisory procedure referred to in Article 32(4) within twelve months from the opening of the market investigation. (AM 685, 686, 687)
2. In the course of a market investigation pursuant to paragraph 1, the Commission shall ~~endeavour to~~ communicate its preliminary findings to the provider of core platform services concerned within six months from the opening of the investigation. In the preliminary findings, the Commission shall explain whether it considers, on a provisional basis, that the provider of core platform services should be designated as a gatekeeper pursuant to Article 3(6). (AM 79, 689, 690)
3. Where the provider of core platform services satisfies the thresholds set out in Article 3(2), but has presented significantly substantiated arguments in accordance with Article 3(4), the Commission shall ~~endeavour to~~ conclude the market

investigation within five months from the opening of the market investigation by a decision pursuant to paragraph 1. In that case the Commission shall endeavour to communicate its preliminary findings pursuant to paragraph 2 to the provider of core platform services within three months from the opening of the investigation. (AM 80)

4. When the Commission pursuant to Article 3(6) designates as a gatekeeper a provider of core platform services that does not yet enjoy an entrenched and durable position in its operations, but it is foreseeable that it will enjoy such a position ~~in the near future~~, it shall declare applicable to that gatekeeper *specific* obligations laid down in **this Regulation** ~~Article 5(b) and Article 6(1) points (e), (f), (h) and (i)~~ as specified in the designation decision. The Commission shall only declare applicable those obligations that are appropriate and necessary to prevent that the gatekeeper concerned achieves by unfair means an entrenched and durable position in its operations. The Commission shall review such a designation in accordance with the procedure laid down in Article 4. (AM 81, 697, 698)

COMP P (Art 16) covering AMs 82-84, 684, 700-717

Article 16

Market investigation into systematic non-compliance

1. Where the market investigation shows that a gatekeeper has systematically infringed the obligations laid down in Articles 5 and 6, **and has further strengthened or extended its gatekeeper position in relation to the characteristics** under Article 3(1), **or where the Commission assesses is informed** under Article 12 **that any intended concentration has an adverse impact on the contestability of markets**, the Commission ~~shall~~ **may** by decision adopted in accordance with the advisory procedure referred to in Article 32(4) impose on such gatekeeper any behavioural or structural remedies which are proportionate to the infringement committed and necessary to ensure compliance with this Regulation. The Commission shall conclude its investigation by adopting a decision within twelve months from the opening of the market investigation. (AM 82, 701, 702, 703, 704)
2. ~~The Commission may only impose structural remedies pursuant to paragraph 1 either where there is no equally effective behavioural remedy or where any equally effective behavioural remedy would be more burdensome for the gatekeeper concerned than the structural remedy.~~ (AM 705)

The Commission may *also* impose structural remedies pursuant to paragraph 1 where **it considers them more effective than behavioural remedies in ensuring compliance with the obligations laid down in Articles 5 and 6.** Such structural remedies may include:

- **separation of business units;**
- **unbundling and horizontal division of services;**

- changes to the gatekeeper's financing model;

- disgorging financial benefits to end-users;

3. A gatekeeper shall be deemed to have engaged in a systematic non-compliance with the obligations laid down in Articles 5 and 6, ~~where~~ **as soon as** the Commission has issued at least ~~three~~ **two** non-compliance or fining decisions pursuant to Articles 25 and 26 respectively against a gatekeeper in relation to any of its core platform services within a period of five years prior to the adoption of the decision opening a market investigation in view of the possible adoption of a decision pursuant to this Article. (AM 83, 708, 709, 710)
4. ~~A gatekeeper shall be deemed to have further strengthened or extended its gatekeeper position in relation to the characteristics under Article 3(1), where its impact on the internal market has further increased, its importance as a gateway for business users to reach end users has further increased or the gatekeeper enjoys a further entrenched and durable position in its operations.~~ (AM 84, 711, 712)
5. The Commission shall communicate its objections to the gatekeeper concerned within six months from the opening of the investigation. In its objections, the Commission shall explain whether it preliminarily considers that the conditions of paragraph 1 are met and which remedy or remedies it preliminarily considers necessary and proportionate.
6. The Commission may at any time during the market investigation extend its duration where the extension is justified on objective grounds and proportionate. The extension may apply to the deadline by which the Commission has to issue its objections, or to the deadline for adoption of the final decision. The total duration of any extension or extensions pursuant to this paragraph shall not exceed six months. The Commission may consider commitments pursuant to Article 23 and make them binding in its decision.
- 6 a. ***In order to ensure effective compliance by the gatekeeper with its obligations laid down in Articles 5 or 6, the Commission shall regularly review the remedies imposed in accordance with paragraph 1 or commitments made binding in accordance with paragraph 6. The Commission shall be entitled to require changes to the imposed remedies if, following an **assessment**, it finds that the remedies are not effective.*** (AM 716)

COMP Q (Art 17) covering AMs 718-724

Article 17

Market investigation into new services and new practices

The Commission may conduct a market investigation with the purpose of examining whether one or more services within the digital sector should be added to the list of core platform services or to detect types of practices that may limit the contestability of core platform services or may be unfair and which are not effectively addressed by this Regulation. It shall

issue a public report at the latest within 20 months from the opening of the market investigation. (AM 718, 719, 720, 721)

Where appropriate, that report shall:

- (a) be accompanied by a proposal to amend this Regulation in order to include additional services within the digital sector in the list of core platform services laid down in point 2 of Article 2;
- (b) be accompanied by a delegated act amending Articles 5 or 6 as provided for in Article 10.