EUROPEAN COMMISSION

CASE DMA.100203 – Article 6(7) – Apple – iOS – SP – Features for Connected Physical Devices

(Only the English text is authentic)

Digital Markets Act

Regulation (EU) 2022/1925 of the European Parliament and of the Council

Decision on the implementation of the measures pursuant to Commission Decision C(2025) 3000

Date: 04/08/2025

EUROPEAN
COMMISSION

Brussels, 4.8.2025
C(2025) 5474 final

COMMISSION IMPLEMENTING DECISION

of 4.8.2025

on the implementation of the measures pursuant to Commission Decision C(2025) 3000

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act),[1] and in particular Article 8 thereof,

Whereas:

1. THE COMMISSION DECISION OF 19 MARCH 2025

1.1. Summary

(1) On 19 March 2025, the Commission adopted an implementing decision pursuant to Article 8(2) of Regulation (EU) 2022/1925 (the "**Specification Decision**").[2] The Specification Decision specifies measures that Apple Inc., together with all legal entities directly or indirectly controlled by Apple Inc. (hereinafter referred to as "**Apple**"), must implement in relation to its operating system iOS in order to effectively comply with the obligations under Article 6(7) of Regulation (EU) 2022/1925 for certain iOS features for connected physical devices.

(2) The Specification Decision specifies measures in relation to nine iOS features, namely: (i) iOS notifications, (ii) high-bandwidth peer-to-peer Wi-Fi connections, (iii) proximity-triggered pairing, (iv) background execution, (v) features for close-range wireless file transfers solutions, (vi) automatic Wi-Fi connection, (vii) features for media casting, (viii) automatic Bluetooth audio switching, and (ix) NFC controller in reader/writer mode. The measures have different implementation timelines depending on their technical complexity. The Specification Decision also specifies measures that apply to all features to ensure the effectiveness of the measures for the individual features.

1.2. Waiver clause

(3) Pursuant to paragraph 102 of the annex of the Specification Decision ("**Annex**"), the Commission may in exceptional circumstances, in response to a reasoned request

[1] OJ L 265, 12.10.2022, pages 1-66.

[2] Decision C(2025) 3000 final.

from Apple showing good cause, modify or substitute one or more of the measures set out in the Specification Decision or a part of them ("**Waiver Clause**"). Recital 650 of the Specification Decision clarifies that the Waiver Clause applies to exceptional situations in which Apple would not be in a position to implement one or more of the measures imposed by the Specification Decision, or a part of them, for legal, technical or other reasons. The rationale behind the inclusion of the Waiver Clause pertains to the technical complexity associated with the implementation of the measures specified in the Specification Decision.[3]

1.3. Apple's judicial challenge of the Specification Decision

(4) On 30 May 2025, Apple lodged an action for annulment against the Specification Decision.[4]

(5) […].

2. PROCEDURE AND APPLE'S WAIVER REQUESTS

(6) On 22 April 2025, following the adoption of the Specification Decision and in line with paragraph 101(l) of the Annex, Apple submitted a report setting out the measures Apple intends to take to comply with the Specification Decision ("**Implementation Report**").[5] The Commission's requested information regarding Apple's Implementation Report by email on 25 April 2025 and through a request for information ("**RFI**") on 30 April 2025.

(7) Apple submitted its replies on 12 and 21 May 2025.[6] On 14 May 2025, Apple submitted an annex and a supplement to the Implementation Report.[7] Apple presented its implementation plans in a technical meeting with the Commission on 14 May 2025.

(8) Separately, on 29 April 2025, Apple submitted a document […].[8] […]. In that context, Apple requested that the Commission reconsiders the Specification Decision and the measures imposed by the Specification Decision.

(9) On 2 June 2025, Apple submitted five requests pursuant to the Waiver Clause asking the Commission to waive or modify the measures for five of the nine features included in the Specification Decision as follows:

(a) **iOS notifications**: Apple requests that the Commission waive the requirement to implement the measures for the iOS notification feature in their entirety or, in the alternative, that the Commission waive the requirement to implement the measures for iOS notifications to the extent that they require Apple to allow third parties to pre-process notifications before relaying these notifications to third-party connected physical devices.

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3 Specification Decision, recital 650.

4 Apple and Apple Distribution International v Commission, Case T-354/25.

5 Apple's Implementation Report.

6 Apple's reply to RFI of 30 April 2025 submitted on 12 May 2025 and 21 May 2025.

7 Apple's Annex to the Implementation Report of 14 May 2025, setting out where individual measures in the Annex to the Specification Decision are addressed in the Implementation Report and Apple's Supplement to the Implementation Report of 14 May 2025, addressing the measures for all sections in Section 10 of the Annex to the Specification Decision.

8 Apple's submission […] of 29 April 2025.

(b) **Proximity-triggered pairing**: Apple requests that the Commission waive the requirement to implement the measures for the proximity-triggered pairing feature in their entirety.

(c) **Close-range wireless file transfers**: Apple requests that the Commission waive the requirement to implement the measures for features for close-range wireless file transfer solutions in their entirety or, in the alternative, that the Commission waive the requirement to implement the measures for close-range wireless file transfer solutions to the extent that these measures require Apple to implement a solution for so-called trusted devices.

(d) **Automatic Wi-Fi connections**: Apple requests that the Commission waive the requirement to implement the measures for automatic Wi-Fi connections feature in their entirety or, in the alternative, that the Commission waive the requirement to implement the measures for automatic Wi-fi connections to the extent that these measures apply to Wi-Fi network information saved before the pairing with the relevant third-party connected device.

(e) **Automatic audio switching**: Apple requests that the Commission waive the requirement to implement the measures for the automatic audio switching feature in their entirety.

(10) On 8 July 2025, Apple sent an email to the Commission requesting further engagement and a meeting on the waiver requests.[9] The Commission replied on 9 July 2025 indicating that it would be in contact the following week and indicating that it is available for a meeting.[10]

(11) On 15 July 2025, Apple sent a letter re-iterating some of the arguments underlying its waiver requests of 2 June 2025.[11]

(12) On 16 July 2025, the Commission informed Apple in writing of its preliminary assessment of the five waiver requests, providing it with five working days to submit its views (i.e. until 24 July 2025 close of business) and reiterated the possibility to organise a meeting as announced in the email of 9 July.[12]

(13) On 22 July 2025, Apple replied to the Commission's letter of 16 July 2025.[13] In that letter, Apple expressed general concerns about the application of the Waiver Clause and the deadline to respond to the letter, but did not use the opportunity to substantiate its claims in relation to the features in question, to request an extension to the deadline to submit its observations, or to request a meeting.

(14) On 25 July 2025, the day following the deadline to respond to the Commission's letter of 16 July 2025, the Commission sent an email to Apple with a view of clarifying that Apple's letter of 22 July 2025 constitutes its formal observations to its letter of 16 July 2025 and noting no meeting was requested by Apple.[14] In the same email, the Commission offered to meet with Apple the following week, should Apple see merit in having such a meeting.

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9 Email from Apple to the Commission of 8 July 2025.
10 Email from the Commission to Apple of 9 July 2025.
11 Letter from Apple to the Commission of 15 July 2025.
12 Letter from the Commission to Apple of 16 July 2025.
13 Letter from Apple to the Commission of 22 July 2025.
14 Email from the Commission to Apple of 25 July 2025.

(15) In an email of 26 July 2025, Apple explained that its letter of 22 July 2025 does not constitute its formal observations and repeated its concern that the five-working-day-deadline is insufficient.[15] It did not ask for an extension of the deadline to submit formal observations, nor did it indicate whether and when it intends to make any further submissions. As concerns the offer to organise a meeting, Apple explained they could not meet on the proposed dates.

(16) On 27 July 2025 the Commission sent an email to Apple to offer alternative times for a meeting.[16] A meeting was subsequently organised on 31 July 2025. In that context, the Commission asked Apple to submit any written input prior to the meeting.[17] Apple did not make any further submissions. During the meeting Apple was given an opportunity to ask questions and express its views on the preliminary position taken by the Commission in its letter of 16 July 2025. In that context, Apple reiterated its views set out in the waiver requests and its letter of 22 July 2025. Apple focused on presenting its IPR concerns, using the automatic audio switching feature as an example.

3. LEGAL FRAMEWORK

3.1. Purpose and background of the Waiver Clause

(17) The Waiver Clause, as provided for in the Specification Decision, is intended to apply in exceptional situations where Apple, in the implementation of the measures, encounters unforeseen technical, legal, or other circumstances impacting its ability to implement the measures.[18] The Waiver Clause constitutes a means for Apple to bring to the Commission's attention implementation issues which could be remedied by a modification or substitution of one or more of the measures imposed by the Specification Decision.

(18) The purpose of the Waiver Clause is to introduce flexibility for future circumstances which were hypothetical or unforeseeable when the Specification Decision was adopted and therefore could not be assessed during the administrative proceedings. In view of the technical complexity that the implementation of the measures specified by the Specification Decision may entail, circumstances not existing or foreseeable when the Specification Decision was adopted may call for targeted modifications.[19]

(19) Indeed, the Waiver Clause has a narrow scope limited to exceptional and unforeseeable circumstances. The narrow scope of the Waiver Clause clearly appears from the text of the Specification Decision, which refers to the possible application of such Clause in three specific instances.

(20) *First*, recital 610 of the Specification Decision clarifies that Apple may submit a request under the Waiver Clause if it considers that it is not possible to develop or provide an interoperability solution which is agnostic of the beneficiary, app, or use case. The Commission explained to Apple that the Specification "*decisions strike a balance between the mandate of the DMA to enable new use cases, which are major*

15 Email from Apple to the Commission of 26 July 2025.
16 Email from the Commission to Apple of 27 July 2025.
17 Email from the Commission to Apple of 27 July 2025.
18 Specification Decision, recital 650.
19 Specification Decision, recital 650.

drivers of innovation, and allowing Apple to address legitimate design challenges when developing its interoperability solutions" and that, "*[i]n exceptional cases, where such balance cannot be found, the decisions provide for a waiver clause to relieve Apple of its obligations.*"[20] The Commission recognised, following Apple's comments, that implementing or adapting an interoperability solution suitable for these new hypothetical use cases may not always be possible.[21] Given the hypothetical nature of these new use cases, the Specification Decision could neither factor such use cases nor the design and implementation challenges that they may pose for Apple.

(21) *Second*, recital 642 of the Specification Decision clarifies that Apple may make a request under the Waiver Clause if, in the context of its operations and in exceptional circumstances, it considers necessary to deprecate an interoperability solution or parts of it for the features listed in the Specification Decision. The reference pertains to future and hypothetical situations where certain software and hardware capabilities may become obsolete, go out of fashion, or be superseded by better alternatives.[22] The reference was added in response to Apple's argument [that interoperability solutions have to reflect future developments].[23] The reference thus ensures a certain level of futureproofing of the Specification Decision by acknowledging that certain interoperability solutions might become outdated in the future.

(22) *Third and finally*, recital 232 of the Specification Decision pertaining to Wi-Fi Aware standard clarifies that Apple may submit a request under the Waiver Clause without undue delay if it considers that, in certain specific circumstances, the measures of paragraph 17(g) of the Annex are liable to violate Apple's right to property under Article 17 of the Charter. In this specific context, the Waiver Clause covers the exceptional situation where new functionalities would become part of the Wi-Fi Aware standard for which Apple has valid and enforceable intellectual property rights ("**IPR**"). While Apple must not prevent functionalities available under its own Apple Wireless Direct Link ("**AWDL**") implementation from becoming part of the Wi-Fi Aware standard under paragraph 17(g) of the Annex, the Commission referred Apple to the possibility of a waiver for the hypothetical situation that, in the future, third parties seek to include functionalities protected by Apple IPR in the Wi-Fi Aware standard. Recital 232 of the Specification Decision therefore responds to Apple's [IP concerns].[24] This question is different from the question, raised by Apple, whether the other measures regarding the high-bandwidth peer-to-peer Wi-Fi connection feature are compatible with Article 17 of the Charter, which is addressed in Section 6.1 of the Specification Decision.

(23) Each of these three references to the Waiver Clause concerns a specific single measure within the full set of measures for the respective features. The Waiver Clause was not meant to allow for a blanket waiver of all measures for a feature, but

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20 Email from the Commission to Apple of 17 March 2025.

21 See also the Process specification decision (DMA.100204), Decision C(2025) 3001 final, recitals 293-300, 315, and 320, where a similar reasoning is developed.

22 See also the Process specification decision (DMA.100204), Decision C(2025) 3001 final, recitals 305-306, where a similar reasoning is developed.

23 [Apple proposed language to state that interoperability solutions have to reflect future developments], see Apple's mark-up of the Commission's proposed measures of 31 January 2025.

24 Email from Apple to the Commission of 21 February 2025. Apple further [made an argument about potential implications for IP rights].

to specifically address exceptional and unforeseeable issues arising in the implementation of certain measures.

3.2. Scope and application of the Waiver Clause

(24) The Commission notes that pursuant to the Annex, the Waiver Clause can only be triggered in case of "*exceptional circumstances*".[25] As the Waiver Clause provides for exceptions to the measures set out in the Specification Decision, it ought to be interpreted narrowly. Circumstances are exceptional if they are unforeseeable and extraordinary. They must be demonstrated by the party invoking them.

(25) Moreover, to be exceptional, the circumstances must significantly deviate from those that were brought to the Commission's attention or were assessed by the Commission during the administrative proceedings, so as to justify a deviation from the measure in question.

(26) The purpose of the Waiver Clause is to introduce flexibility if, in the implementation of the measures set out in the Specification Decision, Apple were to face problems which were unforeseeable at the time of the adoption of the Specification Decision, and which could therefore not be assessed during the administrative proceedings. However, the Waiver Clause is neither meant to provide a forum for challenging the conclusions reached in the Specification Decision following extensive due process (which Apple challenged before the General Court, see Section 1.3 of this decision) nor meant to provide Apple with an additional opportunity to be heard and to further develop the points raised and assessed during the administrative proceedings. This is consistent with the legislators' will to impose a strict six-month deadline to adopt a decision in specification proceedings pursuant to Article 8(2) of Regulation (EU) 2022/1925, while providing specific opportunities for the gatekeeper to be heard before the adoption of a specification decision.

(27) Apple was able to make its views known on all matters of fact and of law on which the Specification Decision is based during the administrative proceedings. The Commission engaged extensively with Apple before and during the administrative proceedings.[26] Apple made extensive use of its right to be heard in numerous meetings, submissions, and in its response to the preliminary findings. In addition, Apple was allowed the possibility to comment on the draft final measures.[27]

(28) Rather than developing points already raised during the administrative proceedings, the Waiver Clause is there to allow for flexibility to invoke exceptional circumstances closely linked to the technical complexity of development of an interoperability solution as per the measures set out in the Annex.[28] Recital 650 of the Specification Decision explicitly motivates the Waiver Clause with the "*technical complexity associated with the implementation of the measures.*"

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[25] In the letter from Apple to the Commission of 22 July 2025, Apple erroneously claims that the Commission "*narrowed*" the scope of the Waiver Clause in its letter of 16 April 2025. This is addressed in recital (31) of this decision.

[26] Specification Decision, Sections 2.2 and 2.3.

[27] The Commission granted Apple this possibility, even it was not legally required to do it. While the right to be heard extends to all the matters of fact and of law which form the basis of the decision-making act, it does not extend to the final position which the administration intends to adopt. See, for example, General Court, judgement of 17 July 2024, T-1077/23, *ByteDance / European Commission*, paragraph 349.

[28] See recital 650 of the Specification Decision, which inter alia provides that "*Apple may not be in a position to implement one or more of the measures or a part of them*."

(29) Moreover, under the Waiver Clause Apple bears the burden of showing a material obstacle affecting its ability to implement one or more measures. If Apple demonstrates such good cause, the Commission may modify or substitute the measure. Therefore, Apple ought to (i) sufficiently substantiate and provide evidence that it is not in a position to implement the measures, and (ii) show the issue meets the conditions for the application of the Waiver Clause justifying the potential modification or substitution of the measure. The Commission will consider any mitigation measures of the encountered obstacle. As a result, Apple must explain the circumstances, their exceptionality, when they appeared, which specific measures they affect, why and how they present an obstacle to the implementation of the respective measures, and how in Apple's view these alleged obstacles can be overcome.

(30) The Commission notes it would be inconsistent with the requirement of "exceptionality" if the Waiver Clause could be invoked to waive the very obligation to provide interoperability with an entire feature, rather than addressing specific issues related to the implementation of this obligation. If justified in the reasoned request, the Waiver Clause may allow for modification of the way interoperability is to be provided, i.e., the exact implementation of certain measures. It may not however waive the very obligation to develop an interoperability solution which is at the core of the obligation set out in the Article 6(7) of Regulation (EU) 2022/1925. This is reflected in the language of Article 6(7) of Regulation (EU) 2022/1925, which mandates the provision of interoperability with a given software or hardware feature as an endpoint, while leaving some flexibility as to how the interoperability solution is implemented.

(31) Finally, Apple claims in its letter to the Commission of 22 July 2025[29] that the Commission's "*new interpretation*" of exceptional circumstances, which, according to Apple, results in a narrower scope of the waiver clause is defective because: (i) it "*reads 'legal reasons' out*" of the waiver; and (ii) it ignores that "*the specific technical dimensions of the measures on which Apple sought waiver were not determined and finalized until the CD Decision was issued.*" This is blatantly incorrect. The Commission does not categorically exclude legal reasons or IPR concerns from the scope of the Waiver Clause as explained in recitals (19)-(23) above. These recitals set out examples of IPR concerns that may satisfy the conditions for application of the Waiver Clause.

(32) Therefore, requesting a blanket waiver of all measures in relation to five out of nine features, less than three months after making the measures binding, and citing arguments that had already been addressed and discussed during the administrative proceedings can hardly constitute exceptional circumstances and be compatible with the intended narrow scope of the Waiver Clause.

4. COMMISSION'S ASSESSMENT OF APPLE'S REQUESTS

4.1. Introduction and general comments

(33) As outlined in Section 2 of this decision, Apple submitted five requests asking the Commission to waive the measures imposed in the Specification Decision for five features respectively. Each of these waiver requests is described and assessed in

[29] Letter from Apple to the Commission of 22 July 2025.

detail in the subsequent sections of this decision. There are however several aspects across all five requests which lead to the conclusion that all five requests are not based on exceptional circumstances as required by the Waiver Clause and pursuant to the legal framework outlined in Section 3 above.

(34) *First*, Apple's requests are extremely broad in scope. Apple requests that the Commission waives – in other words withdraws – all of the measures of the Specification Decision for five out of nine features, i.e., for more than half of the scope of the Specification Decision. By their very nature, Apple's requests are not limited to seeking to address a specific issue encountered in the implementation of the measures set out in the Specification Decision.

(35) *Second*, in most cases Apple simply asks to entirely waive measures without proposing or requesting a modification or substitution of these measures. As such, Apple is therefore not seeking to overcome any specific obstacles encountered in the implementation of the measures, but rather to withdraw the measures themselves. The Waiver Clause does not, in principle, provide for the waiving of the obligation to allow interoperability with a feature as such. General waiver requests by Apple simply seeking the removal of the obligation to allow interoperability with certain features would be outside the scope of the Waiver Clause and contrary to Article 6(7) of Regulation (EU) 2022/1925.

(36) *Third*, Apple's five waiver requests rely mostly on legal arguments that Apple has previously raised, which therefore do not relate to unforeseen circumstances identified in the implementation of the measures.

(37) *In the first place*, Apple mostly relies on legal arguments pertaining to its position on the legality of Article 6(7) of Regulation (EU) 2022/1925, which it challenges in applications against its designation decision and the Specification Decision[30] and which have little to do with the feasibility of the technical implementation of the measures set out in the Specification Decision. Indeed, Apple's requests come very early – less than three months after the adoption of the Specification Decision – and do not relate to unforeseen circumstances identified in the implementation of the measures. Apple does not explain when these circumstances became known, whether they were foreseeable, and/or why they were a result of the work or analysis of the implementation of the measures.

(38) *In the second place*, contrary to what Apple claims,[31] Apple already submitted most of the arguments and facts during the administrative proceedings, even if now it labels them as new exceptional circumstances. As explained in Section 3 of this decision, the purpose of the Waiver Clause is not to extend the administrative proceedings or provide a forum to re-assess arguments already submitted during the administrative proceedings. In fact, if Apple considers that the Commission committed errors in the assessment of those arguments, it should raise (and duly show) such alleged errors in the context of a legal challenge of the Specification Decision in front of the European Union Courts, which Apple has lodged with the General Court on 30 May 2025 (see Section 1.3 of this decision).

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30 Apple v Commission, Case T-1080/23 and Apple and Apple Distribution International v Commission, Case T-354/25.

31 See the letter from Apple to the Commission of 22 July 2025, where Apple claims that "*waivers reflected new facts and new information*".

(39) *Finally*, Apple claims in its letter of 22 July 2025 that the Commission infringed its rights to be heard and due process throughout the administrative proceedings, including by providing Apple only five working days to submit its observations to the Commission's preliminary assessment.[32] This claim is baseless, as the Commission respected Apple's right to be heard and to due process throughout both, the administrative proceedings leading to the adoption of the Specification Decision, as set out in Section 2.3 of that Decision, and the Commission's assessment of Apple's waiver requests. The Commission considers five working days (eight calendar days) adequate for Apple to make its views known in an effective manner before the adoption of this decision. In fact, the letter setting out the Commission's preliminary views is short – only 14 pages – and consistent with the line followed throughout by the Commission. Additionally, while Apple complained about the time granted to submit its observations, it did not request an extension to submit their observations. A meeting between Apple and the Commission was only organised on 31 July 2025 following the expiration of the deadline to respond to the Commission's preliminary views.[33]

4.2. Apple's IPR claims and the Commission's assessment

4.2.1. Apple's IPR claims

(40) Apple argues that the measures for each of the five features covered by the waiver requests interfere with Apple's IPR and that such interference is disproportionate. In fact, Apple uses more than half of each waiver request to motivate its IPR-related claims. On that basis, Apple requests to waive the measures for the five features in their entirety.

(41) In each waiver request, Apple makes largely the same IPR-related claims, namely:

(a) Apple claims that its implementation work over the past two months has substantiated its IPR concerns, raising new issues and making clear that the measures directly and comprehensively implicate Apple's copyrights, trade secrets, and patents.[34]

(b) If Apple cannot count on its IPRs, including those inherently implicated by the measures for the five features at issue, being respected, its entire business model is at risk, competition and contestability are undermined, and the products available to end users are rendered generic.[35]

(c) Because the measures for each of the five features "*draw no line between any interest in further interoperability to achieve the objectives of the DMA and this risk, they cannot be fulfilled without disproportionately burdening Apple's fundamental rights to property and business.*"[36]

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32 Letter from Apple to the Commission of 22 July 2025.

33 See recitals (12)-(16) of this decision.

34 Apple's iOS notifications waiver request, paragraph 4; Apple's automatic Wi-Fi connection waiver request, paragraph 2. Apple's Proximity Pairing Waiver request, paragraph 2; Apple's file transfer waiver request, paragraph 3; Apple's automatic audio switching waiver request, paragraph 2.

35 Apple's iOS notifications waiver request, paragraph 5; Apple's automatic Wi-Fi connection waiver request, paragraph 4. Apple's Proximity Pairing Waiver Request, paragraph 4; Apple's file transfer waiver request, paragraph 4; Apple's automatic audio switching waiver request, paragraph 4.

36 Apple's iOS notifications waiver request, paragraph 5; Apple's automatic Wi-Fi connection waiver request, paragraph 4. Apple's Proximity Pairing Waiver Request, paragraph 4; Apple's file transfer waiver request, paragraph 4; Apple's automatic audio switching waiver request, paragraph 4.

(d) The Specification Decision lacks the prerequisite assessment of the extent to which interference with Apple's IPRs relevant to the respective feature is necessary to achieve the aim of contestability. Interpreting interoperability to require access to the same technical approach and the same technological functionality that Apple provides to its own connected devices is incompatible with the right to property.[37]

(e) Apple further submits in each waiver request that the measures require Apple to create new solutions, which entails the creation/invention of certain new functionalities/frameworks/infrastructures. In the same paragraph, Apple claims that this requires inventive effort and the creation of new copyright-protected software and code. Apple devotes another paragraph to the claim that the requirement to create and publish new documentation in relation to each of the five features would disclose further proprietary and confidential Apple information which would interfere with Apple's copyrights and destroy its trade secrets.[38] The claims are not tied to specific IPR.

(f) In addition to these general arguments common to all five waiver requests, Apple explains in one paragraph that certain functionalities (such as "*responding to or dismissal of a notification*") are covered by (unspecified) patents, copyrights and trade secrets.[39] For each of the five features covered by the waiver request, Apple names [patents].[40]

4.2.2. The Commission's assessment of Apple's IPR claims in the Specification Decision

(42) Apple raised the arguments about an alleged disproportionate interference with its rights to property and right to conduct its business already during the administrative proceedings and submitted certain evidence to support those claims. The Specification Decision assesses, and ultimately rejects, these claims in its Section 6 titled "proportionality". As set out in Section 6.1 of the Specification Decision concerning the right to property, the rejection is based, in essence, on a lack of adequate substantiation of Apple's IPR-related claims, including its claim that any interference by the Specification Decision with Apple's IPR would be disproportionate. The Commission therefore carefully assessed Apple's IPR-related claims based on the information available to it during the administrative proceedings.

(43) In particular, the Commission noted that Apple submitted […] too late in the proceedings to afford the Commission sufficient time to properly take it into account. The letter was submitted only four working days before the legal deadline and one

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37 Apple's iOS notifications waiver request, paragraphs 3, 6, 17, 25-26, 30; Apple's automatic Wi-Fi connection waiver request, paragraphs 3, 17-20. Apple's Proximity Pairing Waiver Request, paragraphs 19-24; Apple's file transfer waiver request, paragraphs 5, 20-23; Apple's automatic audio switching waiver request, paragraphs 4, 20-23.

38 Apple's iOS notifications waiver request, paragraphs 21-22; Apple's automatic Wi-Fi connection waiver request, paragraphs 14-15; Apple's Proximity Pairing Waiver Request, paragraphs 16-17; Apple's file transfer waiver request, paragraphs 17-18; Apple's automatic audio switching waiver request, paragraphs 17-19.

39 Apple's iOS notifications waiver request, paragraph 17; Apple's automatic Wi-Fi connection waiver request, paragraph 10; Apple's Proximity Pairing Waiver Request, paragraphs 13 - 14; Apple's automatic audio switching waiver request, paragraph 13; Apple's file transfer waiver request, paragraph 14.

40 Apple's iOS notifications waiver request, paragraph 18; Apple's automatic Wi-Fi connection waiver request, paragraph 11; Apple's file transfer waiver request, paragraph 15; Apple's Proximity Pairing Waiver Request, paragraph 13; Apple's automatic audio switching waiver request, paragraph 14.

working day before the scheduled meeting with the Digital Markets Advisory Committee.[41] The Commission also considered that the information in the letter does not sufficiently substantiate Apple's IPR-related concerns, including why the proposed measures would disproportionately interfere with Apple's patents.[42] Even assuming an interference with an existing European patent, the Commission considered that it remains unclear why any proposed measure would disproportionately interfere with such patent.[43]

(44) The Specification Decision assesses, and ultimately rejects, Apple's claims regarding the right to conduct its business in Section 6.2 titled "*right to compete on privacy and security*". The Specification Decision assesses Apple's innovation arguments in Section 3.2 of this decision.

4.2.3. Further submissions on IPR claims made by Apple following the adoption of the Specification Decision

(45) After the adoption of the Specification Decision, which concluded the administrative proceedings, Apple incrementally submitted further information on its IPR on 11 April 2025, 22 April 2025 (as part of Apple's implementation report) and 29 April 2025 (with a submission on 5 May 2025 correcting this submission). Except the submission of 22 April 2025, in each submission Apple incrementally added detail on how specific Apple's IPR is engaged and by what feature. The Commission informed Apple on 16 May 2025 that it was reviewing the information Apple submitted and the points Apple raised. Apple responded on 24 May 2025, claiming that the Commission's analysis of Apple's IPR in the Specification Decision was insufficient and informing the Commission that Apple planned to submit waiver requests without undue delay "*in order to sharpen our dialogue on issues*" including Apple's IPR and fundamental rights concerns.[44]

(46) In its letter of 22 July 2025, Apple claims that it has substantiated its IPR concerns throughout the proceedings and that it provided more detail after the adoption of the Specification Decision, claiming in general terms that the Commission has refused to engage with the substance of these concerns.[45]

(47) During the meeting of 31 July 2025, Apple seemed to suggest that, to the extent a feature is protected by IPR, it cannot be subject to the interoperability obligations under Article 6(7) of Regulation (EU) 2022/1925. Apple stated in that context that when third parties avail themselves of an interoperability solution under that Regulation, this could constitute unlicensed use of Apple's IPR, which under EU law can result in injunctions.

4.2.4. The Commission's assessment of Apple's IPR claims under the Waiver Clause

(48) As regards Apple's request to waive the measures for the five features in their entirety based on IPR-related concerns, the Commission considers (i) that Apple's IPR claims are not covered by the Waiver Clause and (ii), even if they were – *quod non* – Apple's IPR claims are unsubstantiated.

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41 Specification Decision, recitals 664-669.
42 Specification Decision, recitals 670-672.
43 Specification Decision, recital 673.
44 Email from Apple to the Commission of 24 May 2025.
45 Letter from Apple to the Commission of 22 July 2025.

4.2.4.1. Apple's IPR claims are not covered by the Waiver Clause

(49) The Commission considers that Apple's IPR-related concerns are not within the scope of the Waiver Clause.

(50) As explained in Section 3 of this decision, the Waiver Clause requires exceptional circumstances arising in the technical implementation of a specific interoperability solution, which were unforeseeable at the time of the adoption of the Specification Decision, and which could therefore not be assessed during the administrative proceedings. However, Apple is unable to show the existence of such exceptional circumstances in relation to its IPR related claims, which would justify the grant of a waiver under the Waiver Clause.

(51) *First*, Apple does not explain why the IPR-related arguments and evidence presented in the waiver requests should be considered exceptional so as to justify modification or substitution of the measures set out in the Annex. In fact, Apple mostly reiterates arguments and evidence that it had already submitted during the administrative proceedings and does not rely on new evidence emerged in the implementation of the measures in question. As explained in recitals (42) to (44) above, the Commission assessed Apple's IPR-related claims at length and dismissed them in the Specification Decision. It is not the purpose of the Waiver Clause to allow gatekeepers to further develop claims made in the framework of the administrative proceedings, reopening issues already examined in the Specification Decision, nor to contest such Decision (which Apple challenged before the General Court).

(52) While Apple notes that it has been raising IPR issues since the beginning of the proceedings, the Specification Decision addressed its claims and rejected them. Apple's arguments were without exception generic and, as explained in recital (45) above, Apple has been providing piecemeal information without duly showing any disproportionate interference with its IPR. Including in its latest submission of 15 July 2025,[46] the information on the [patents] remains very limited and high level, far from giving rise to unforeseen and extraordinary circumstances. […][47] […]. Apple states that its implementation work is "*raising new issues*" regarding its IPR concerns,[48] but it does not even attempt to explain what these alleged new issues may be, nor does it provide any elements showing these issues would amount to exceptional circumstances.

(53) Apple does not present any exceptional circumstances as regards its claims that the Commission unduly interprets Article 6(7) of Regulation (EU) 2022/1925 that Apple should make the same feature interoperable and its criticism that some of the features were only explicitly requested by few competitors. Apple's IPR-related arguments were already assessed in light of these claims in the Specification Decision.[49]

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46 Letter from Apple to the Commission of 22 July 2025.

47 […].

48 See, e.g., Apple's iOS notifications waiver request, paragraph 4. See also the Apple letter accompanying the waiver requests, page 1: "*Our analysis of the final CD Measures over the past two months has also made clear that implementation is not possible without [disproportionately interfering with Apple's IPRs].*" and the letter from Apple to the Commission of 22 July 2025.

49 Apple claims that interpreting effective interoperability to require "*the same technical approach and same technological functionality*" is a "*direct attack*" on its property and contrary to the raison d'être of Article 17 of the Charter (iOS notifications waiver request, paragraph 21). The Specification Decision rejects Apple's arguments that Article 6(7) of Regulation (EU) 2022/1925 does not require it to make the same feature available in recitals 60-67. The Specification Decision does not state that Apple must

(54) *Second*, to the extent any IPR claims are relevant, they have already been assessed in the Specification Decision on the basis of the information submitted by Apple at that stage. As indicated, the Waiver Clause is neither meant to provide a forum for challenging the conclusions reached in the Specification Decision […] nor to provide Apple with an additional opportunity to be heard and to further develop the points raised and assessed during the administrative proceedings.

(55) Apple's claim that the administrative proceedings "*afforded little if any opportunity for Apple to evaluate and substantiate its concerns regarding the extent to which the measures adopted in March interfere with Apple's intellectual property rights*"[50] is unfounded and not relevant for the application of the Waiver Clause. Apple does not present exceptional circumstances but unduly criticises the Commission's finding in the Specification Decision that Apple did not show that the measures set out in that Decision give rise to a disproportionate interference with its IPR. […].

(56) Apple misinterprets the Waiver Clause as a means to correct an "*imbalance between the CD Measures and the interference with Apple's IPRs and technology*"[51] and "*to sharpen our dialogue on issues*" including Apple's IPR and fundamental rights concerns. The Commission is not under an obligation to engage in a permanent "*dialogue*" about Apple's IPR and fundamental rights concerns and alleged imbalances addressed in the Specification Decision.

(57) In any case, Apple was afforded sufficient time to substantiate its IPR concerns during the administrative proceedings that led to the Specification Decision. The preliminary scope of the proceedings, i.e., the features covered, was communicated to Apple on 25 September 2024 and laid out in detail in the preliminary findings adopted on 18 December 2024. Each of the features in the Specification Decision were already included in the preliminary scope and the preliminary findings, including the five features subject to Apple's five waiver requests.

(58) Apple was also aware of the interoperability requests many months before the opening of proceedings on 19 September 2024. As set out in Section 4 of the Specification Decision, Apple received the first requests for eight of the nine features covered by the Specification Decision between January and March 2024.[52] […][53] […].[54] […].[55] […].[56]

(59) *Third*, in any event, Apple has not shown, not even at this stage, that the measures in question give rise to a disproportionate interference with its IPR in violation of its fundamental freedoms.[57] Apple does not (i) explain how the measures interrelate

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use the same technical approach when allowing for effective interoperability (see recital 63 of the Specification Decision). Regarding competitor requests, see Apple's iOS notifications waiver request, paragraph 24. The Specification Decision addresses this criticism in, e.g., recital 17 and 422.

50 See also the letter from Apple to the Commission of 2 June 2025 accompanying the waiver requests, page 2.

51 Letter from Apple to the Commission of 2 June 2025 accompanying the waiver requests, page 2.

52 The exception is the features for close-range wireless file transfer solutions, see Specification Decision, recital 121(e).

53 […].

54 Apple's reply to RFI 9 of 12 September 2024, Table 5.

55 Apple's internal document […] of 2 August 2024 […].

56 Apple's internal document […].

57 The General Court put the burden of proof regarding a justification based on IPR on the company invoking the IPR, Case T-167/08, Microsoft v Commission, EU:T:2012:323, paragraphs 688-689, 697. Rejecting IPR-claims in a challenge against a EU law requires that the applicant "*states how [IPR] is*

with the specific patents and their scope, (ii) explain whether the measures can only be implemented by engaging with Apple's patents or there exist other implementation solutions that do not interfere with these patents, and (iii) substantiate why the implementation of the measures disproportionately affects Apple's rights under Articles 16 and 17 of the Charter. Apple also does not substantiate its claim that it would need to invent new functionalities, frameworks or infrastructures to comply with the measures, and, in any event, has not explained why this would be disproportionate. It is not clear from the waiver requests what these inventions would consist of, whether they would enjoy IPR protection, and what kind of engineering effort that would entail.[58]

(60) Therefore, Apple's allegation made in its letter of 22 July that the Commission refused to engage with its IPR claims holds untrue and can only be read as Apple's disagreement with the Commission's analysis in the Specification Decision and the preliminary assessment of the Waiver request communicated on 16 July 2025. As regards Apple's claims made during the meeting of 31 July 2025 (see recital (47) of this decision), they concern the scope of Article 6(7) of Regulation (EU) 2022/1925, […].

4.3. Apple's request for waiver and modification of the iOS Notifications Measures

4.3.1. Apple's request

(61) Apple submitted a request to waive or modify the iOS notifications measures ("**iOS notifications waiver request**").[59] Apple requests that (i) the Commission waive the requirement to implement the iOS notifications measures in their entirety ("**iOS notifications measures**") or, (ii) should the Commission reject that request, Apple requests in the alternative that the iOS notifications measures be waived to the extent that they require Apple to allow third parties to pre-process iOS notifications before relaying them to their connected physical devices ("**Pre-Processing Requirement**").[60]

(62) *First*, Apple argues that the iOS Notifications Measures impose a disproportionate burden on the security and privacy of iOS devices and their users. The Pre-Processing Requirement pursuant to paragraph 6(a) of the Annex requires Apple to enable providers of connected devices to pre-process iOS notifications in their companion apps before the iOS notifications are relayed to those connected devices. For a companion app to pre-process a notification without any limitation, the notification must be decrypted. Apple argues that this requirement prevents it from

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infringed" T-745/20, Symphony Environmental Technologies and Symphony Environmental v Parliament and Others, EU:T:2024:45, 324. In order to enforce SEP in compliance with Article 102 TFEU, companies must "*designate the [IP] and specifying the way in which it has been infringed*" (see Case C-170/13, Huawei v ZTE, EU:C:2015:477, paragraphs 61, 71).

58 In each waiver request, Apple references paragraph 44 of the EUCJ judgment of 22 January 2013, Sky Österreich, C-283/11, EU:C:2013:28 to support its position that the measures interfere with its Charter rights. However, Apple quotes the above-mentioned judgment selectively, and a more comprehensive reading does not support Apple's position. The next paragraphs of the judgment, which Apple does not reference, indicate that the freedom to conduct business is not absolute, but must be viewed in relation to its social function, and that the freedom to conduct business may be subject to a broad range of interventions on the part of public authorities which may limit the exercise of economic activity in the public interest. The Court ultimately concludes that the validity of the Article under review is not affected.

59 Apple's iOS notifications waiver request.

60 Apple's iOS notifications waiver request, paragraphs 31 and 32.

technically mandating end-to-end encryption, i.e., that the notification stays encrypted between iOS and the connected device. According to Apple, this compromises users' privacy and security. Apple submits that requiring third parties to ensure encryption of iOS notifications by policy, as foreseen in the Specification Decision, offers a substantially lower level of assurance than a technical control that prevents access to unencrypted data altogether. Apple also argues that potential privacy breaches and data misuse would reflect negatively on iOS itself and undermine users' trust in Apple's ecosystem and its privacy and security standards.[61] Finally, […].[62]

(63) *Second*, as already outlined in Section 4.2 above, Apple argues that the iOS notification measures disproportionately interfere with Apple's IPRs pursuant to Articles 16 and 17 of the Charter. According to Apple, the iOS notifications measures require Apple to provide third parties with access to its existing, proprietary technology which is protected by copyright and patents and constitute trade secrets. Apple [contends that the iOS notifications measures interfere with its patents]. Apple submits that the iOS notifications measures require Apple to develop new technological solutions and infrastructure and to develop and publish significant amounts of new documentation. Apple argues that the iOS notifications measures are neither appropriate nor necessary to achieve the aim of Article 6(7) of Regulation (EU) 2022/1925 and go far beyond what is required to allow effective interoperability.[63]

4.3.2. Commission's assessment

(64) The iOS notifications waiver request does not meet the conditions for the application of the Waiver Clause.

(65) *First*, the iOS notifications waiver request is not based on exceptional circumstances. The request is not based on any new or unforeseeable circumstances, it asks, in the first place, for the waiving of all of the iOS notifications measures and it does not explain how the request constitutes an exception to Apple's obligation under Article 6(7) of having to provide interoperability with the iOS notifications feature.

(66) *Second*, most circumstances put forward in the iOS notifications waiver request (and as reiterated in passing in the letter from Apple to the Commission of 22 July 2025[64]) were raised by Apple during the administrative proceedings and have been assessed and addressed at length in the Specification Decision. The concerns regarding the alleged security and privacy risks of the Pre-Processing Requirement were submitted by Apple in writing on 17 February 2025[65] and comprehensively assessed in recitals 172 to 174 and footnote 210 of the Specification Decision. As described in Section 4.2 above, Apple submitted its arguments that the iOS notifications measures disproportionately interfere with Apple's IPR already during the administrative proceedings. To the extent possible, these IPR-related claims were addressed in the Specification Decision.

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61 Apple's iOS notifications waiver request, paragraphs 9-15; Apple also briefly mentioned these concerns in its letter to the Commission of 22 July 2025.

62 Apple's iOS notifications waiver request, paragraph 29.

63 Apple's iOS notifications waiver request, paragraphs 16-30.

64 Letter from Apple to the Commission of 22 July 2025.

65 Specification Decision, recital 167.

(67) *Third*, insofar as the iOS notifications waiver request includes (few and minor) new arguments and facts, further developing these claims made in the framework of the administrative procedure, they do not concern new issues identified in the implementation of the measures and could have been raised during the administrative proceedings.

(68) Apple's new arguments concerning the Pre-Processing Requirement, i.e., the alleged lack of assurances provided by a policy-based encryption requirement and reputational risks for Apple's products and ecosystem, are generic, hypothetical, and were known and obvious to Apple during the administrative proceedings. Apple does not submit that these arguments result from the implementation of the measures following the adoption of the Specification Decision.

(69) Apple's new arguments concerning the disproportionate interference of the iOS notifications measures with its IPR, i.e., [Apple's patents], do not constitute any new and unforeseen facts that emerged during the implementation of the measures following the adoption of the Specification Decision.

(70) *Fourth*, on substance, Apple has not presented any circumstances that prevent it from implementing the iOS notifications features.

(71) *In the first place*, Apple has not demonstrated that the iOS notifications measures disproportionately affect the privacy and security of iOS devices. As described in recitals 172 to 174 of the Specification Decision, (i) Apple may mandate full encryption of iOS notifications, including during transmission, by policy; (ii) iOS notifications are already decrypted today on iOS by Apple before being relayed to the Apple Watch; (iii) Apple vastly overstates the security and privacy risks given that third parties will obtain access to the unencrypted iOS notification in any event on the connected device and are subject to the applicable data protection legislation and (iv) does not consider, in the framework of a proportionality assessment, that pre-processing of iOS notifications is crucial for innovation, as confirmed by third parties during the public consultation. Apple's proposal […] would not allow third parties to innovate on par with Apple, e.g., by offering notification summaries.[66]

(72) *In the second place*, Apple has not demonstrated that the iOS notifications measures disproportionately interfere with its IPR. As described in Section 4.2 above, Apple does not sufficiently substantiate its IPR-related claims in the iOS notifications waiver request. Specifically, Apple does not explain (i) how the iOS notifications measures engage with the specific patents and their scope, (ii) whether the iOS notifications measures can only be implemented by engaging with Apple's patents or there exist other implementation solutions that do not engage with these patents, (iii) how the implementation of the iOS notifications measures is disproportionate compared to the alleged infringements of Apple's rights under Articles 16 and 17 of the Charter (e.g., submitting the value of the patents allegedly infringed by the iOS notifications measures).

[66] See footnote 210 of the Specification Decision, which explains that pre-processing of iOS notifications is crucial for developers to determine and optimise how the notification is relayed to the connected physical device, e.g., by being able to provide notification summaries and notification announcements.

4.3.3. Conclusion

(73) In light of the reasons set out above, based on the information provided by Apple in its waiver request in relation to iOS notifications feature, the Commission is currently not in a position to waive or modify any of the iOS notifications measures.

4.4. Apple's request for waiver of the Proximity Pairing Measures

4.4.1. Apple's request

(74) Apple submitted a request to waive or modify the proximity pairing measures ("**proximity pairing waiver request**").[67] Apple requests that the Commission waive the requirement to implement the proximity pairing measures in their entirety ("**proximity pairing measures**"). Apple submits that the measures set out for this feature (i) interfere with Apple's IPR; (ii) they are disproportionate; and (iii) create security and privacy concerns that cannot be mitigated. Apple considers that these reasons justify requesting the waiver as "*legal, technical [and] other reasons,*" which would fall into the category of "*exceptional circumstances*" warranting a waiver.[68]

(75) *First*, Apple claims that the measures for the proximity pairing feature interfere with Apple's IPR, including "*Apple's copyrights, trade secrets, and patents*".[69] Apple supports its arguments by providing examples of proprietary technologies to which it will have to provide access for third parties and [patents that will be interfered with].[70] Apple also claims that the measures it has to implement for the proximity pairing feature will entail the development of new technologies, which will also be covered by IPR, to which it will have to provide access to for third parties.

(76) *Second*, according to Apple the measures interfere disproportionately with Apple's IPR and the freedom to conduct business, breaching Articles 16 and 17 of the Charter.

(77) Apple claims that the Specification Decision does not explain why interference with Apple's IPR is necessary to achieve the goal of contestability, when the measures are solely based in three competitor's request for access to the feature, without considering alternative solutions which impact less Apple's IPR.[71] In particular, Apple refers to *AccessorySetupKit* as an effective but less onerous solution which was rejected by the Commission.[72] Apple concludes that by mandating the same access to the same features available to or used by Apple's own devices the Commission run afoul of Apple's IPR.[73]

(78) Third, Apple argues that the measures set out in the Specification Decision for the proximity pairing feature raise security and privacy concerns which cannot be mitigated. Specifically, Apple explains that the measures expand the attack surface of user devices for malicious third-party devices and bad actors, which could lead to a risk of bad actors spamming a user's iOS device. According to Apple, the Specification Decision does not weigh or address these concerns.[74]

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67 Apple's proximity pairing waiver request.
68 Apple's proximity pairing waiver request, paragraph 1.
69 Apple's proximity pairing waiver request, paragraphs 10-17.
70 Apple's proximity pairing waiver request, paragraphs 12-15.
71 Apple's proximity pairing waiver request, paragraphs 19-22.
72 Apple's proximity pairing waiver request, paragraph 23.
73 Apple's proximity pairing waiver request, paragraph 24.
74 Apple's proximity pairing waiver request, paragraphs 25-26.

4.4.2. Commission's assessment

(79) The proximity pairing waiver request does not meet the conditions for the application of the Waiver Clause.

(80) *First*, contrary to what Apple claims, Apple is not providing any new facts or circumstances which would prevent it from implementing the measures for the proximity pairing feature. Importantly, during the exchanges with the Commission that took place from the adoption of the Specification Decision until the submission of the proximity pairing waiver request, Apple did not raise any technical reason explaining why the measures were not possible to implement. Apple did not mention any new constraints it encountered during the solution's implementation to comply with the measures in its Implementation Report,[75] nor during the technical meeting on the Implementation Report, nor in the responses to the RFIs it submitted on 12 and 21 May 2025. Importantly, Apple's waiver request still does not explain why Apple cannot implement its proposed solution but simply reiterates the concerns already raised during the administrative proceedings.

(81) In fact, Apple's claims in relation to the breach of its IPR were already assessed in the Specification Decision […]. Therefore, this argument cannot be considered as an exceptional circumstance justifying a waiver, as explained in Sections 3 and 4.2 of this decision. This applies *mutatis mutandis* to the arguments regarding the disproportionate interference with Apple's IPRs, and the claims on privacy and security concerns, which were already raised during the administrative proceedings and assessed in the Specification Decision as explained in recitals (86) and (87) in this decision.

(82) *Second*, Apple's request is unsubstantiated and far-reaching. Apple does not provide an alternative solution or proposal which could address its concerns (which, in any event, are not substantiated). Therefore, Apple simply requests that the Commission entirely lifts Apple's obligations by means of a waiver of the proximity pairing feature, without proposing any modification thereof to address specific issues arising in the implementation of the measure in question. This cannot be accepted, as already explained in Section 3 of this decision.

(83) *Third*, none of these claims can be considered exceptional circumstances affecting Apple's position to implement the measures. These are rather legal claims that underline Apple's disagreement with the measures set out in the Specification Decision, which cannot be considered an "*exceptional circumstance*" preventing Apple from implementing its own solution.

(84) *Fourth*, Apple's claims regarding the disproportionate burden of the Specification Decision, and the fact that the Specification Decision should have explained why interference with Apple's IPR is necessary for contestability cannot be the basis for a waiver request. These claims put into question the legality of the Specification Decision […].

(85) In particular and contrary to Apple's assertions, the Specification Decision did assess in detail *AccessorySetupKit* as an alternative solution. The Specification Decision

[75] In the Implementation Report Apple referred to the fact that compliance with the Proximity Pairing feature would require engaging Apple's IPR (Apple's Implementation Report, paragraphs 100-103).

provided an assessment of *AccessorySetupKit* as an alternative solution and took account of third parties' feedback regarding Apple's *AccessorySetupKit*.[76] […].[77]

(86) *Fifth*, the Specification Decision took account of Apple's concerns regarding security and privacy by including a registration program, as proposed by Apple itself.[78] Apple's security and privacy concerns are the same as already put forward by Apple during the administrative proceedings. These concerns were taken into account and reflected in the measures for the proximity pairing feature in the Specification Decision.

(87) Indeed, recital 281 of the Specification Decision explains that the Commission modified the initial proposed measures to reflect, among others, Apple's "*new interoperability proposal*". The measures set out in recitals 285 to 286 of the Specification Decision, as well as paragraphs 26 to 27 of its accompanying Annex include these changes.[79] Therefore, Apple's claims that the Specification Decision did not take account of these concerns are unfounded.

4.4.3. Conclusion

(88) In light of the reasons set out above, based on the information provided by Apple in its waiver request in relation to the proximity pairing feature, the Commission is currently not in a position to waive or modify any of the proximity pairing measures.

4.5. Apple's request for waiver and modification of the File Transfer Measures

4.5.1. Apple's request

(89) Apple submitted a request to waive or modify the file transfer measures ("**file transfer waiver request**").[80] Apple sets out two waiver options, namely to (1) waive all measures set out for the features for close-range wireless file transfer solutions in Section 5 of the Annex ("**file transfer measures**"), or, if the IPR-related arguments are rejected, to (2) waive the file transfer measures on trusted devices set out in paragraph 47 of the Annex ("**trusted devices measures**").[81]

(90) Apple considers a waiver to be warranted for "*legal, technical, [and] other reasons.*"[82] Consequently, Apple argues that it is not in the position to implement the file sharing measures. According to Apple, the inability to implement the measures amounts to "exceptional circumstances," which warrants a waiver or modification of the measures.[83]

(91) With regard to the technical reasons, Apple argues that "*it is not technically feasible to develop a technical solution*" to implement the trusted devices measures,[84] making

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76 Specification Decision, recitals 263-266 and 275-277.

77 Apple and Apple Distribution International v Commission, Case T-354/25, paragraphs 332 and 356.

78 […].

79 This specific proposal and the risks raised by Apple were also discussed with third parties (see Specification Decision, footnote 318).

80 Apple's file transfer waiver request.

81 Apple's file transfer waiver request, paragraphs 24-25.

82 Apple's file transfer waiver request, paragraph 1.

83 Apple's file transfer waiver request, paragraph 1.

84 The trusted devices measures require Apple to identify whether a non-Apple device belongs (i) to the same end user and (ii) to a contact of the end user. According to Apple, there are no private and secure cross-platform solutions to address either (Apple's file transfer waiver request, paragraph 9). Regarding point (i), Apple explains that its solution currently relies on the Apple Account, which cannot be

the measures "*disproportionate*".[85] Apple also claims that "*[i]t is not appropriate for the [Commission] to require Apple to invest significant resources to investigate potentially infeasible technical solutions*".[86] Furthermore, Apple claims that the trusted devices measures (i) are not appropriate and necessary to achieve contestability and fairness, (ii) are not the least onerous measures to allow effective interoperability, and (iii) require updates to the Wi-Fi Aware standard, which is controlled by Wi-Fi Alliance, not Apple.[87] Apple also requests that the Commission considers "*additional objections to the File Transfer Measures, as stated in Apple's submissions prior to the [Specification] Decision, […] as independent bases for waiver.*"[88]

(92) With regard to the legal reasons, as explained in Section 4.2 of this decision, Apple states that the file sharing measures disproportionately interfere with Apple's IPRs pursuant to Articles 16 and 17 of the Charter.[89] According to Apple, the file transfer measures require Apple to provide third parties with access to its existing, proprietary technology which is protected by copyright and patents and constitute trade secrets.[90] [Apple contends that the file transfer measures interfere with its patents].[91] Apple submits that the file transfer measures require Apple to adapt and expand its existing, proprietary frameworks,[92] create new technologies and user interfaces, and publish significant amounts of new documentation.[93] Apple argues that the file transfer measures are neither appropriate nor necessary to achieve the aim of Article 6(7) of Regulation (EU) 2022/1925, go far beyond what is required to allow effective interoperability, and the Specification Decision lacks assessment and analysis on the proportionality of the measures compared to IPR in order to achieve contestability.[94]

4.5.2. Commission's assessment

(93) The file transfer waiver request does not meet the conditions for the application of the Waiver Clause.

4.5.2.1. Waiving the entire file transfer measures

(94) Apple's request to entirely waive the file transfer measures is neither based on exceptional circumstances nor sufficiently substantiated.

(95) *First*, most of Apple's arguments presented in the file transfer waiver request are limited to the trusted device measures (see Section 4.5.2.2 of this decision). However, requesting the elimination of the entirety of the file sharing measures based on circumstances that only apply to a subset of measures is unjustified.

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replicated for third-party devices and is not controlled or operated by iOS. Regarding point (ii), Apple explains that there currently does not exist a known private, secure, solution.

85 Apple's file transfer waiver request, paragraphs 8-9.

86 Apple's file transfer waiver request, paragraphs 2, 10.

87 Apple's file transfer waiver request, paragraphs 10 to 13.

88 Apple's file transfer waiver request, paragraph 7.

89 Apple's file transfer waiver request, paragraph 19.

90 Apple's file transfer waiver request, paragraph 3.

91 Apple's file transfer waiver request, paragraph 15.

92 According to Apple, these frameworks include *DeviceDiscoveryUI*, *AccessorySetupKit*, and *Network Framework*, Apple's file transfer waiver request, paragraph 14.

93 Apple's file transfer waiver request, paragraphs 14-18.

94 Apple's file transfer waiver request, paragraphs 20-23.

(96) *Second*, beyond Apple's arguments on trusted devices, Apple (i) raises IPR claims and (ii) requests that the Commission re-evaluate claims that have been made by Apple prior to the adoption of the Specification Decision. The arguments based on IPR are addressed in Section 4.2 above. The claims Apple made prior to the adoption of the Specification Decision are addressed in that Decision do not constitute exceptional circumstances justifying a waiver.

4.5.2.2. Waiving the trusted devices measures

(97) The arguments Apple brings forward to justify waiving the trusted devices measures do not warrant waiving those measures.

(98) *First*, many of Apple's arguments were submitted during the administrative proceedings and have been addressed in the Specification Decision.

(99) *In the first place*, Apple's argument that no solution currently exists for the trusted devices measures making the trusted devices measures technically not feasible has been submitted during the administrative proceedings and has been addressed in the Specification Decision. […][95] […].[96] […].[97] The Specification Decision addressed Apple's claim, as the Commission (i) took on board all of Apple's suggestions to mitigate its technical feasibility concerns[98] and (ii) followed Apple's timing suggestion to develop the interoperability solution for the file transfer measures.[99]

(100) *In the second place*, Apple's argument that a technical solution is subject to the assessment of the Wi-Fi Alliance, meaning that Apple cannot control the protocol nor the timing of the protocol's implementation, has been submitted during the administrative proceedings and has been addressed in the Specification Decision. In particular, Apple has made this claim in the context of the high-bandwidth peer-to-peer Wi-Fi connection feature.[100] The Specification Decision addresses the Wi-Fi Alliance argument in recitals 224 and 225.

(101) *Second*, Apple's argument that the Apple Account-based part of the trusted devices measures solution[101] cannot be replicated for third-party devices and is not controlled or operated by iOS (the "Apple Account argument") is contradictory and is not substantiated.

(102) *In the first place,* […].[102]

(103) *In the second place,* Apple does not substantiate its argument. Apple does not explain if and how technical obstacles prevent it from replicating the Apple Account solution for third-party devices.[103] Similarly, Apple's file transfer waiver request failed to

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95 […].

96 […].

97 Technical meeting Apple/Commission of 14 May 2024.

98 Specification Decision, recitals 392-393.

99 Specification Decision, recital 394.

100 Apple's reply to the Preliminary Findings, paragraphs 192-195.

101 Apple currently relies on two (or more) devices being signed into the same Apple Account to trust devices that belong to the same end user (and not to trust devices that belong to a contact of the user) (Apple's file transfer waiver, paragraph 9). […].

102 Apple's reply to RFI 5 of 16 October 2024, question 36.

103 Apple's file transfer waiver request, paragraph 9.

raise or further substantiate the concerns that Apple already laid out in the Implementation Report.[104]

(104) *In the third place*, Apple claims that the Apple Account is not controlled or operated by iOS. As set out in recital 63 of the Specification Decision, the Commission does not mandate Apple to make the same interoperability solution (which is currently based on the Apple Account) available to third parties, provided that an interoperability solution for third parties is equally effective and provided under equal conditions. As set out in recital (30) of this decision, the Specification Decision mandates the provision of interoperability with a given software or hardware features as an outcome, not the interoperability solution Apple currently implemented via Apple Account. This also applies to the trusted device measures.

(105) *Third*, Apple's resource argument (i.e., that the resource-intensive engineering work required to develop a trusted devices solution is disproportionate) simply develops an argument already raised during the administrative proceedings. In any case it is not substantiated and appears contradictory.

(106) *In the first place*, Apple already mentioned the resource-intensive engineering effort during the administrative proceedings when presenting its preliminary trusted devices solutions and could have been further substantiated at this stage. The Commission addressed Apple's engineering efforts insofar as it accepted Apple's implementation timeline for the close-range wireless file transfer measures in recital 394 of the Specification Decision.

(107) *In the second place*, Apple's resource argument is inherently inconsistent with its technical "infeasibility" claim. Apple argues both that "it is not technically feasible to develop a technical solution"[105] and that "*Apple [needs] to invest significant resources to investigate potentially infeasible technical solutions*".[106] It appears that Apple does not claim technical infeasibility, but that it may take a disproportionate burden to develop an interoperability solution for the trusted devices measures.

(108) *In the third place*, Apple does not sufficiently substantiate the magnitude of "*significant resources to investigate potentially infeasible technical solutions*" for implementing the trusted devices measures in the file transfer waiver request. In itself, "*significant resources*" do not imply a disproportionate burden. In fact, Apple does not quantify its assessment, nor does it provide any concrete figures. Apple's claim that Article 6(7) of Regulation (EU) 2022/1925 cannot "*require gatekeepers to invest unlimited resources*" does not serve to substantiate its claim. During the administrative procedure, Apple had explained that making the new device discovery solution available to third parties will increase Apple's operating costs,[107] but did not quantify the statement.

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104 In the Implementation report, Apple raised a number of concerns about the trusted devices measure which relates to devices belonging to the same end user. Apple stated that (i) such a solution does not yet exist, (ii) Apple cannot implement a solution by itself, (iii) the solution requires changes to the Wi-Fi Aware standard, and (iv) the solution may introduce new vulnerabilities (Apple's Implementation Report, paragraph 147).

105 Apple's file transfer waiver request, paragraph 8.

106 Apple's file transfer waiver request, paragraph 2.

107 Apple's reply to RFI 5 of 16 October 2024, question 29.

(109) *In the fourth place*, the mere fact that Apple may need to invest resources in order to provide interoperability for third parties is a corollary of its obligation under the DMA and cannot be a reason not to provide interoperability.

(110) While the Commission recognises that Apple's arguments concerning the file sharing measures pertain to its technical implementation, these arguments remain hypothetical and unsubstantiated. Indeed, Apple merely hypothesises about a possible technical issue instead of describing the concrete obstacle encountered in practice, which could give raise to a modification or substitution of the file sharing measures.

4.5.3. Conclusion

(111) In light of the reasons set out above, based on the information provided by Apple in its waiver request in relation to the features for close-range wireless file transfer solutions, the Commission is currently not in a position to waive or modify any of the file transfer measures.

4.6. Apple's request for waiver and modification of the Automatic Wi-Fi Connection Measures

4.6.1. Apple's request

(112) Apple submitted a request to waive or modify the automatic Wi-Fi connection measures ("**automatic Wi-Fi connection waiver request**").[108] Apple requests that (i) the Commission waive the requirement to implement automatic Wi-Fi connection measures in their entirety ("**automatic Wi-Fi connection measures**") or, (ii) should the Commission reject that request, Apple requests in the alternative that the automatic Wi-Fi connection measures be modified.[109] Such modifications aim to (a) limit the Wi-Fi Network Information subject to these measures to network information "*saved following the pairing with the relevant third-party connected device*" and (b) include a footnote in the Annex stating that "*Apple shall not be required to implement a prompt to users of Apple connected physical devices that are signed into the same Apple Account with the same Apple ID.*"[110]

(113) *First*, regarding request (i), Apple claims a violation of its fundamental rights to property and freedom to conduct business based on an alleged disproportionate interference with its IPR.

(114) *Second*, regarding request (ii)(a), Apple submits that it has serious security and privacy concerns in relation to sharing sensitive Wi-Fi Network Information with third-party connected devices.[111] Information on historical networks would raise more significant privacy concerns, given that network information can and often does include sensitive data regarding the user's affiliations, whereabouts, and activities, and the user may not necessarily remember all the Wi-Fi networks used during a period of time that might span many years.[112] While Apple provides access to the Photo Library or Contacts today, Apple consider this a poor analogy because it is significantly more intuitive for a typical user to comprehend the privacy

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108 Apple's automatic Wi-Fi connection waiver request.

109 Apple's file transfer waiver request, paragraphs 33-34.

110 Apple's automatic Wi-Fi connection waiver request, paragraphs 33-34.

111 See for instance Apple's file transfer waiver request, paragraph 5 and Section IV.

112 Apple's automatic Wi-Fi connection waiver request, paragraph 23.

implications of sharing the contents of the Photo Library and Contacts compared to the more technical nature of the list of Wi-Fi networks.[113]

(115) According to Apple, sharing information on historical networks also raises security concerns: once shared with third parties, such information will become subject to abuse such as fingerprinting, tracking and monitoring, allowing third-party devices access to restricted networks, or uploading the user's networks and passwords to insecure servers.[114] Apple requires an additional authentication before a user can access the list of historical Wi-Fi networks on iOS.[115]

(116) Apple submits that these privacy and security concerns are serious and significant, and that risks are disproportionate.[116] As a result, any sharing of Wi-Fi Network Information should be limited to currently connected networks, excluding information for historical networks. Information on every network to which the paired iPhone connects on a current and forward-looking basis is sufficient for interoperability and the privacy and security concerns above outweigh any benefits of providing such information. Apple submits that [third party] is the only third party that requested historical networks information and indicated that it is unnecessary once their connected device had an ability to receive the currently connected Wi-Fi network information.[117]

(117) *Third*, regarding request (ii)(b), Apple submits that an obligation on Apple to show a permission prompt to its own connected physical devices before sharing Wi-Fi Network Information is unnecessary and disproportionate. While showing a prompt to third parties would be necessary to address privacy and security concerns, such prompt would be unnecessary for and inapplicable to Apple's connected devices.[118] Apple currently limits the sharing of the Wi-Fi Network Information to Apple devices associated with a known Apple Account, and Apple itself has no access to this information as it is shared using end-to-end encryption.[119] iOS securely discloses Wi-Fi Network Information to Apple Watch only when both iOS and Apple Watch are signed in to an Apple Account with the same Apple ID. This allows iOS to verify the identity of the Apple Watch and thereby builds safeguards into how the Apple Watch accesses and uses that information.[120]

(118) Showing its own users a permission prompt would confuse users which likely assume the information is already shared across devices and unduly disrupt and undermine the integration Apple offers to its users, and that users expect. Further,

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113 Apple's automatic Wi-Fi connection waiver request, footnote 17.

114 Apple's automatic Wi-Fi connection waiver request, paragraph 24.

115 Apple's automatic Wi-Fi connection waiver request, footnote 18.

116 Apple's file transfer waiver request, Section V.

117 Apple's automatic Wi-Fi connection waiver request, paragraphs 25-27.

118 Apple's automatic Wi-Fi connection waiver request, paragraphs 28-29.

119 In this context, the Commission understands the concept of "end-to-end encryption" as follows: the iOS device stores the Wi-Fi network information in an encrypted file (i.e. iCloud CloudKit container) uploaded to secure cloud storage (i.e. iCloud Keychain) that is tied to a user account (i.e. an Apple Account). That encrypted file is then synchronised to other devices logged into that user account, where the file can then be decrypted using the encryption keys tied to and only available to devices logged into the user account. The two "ends" of end-to-end encryption are therefore two or more devices and their operating systems, where the Wi-Fi network information is decrypted, with encryption protecting against the observation, in this case by Apple, of the contents of the file in cloud storage. See Apple's automatic Wi-Fi connection waiver request, paragraph 5 second bullet and paragraphs 30-31; Apple's reply to RFI 6 of 23 October 2024, paragraph 12.2.

120 Apple's automatic Wi-Fi connection waiver request, paragraph 30.

Apple considers it inappropriate for the Commission to have effectively dismissed the user benefit of an end-to-end encryption solution which has ensured that Apple has no access to historical network information.[121]

4.6.2. Commission's assessment

(119) The automatic Wi-Fi connection waiver request does not meet the conditions for the application of the Waiver Clause.

(120) *First*, Apple's request to entirely waive the automatic Wi-Fi connection measures based on IPR claims, without proposing any modification thereof to address specific issues arising in the implementation of the measure in question, cannot be justified under the Waiver Clause, as explained in Section 4.2 above.

(121) *Second*, as regards Apple's request to modify the automatic Wi-Fi connection measures to limit the Wi-Fi Network Information to information "*saved following the pairing with the relevant third-party connected device,*" Apple's request is based on information that Apple already submitted during the administrative proceedings.[122] The automatic Wi-Fi connection waiver request essentially summarises Apple's submissions in the administrative proceedings. All these claims were carefully addressed in the Specification Decision taking due account of Apple's submissions.[123] The automatic Wi-Fi connection waiver request is thus not based on exceptional circumstances, as Apple simply disagrees with the conclusion reached in the Specification Decision.

(122) Apple raises two facts for the first time and does so in two footnotes.

(123) *In the first place*, Apple challenges the finding in recital 430 of the Specification Decision that "*iOS already gives third parties access to information that is similarly or even more sensitive*" than historical Wi-Fi networks information; for example "*iOS enables access of third-party apps to the user's photo library and list of contacts*".[124] Apple claims these examples are a poor analogy for the scenario in question because for a typical user, it is significantly more intuitive to comprehend the privacy implications of sharing the contents of the Photo Library or Contacts compared to the more technical nature of the list of Wi-Fi networks. Apple could have been aware of the comparison with the photo library on 29 January 2025, when the Commission forwarded to Apple [third party]'s short submission which prominently highlighted – with the screenshot below – that Apple allows the sharing of photos with third-party devices via a permission prompt.[125]

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121 Apple's automatic Wi-Fi connection waiver request, paragraph 31.

122 Apple's reply to the Preliminary Findings, paragraphs 24-26, 86, 336-343.

123 Specification Decision, Section 5.8.6.1, recitals 424-431.

124 Apple's automatic Wi-Fi connection waiver request, footnote 17.

125 [third party]'s comments of 29 January 2025 following the tripartite meeting with Apple and the Commission on 27 January 2025.

Figure 1 – Screenshot in [third party] submission

(124) Contrary to what Apple claims, comparing Wi-Fi Network Information and other sensitive data that Apple shares with third-party devices (e.g., list of contacts, location) is appropriate, as these instances involve similarly (or even more) sensitive data. It is incumbent on Apple to appropriately justify why such a comparison is inappropriate.

(125) However, the information provided by Apple is unsubstantiated. Apple does not offer any factual basis for its claim but "intuition". It is upon Apple to assess – in a methodologically sound way – the magnitude of the risk with respect to the Wi-Fi Network Information and compare it to other types of sensitive information that Apple shares with Apple's and third parties' services and hardware, and under which conditions that data is shared.[126] Moreover, it is upon Apple to assess and propose measures other than sharing the historical Wi-Fi networks list, based on conditions that are transparent, objective and non-discriminatory, and that apply equally to third-party's and Apple's services and hardware (such as the Apple Watch).[127] Finally, Apple fails to explain why its privacy and security concerns are related to ensuring the integrity within the meaning of Article 6(7) of Regulation (EU) 2022/1925.[128]

(126) *In the second place*, Apple submits that *"[i]n recognition of these [security] concerns, Apple requires an additional authentication before a user can access this list on iOS (Settings -> Wi-Fi -> Edit).*"[129] However, this is not an exceptional element raised by the technical implementation of the measure in question. Indeed, the information on how Apple makes available data to end users is basic and could have been provided during the administrative proceedings. In any case, the Specification Decision already addresses Apple's claims in relation to the sensitive nature of historic Wi-Fi networks information and similarly sensitive information.[130] Finally, Apple fails to explain why its security concerns are covered by the concept of integrity in Article 6(7) of Regulation (EU) 2022/1925.[131]

(127) Apple claims that [third party] indicated during the Commission-arranged tripartite meeting of 27 January 2025 that historical network information would be

126 Specification Decision, recitals 109, 111; Annex to the Specification Decision, paragraph 97.
127 Specification Decision, recitals 110-111; Annex to the Specification Decision, paragraph 97.
128 Specification Decision, recitals 100-107.
129 Apple's automatic Wi-Fi connection waiver request, footnote 18.
130 Specification Decision, recital 430.
131 Specification Decision, Section 3.3, recitals 100-107.

unnecessary, and that information on the currently connected Wi-Fi network would be sufficient.[132] However, contrary to what Apple states, [third party] submitted to the Commission that it seeks access to historical Wi-Fi networks information.[133] This submission was made after the tripartite meeting to which Apple refers, and was shared with Apple on 29 January 2025. The Commission also explicitly informed Apple of [third party]'s position during the meetings of 11 and 12 February.[134] Finally, Apple does not substantiate why historical network information would be unnecessary. In fact, Apple does share such information with its own services and hardware, and there are practical situations when this is necessary for automatic connection to a new but previously known network – for example, if a user is wearing a third-party smartwatch, but is not carrying the iPhone with him/her at that moment.

(128) Third, as regards Apple's request to include a footnote in the Annex stating that "*Apple shall not be required to implement a prompt to users of Apple connected physical devices that are signed into the same Apple Account with the same Apple ID*",[135] Apple's request is not based on exceptional circumstances. The request is based on information that Apple already submitted during the administrative proceedings and that was addressed in the Specification Decision.

(129) In its reply to the preliminary findings during the specification proceedings, Apple submitted that iOS securely discloses Wi-Fi networks information to the Apple Watch, but only when users are signed in with the same Apple Account, which thereby builds safeguards into how the Apple Watch accesses and uses that information. Apple claimed that this ensures that no sensitive user-specific data is shared with others (including other Apple device users).[136] Apple's claims were addressed in the Specification Decision.[137] In particular, the Specification Decision provides that making interoperability conditional on whether a device is signed into an Apple Account would be insufficient, because Apple does not allow end users to sign into their Apple Account on third-party connected physical devices.[138] The Specification Decision mandates that Apple shall only apply conditions the satisfaction of which are not exclusively within the gatekeeper's control, and that any such condition must be non-discriminatory.[139] Apple's waiver request cannot be used to challenge this finding in the Specification Decision. The request to exempt Apple devices from a prompt would not be in line with those principles set in the Specification Decision, as Apple has the exclusive control to enable users to sign into their Apple Account on Apple or third-party devices, and discriminates against third-party devices by not allowing end users to sign into their Apple Account on third-

132 Apple's automatic Wi-Fi connection waiver request, paragraph 27.

133 [third party]'s comments of 29 January 2025 following the tripartite meeting with Apple and the Commission on 27 January 2025, paragraphs 7.4, 7.3.1-7.3.2, 7.2 ("*Third-party connected devices should have the ability, with user consent, to share Wi-Fi Network Information at any time, regardless of whether it pertains to the currently connected network.*").

134 See agreed minutes of the meeting of 11 and 12 February 2025, paragraph 24 ("*In their latest submission, [third party] also asked for historic Wi-Fi Network Information*.").

135 Apple's automatic Wi-Fi connection waiver request, paragraphs 33 and 34.

136 Apple's reply to the Preliminary Findings, paragraphs 86, 339, 343.

137 Specification Decision, Section 5.8.6.1, recitals 424-431, and in particular recital 431.

138 Specification Decision, recitals 429 and 431, which reference the framework set out in the Specification Decision, Section 3.3 and in particular recital 112.

139 See Specification Decision recitals 429 and 431, which reference the framework set out in the Specification Decision, Section 3.3 and in particular recital 112.

party connected physical devices. It would therefore not be justified to limit the interoperability measure in question simply because Apple did not enable this.

(130) Moreover, the Commission gave Apple the opportunity to comment on the automatic Wi-Fi measures and general measures on 19 December 2024 (preliminary findings) and on 7 February 2025 (draft final measures). In their response, Apple did not raise that Apple should not be obliged to show a prompt for its own devices.[140] Apple only raised the point that the permission should not be perpetual and that users should also be able to provide a one-time consent to access the currently available networks.[141] Similarly, the general measure that "*Apple shall only apply conditions the compliance with which is capable of being independently verified and not exclusively within the gatekeeper's control*" was already, in almost identical form, included in the draft final measures,[142] so that Apple was able to comment on it. Yet Apple did not raise any concerns other than adding "independently" in its comments dated 13 February 2025[143] and during the call to discuss the draft final measures on 11/12 February 2025.[144] During that call, the Commission explained that it wants to ensure Apple cannot refuse interoperability by relying on, for instance, the fact that Apple only trusts or controls its own products. Third parties would never be able to meet that condition, which would lead to arbitrary and unsatisfactory results. Apple understood the concerns and did not raise any objections.[145] Apple also did not raise any concerns with respect to the requirement that any integrity measure must be based on non-discriminatory conditions.[146]

(131) Apple's argument that showing its own users a permission prompt would be confusing cannot be considered an exceptional circumstance. Apple already displays prompts to users for some of its own apps, for example asking users permission to share their location with Apple Maps.[147] Users are therefore already familiar with granting permission for sensitive data, including for Apple apps, so it is unclear –

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140 The draft final measures and the measures in the Annex do not differ in a relevant way. The draft final measures, paragraph 61: "*Apple may seek permission from the user for sharing "Wi-Fi Network Information" via a permission prompt in compliance with the requirements of Article 6(7) of Regulation (EU) 2022/1925. Apple may only require a one-time permission, so that such permission also applies to all Wi-Fi networks to which the iOS device connects in the future*." Automatic Wi-Fi Connection Measures in Annex, paragraph 62: "*Apple may seek permission from the user for sharing "Wi-Fi Network Information" via a permission prompt in compliance with the requirements of Article 6(7) of Regulation (EU) 2022/1925. Among consent options that Apple offers to the user, there must be a one-time permission, so that such permission also applies to all Wi-Fi networks to which the iOS device connects in the future (provided the Wi-Fi network is in scope of paragraph (58))*" (omitting footnote 11).

141 See Apple comments on the draft final measures, email of 13 February 2025 with the subject "Re: DMA.100203 & DMA.100204 - Draft final measures for observations,".

142 The draft final measures, paragraph 93: "*Apple shall only apply conditions the compliance with which is verifiable by third parties and not exclusively within the gatekeeper's control.*" The measures in the Annex, paragraph 97: "*Under Article 6(7) of Regulation (EU) 2022/1925, second subparagraph, Apple shall only apply conditions the compliance with which is capable of being independently verified and not exclusively within the gatekeeper's control*."

143 See Apple comments on the draft final measures, email of 13 February 2025 at 11:35:40 with the subject "Re: DMA.100203 & DMA.100204 - Draft final measures for observations,".

144 Agreed minutes of the meeting of 11 and 12 February 2025.

145 Agreed minutes of the meeting of 11 and 12 February 2025, paragraph 16.

146 This requirement was included in the draft final measures of 7 February 2025. Notably, Apple did not raise concerns in that respect during the meeting of 11 and 12 February 2025, see agreed minutes of the meeting of 11 and 12 February 2025.

147 See second figure at https://support.apple.com/en-us/102515, accessed on 24 February 2025.

and is not substantiated by Apple – why such a permission for Wi-Fi Networks Information would generate confusion. Moreover, Apple appears to imply that confusing prompts would be appropriate for third-party devices but not for its own devices. Such an approach would stand in stark contrast with the goals of Article 6(7) of Regulation (EU) 2022/1925,[148] giving rise to a worse user experience for third parties without objective justification.

(132) Apple's explanations of how it securely discloses Wi-Fi networks information to the Apple Watch cannot be considered an exceptional circumstance. Apple submitted during the administrative proceedings that it securely discloses Wi-Fi networks information to the Apple Watch.[149] End-to-end encryption is a well-established means to securely share information among devices and is used by Apple and third parties in different settings, including password synchronisation.

(133) However, Apple's reasoning misses the point, by confounding an objective technical criterion (end-to-end encryption) with a subjective criterion solely under the gatekeeper's control (a shared Apple Account).[150] Apple could decide to make the display of a permission prompt conditional on the use of end-to-end encryption when sharing or storing Wi-Fi Networks Information, which would be in line with the requirements set out in the Specification Decision.[151] The satisfaction of this condition is (i) capable of being independently verified, since independent parties can analyse how Apple or a third party implements end-to-end encryption; (ii) not exclusively within the gatekeeper's control, since third parties can implement end-to-end encryption without gatekeeper involvement; and (iii) non-discriminatory, since third parties are able to implement end-to-end encryption for their services in the same way as Apple does, for example requiring users to sign into the same (third-party) account. However, tying the prompt to the use of an Apple Account, and by extension an Apple device, does not meet those requirements and is thus not a valid reason to have no prompt for Apple devices and waive any of the automatic Wi-Fi connection measures in that regard.

4.6.3. Conclusion

(134) In light of the reasons set out above, based on the information provided by Apple in its waiver request in relation to automatic Wi-Fi connection feature, the Commission is currently not in a position to waive or modify any of the automatic Wi-Fi connection measures.

4.7. Apple's request for waiver of the Automatic Audio Switching Measures

4.7.1. Apple's request

(135) Apple submitted a request to waive the automatic audio switching measures pursuant to paragraph 102 of the Annex ("**automatic audio switching waiver request**").[152] In the automatic audio switching waiver request, Apple requests that the Commission

148 See Specification Decision, recital 84.
149 See Apple's reply to the Preliminary Findings, paragraph 336.
150 Apple's automatic Wi-Fi connection waiver request, paragraphs 30 and 31.
151 See Specification Decision, recitals 429 and 431, which reference the framework set out in the Specification Decision, Section 3.3 and in particular recital 112.
152 Apple's automatic audio switching waiver request.

waives all the measures relating to automatic audio switching imposed by Section 8 of the Annex ("**audio switching measures**").[153]

(136) Apple claims that the audio switching measures interfere disproportionately with its IPR and that this constitutes a legal reason why Apple is not in a position to implement the audio switching measures.[154]

(137) *First*, Apple claims that the audio switching measures require Apple to disclose trade secrets and permit third parties to copy copyrighted material.[155]

(138) *Second*, Apple argues that the audio switching measures [interfere with its European patents].[156]

(139) *Third*, Apple considers that the audio switching measures require Apple to develop new technologies for the use of third parties and claims that this imposes significant cost and steers Apple's innovative activities.[157]

(140) *Fourth*, Apple argues that the Specification Decision does not assess whether the audio switching measures' interference with Apple's IPRs is proportionate. Apple considers that the Specification Decision does not sufficiently assess less onerous alternatives such as Bluetooth Multipoint.[158]

(141) *Fifth*, Apple claims that the audio switching measures have a detrimental effect on Apple's and third parties' incentive to innovate by allowing third parties to free ride on Apple's innovations and will lead to a deterioration in quality and less choice for consumers.[159]

4.7.2. Commission's assessment

(142) Apple's automatic audio switching waiver request does not meet the conditions for the application of the Waiver Clause.

(143) The condition for "*exceptional circumstances*", as required by the Waiver Clause, is not met by Apple's automatic audio switching waiver request.

(144) In its reply to the preliminary findings in the specification proceedings, Apple did not raise any concerns on the audio switching measures other than timing. […].[160] In line with Apple's reply to the preliminary findings and timing proposal, the Commission adjusted the timing in the Specification Decision measures.

(145) Later in the procedure, Apple raised concerns in relation to two limited parts of the revised audio switching measures. Apple indicated that it would require more time to implement the functionality to present third-party devices that are not connected to the iOS device as selectable audio routes.[161] In response, the Commission extended the timeline for implementation for this functionality in the Specification Decision. At a very late stage of the proceedings, Apple argued this same functionality is

153 Apple's automatic audio switching waiver request, paragraph 1.
154 Apple's automatic audio switching waiver request, paragraph 4.
155 Apple's automatic audio switching waiver request, paragraph 13.
156 Apple's automatic audio switching waiver request, paragraphs 14-16.
157 Apple's automatic audio switching waiver request, paragraphs 17-20.
158 Apple's automatic audio switching waiver request, paragraphs 21-23.
159 Apple's automatic audio switching waiver request, paragraph 24.
160 Apple's response to the Preliminary Findings, paragraphs 170-172.
161 Email from Apple to the Commission of 13 February 2025; Agreed minutes of meetings with Apple on 11 and 12 February 2025.

outside the scope of the automatic audio switching feature and that this functionality was not previously discussed with the Commission. This is incorrect, as this issue was already set out in the Commission's preliminary findings in the specification proceedings.[162] The Commission informed Apple of this.[163]

(146) In summary, Apple did not contest the audio switching measures during the specification proceedings other than for two isolated issues, and it did not therefore claim that it is not in a position to implement the audio switching measures. Moreover, Apple does not argue to have identified unforeseen obstacles in the implementation of this measure. Therefore, Apple does not show the existence of exceptional circumstances justifying its waiver request.

(147) In any event, Apple's claims are insufficiently substantiated and unfounded.

(148) *First*, Apple has not demonstrated that the audio switching measures interfere with its IPR. As described in Section 4.2 above, Apple does not substantiate its IPR-related claims in the automatic audio switching waiver request. Specifically, Apple does not explain (i) how the audio switching measures engage with the specific patents and their scope, (ii) whether the audio switching measures can only be implemented by engaging with Apple's patents or there exist other implementation solutions that do not engage with these patents, (iii) why any alleged interference with Apple's IPR would be disproportionate.

(149) *Second*, Apple argues that the audio switching measures require it to divulge trade secrets and enable copying of copyrighted materials, as it must divulge its smart routing module and audio routing algorithm to competitors, while sharing of this information is heavily restricted even within Apple. However, this is incorrect, as the audio switching measures simply require Apple not to discriminate, in relation to audio routing, between Apple and third-party peripherals. In other words, Apple does not need to divulge its audio routing algorithm, but it should just apply it to all connected audio devices in a non-discriminatory way. Equally, for audio switching, Apple should just provide third parties with contextual information it uses to determine whether to pass audio from a requesting device to the relevant audio output – it does not need to divulge the prioritisation algorithm it uses.

(150) It is therefore not clear what information (qualifying as trade secret) Apple would be required to divulge, and Apple makes no attempt to specify or substantiate its claim.

(151) *Third*, Apple claims that the audio switching measures require it to develop costly and complex technical solutions that it must make available to third parties. According to Apple, this interferes with its trade secrets, copyrights and patents, and steers Apple's innovative activities. Apple claims that this extensively interferes with Apple's right to property and freedom to conduct a business.

(152) However, Apple does not substantiate why the cost or technical complexity of enabling interoperability would be too high in the automatic audio switching waiver request – it only asserts that it is the case. Already at the time of its response to the Commission's preliminary findings in the specification proceedings […]. Apple did not raise the cost or technical complexity of this solution as an issue at the time and has not raised it at any time during the specification proceedings. Apple does not explain what has changed in this respect to justify a waiver request.

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162 Specification Decision, recital 533; Preliminary Findings, paragraph 335.

163 Email from the Commission to Apple of 20 February 2025.

(153) Furthermore, […]. Apple is free to determine for itself how it can best allow interoperability with the automatic audio switching feature in a way that complies with the Specification Decision, whether this is a brand-new solution, or opening the solution that Apple uses for third parties.

(154) *Fourth*, Apple claims that the audio switching measures are not appropriate or necessary to achieve the aim of Regulation (EU) 2022/1925 and Article 6(7) of that Regulation, and that the Specification Decision does not explain how these measures support the Regulation's objective. Apple also claims that there are less onerous alternatives, notably *Bluetooth Multipoint*, which the Specification Decision, according to Apple, does not sufficiently assess.

(155) Apple's argument is already addressed in detail in the Specification Decision[164] and does not constitute a new exceptional circumstance. However, a waiver request cannot be used to contest the Specification Decision. In the Specification Decision the Commission had to specify measures ensuring the implementation of interoperability solutions equally effective to the solution available to the Apple, without having to undertake a case-by-case assessment of whether third parties are currently unable to provide a "*competitive offering*" or an "*alternative solution*".

(156) In any event, and contrary to Apple's argument, the Commission did assess Bluetooth Multipoint as an alternative technology and found shortcomings including poor audio quality and poor user experience – shortcomings that Apple has not contested. Apple merely asserts that the Commission cites only one source for the claim that Bluetooth Multipoint can lead to poor audio quality, and that the Commission does not cite any sources for the finding that Bluetooth Multipoint can offer poor user experience. However, Apple is mistaken, as the Commission did quote a source for this finding and has given Apple access to this source during the proceedings.[165] […].[166]

(157) *Fifth*, Apple claims that the audio switching measures enable third parties to free ride on its innovation thereby having a detrimental impact on both Apple's and third parties' incentives to innovate, contrary to the stated objectives of Regulation (EU) 2022/1925 of promoting innovation, high-quality products and services, and choice for end users.

(158) This argument is misplaced, as the audio switching measures actually promote both Apple's and third parties' incentives to innovate.

(159) Currently, Apple applies discriminatory audio routing policies to its own headphones and third-party headphones. By simply refusing third-party peripherals the user-friendly audio routing enjoyed by Apple's headphones, it creates an artificial edge for its own products, eroding its incentive to pursue innovation. In the absence of discriminatory audio routing policies, Apple would be strongly incentivised to innovate on other differentiating factors, such as audio performance, design and comfort, features and build quality.

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164 Specification Decision, Section 3.1.1.

165 See Third Party 1's submission of 15 October 2024, paragraphs 4.4-4.5. The Commission referenced this submission when assessing Bluetooth Multipoint in footnote 556 of the Specification Decision. The referenced document was made available to Apple in a data room, see recital 33 of the Specification Decision.

166 Apple and Apple Distribution International v Commission, Case T-354/25, paragraphs 297-299.

(160) Moreover, the audio switching measures will enable third parties to innovate too. Today, Apple restricts access to contextual information that is required to inform an audio switching algorithm. Therefore, third parties are not able to design and implement innovative and performant audio switching algorithms with iOS devices. The audio switching measures will make it possible for third parties to design audio switching solutions that are (potentially better) alternative to that of Apple's, which will in turn incentivise Apple to innovate and improve its own audio switching feature.

4.7.3. Conclusion

(161) In light of the reasons set out above, based on the information provided by Apple in its waiver request in relation to automatic audio switching feature, the Commission is currently not in a position to waive or modify any of the automatic audio switching measures.

5. CONCLUSION

(162) Following from the purpose, scope and language of the Waiver Clause and the assessment set out above, none of the five requests to waive or modify measures set out in the Specification Decision currently meet the conditions for the application of the Waiver Clause.

(163) This Decision does not preclude Apple from making future requests pursuant to the Waiver Clause, including in relation to the above features, provided that the conditions for application of the Waiver Clause set out in this decision are met.

HAS ADOPTED THIS DECISION:

Article 1

Apple's requests of 2 June 2025 to waive or modify the measures of the Commission decision C(2025) 3000 of 19 March 2025 are rejected.

Article 2

This decision is addressed to Apple Inc., One Apple Park Way, Cupertino, CA 95014, United States of America, and Apple Distribution International Limited, Hollyhill Industrial Estate, Hollyhill, Cork, Ireland.

Done at Brussels, 4.8.2025

For the Commission

(Signed)
Teresa RIBERA

Executive Vice-President