FOR PUBLIC CONSULTATION

IN CASE DMA.100204 – SP - APPLE - ARTICLE 6(7) – PROCESS

On 18 December 2024, the Commission adopted its preliminary findings in case *DMA.100204 – SP - Apple - Article 6(7) – process*, setting out the proposed measures that Apple should implement to improve the request-based process for requesting interoperability with iOS and iPadOS set up by Apple. The Commission is consulting interested third parties on whether the measures are sufficient to make the request-based process set up by Apple effective. ([1]) These measures are preliminary and might be adjusted subject to feedback from third parties and Apple as well as further investigative steps.

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([1])   Pursuant to Article 8(6) of Regulation 2022/1925.

PROPOSED MEASURES

1.   OVERVIEW

(1)   Gatekeepers choosing to comply with Article 6(7) of Regulation (EU) 2022/1925 by implementing a request-based approach in relation to existing features and functionalities have a responsibility to ensure it gives effect to the developers' right to full and effective interoperability with the objective to preserve their ability and incentives to innovate.

(2)   Given the inherent limitations and risks associated with a request-based process, it is necessary to ensure it delivers a fair and effective pathway to interoperability. To that end, a set of clear principles and safeguards should guide the design and implementation of the process.

(3)   Transparency is a key element of a fair and effective process. Access to relevant information and resources is necessary for developers to exercise their rights under Article 6(7) of Regulation (EU) 2022/1925. Furthermore, transparency vis à vis developers is essential to give them sufficient predictability on the process and its outcome, and to be able to provide useful feedback to the gatekeeper.

(4)   Transparency and other appropriate safeguards to ensure the fairness of the process are particularly necessary, in a context where gatekeepers, due to their dual role ([2]), may have incentives to refuse, delay or restrict the request. It is essential that developers can have confidence that the process is designed and implemented in an objective, fair and non-discriminatory manner.

(5)   Furthermore, it is important to ensure that any disadvantages for developers resulting from Apple's choice to rely on a request-based process are as limited as possible. In particular, delays should be minimised. Furthermore, adequate support should be provided to developers so as to limit, as much as possible, the complexity and transaction costs related to the process.

(6)   On this basis, the Commission preliminarily sets out below the principles and safeguards which should guide the design and implementation of all aspects and stages of the request process, while retaining the possibility of reopening the specification proceedings if the specified measures turn out not to be effective, as provided for in Article 8(9)(c) of Regulation (EU) 2022/1925. In particular, the Commission considers that the following principles and safeguards should apply:

   a.   At the stage where developers consider submitting an interoperability request, they should be provided with clear and accurate information to reach a reasonable level of understanding of which features and functionalities can be subject to interoperability and of how the request process works. Throughout the process, swift two-way communication with the gatekeeper is essential, and the developer should be given the opportunity to provide feedback throughout the process, cf. sections 2.1, 3.1 and 3.2.

([2])   As highlighted by Recital 57 of Regulation (EU) 2022/1925: "*If dual roles are used in a manner that prevents alternative service and hardware providers from having access under equal conditions to the same operating system, hardware or software features that are available or used by the gatekeeper in the provision of its own complementary or supporting services or hardware, this could significantly undermine innovation by such alternative providers, as well as choice for end users.*"

b. In cases where interoperability requests are rejected, or where the interoperability solution Apple would design would not fully respond to the request, developers should be adequately informed of the reasoning for such decision. They should also be able in relevant cases to contest that decision through a fair and impartial mechanism, cf. sections 4.1 and 4.2.

c. In cases where an interoperability solution is implemented, the gatekeeper should ensure that this solution is adequately documented, maintained and future-proof, cf. section 5.1.

d. Each stage of the process should be subject to a clear and transparent timeline, cf. section 6.1.

e. An adequate level of transparency vis à vis the broader developer community, or in some cases vis à vis the general public, is important to foster accountability, cf. sections 6.2 and 6.3.

(7) In the implementation of the specified measures, Apple may take strictly necessary, proportionate and duly justified measures to ensure that interoperability does not compromise the integrity of the operating system, hardware and software features. Moreover, pursuant to article 8(1) of Regulation 2022/1925, the gatekeeper shall ensure that the implementation of any measures pursuant to Article 6(7) of Regulation 2022/1925 complies with applicable law, in particular Regulation (EU) 2016/679, Directive 2002/58/EC, legislation on cybersecurity, consumer protection, product safety, as well as with the accessibility requirements.

(8) To ensure the overall proportionality in the obligations imposed on Apple, the Commission preliminarily relies on the structure of the process as set up and designed by Apple.

(9) This Document presents the preliminary view of the Commission, on the measures necessary and proportionate to ensure a fair and effective process, to the extent Apple relies on a request-based process.

(10) The Commission considers that the measures in this Document are effective in achieving, in a proportionate way, the objectives of the Regulation and compliance with the relevant obligation in relation to existing features and functionalities, for which - also considering the specific configuration of the operating systems subject to these proceedings - it might be disproportionately complex to ensure interoperability by design.

2. TRANSPARENCY OF iOS AND iPadOS FEATURES AND FUNCTIONALITIES RESERVED TO APPLE

2.1. Information on frameworks, libraries, and daemons

(11) To ensure sufficient transparency with respect to features and functionalities that are currently only available to or used by Apple, or not available in an effective manner to third-party developers (hereinafter "reserved feature and functionality"), the following measures should be implemented.

(12) Apple should provide developers with information on reserved features and functionalities, comprising (i) descriptions of all features and functionalities accessed or controlled by iOS or iPadOS, so that developers adequately understand their

purpose; (ii) indications of whether the features and functionalities are reserved to Apple or also available to third parties, such that developers can easily distinguish features and functionalities that are not (yet) available to third-party developers; (iii) any terms, conditions, restrictions, or entitlements that apply, such that developers understand why features and functionalities may or may not be available publicly as well as understand privileged access for Apple; (iv) Apple's services and hardware that use the feature or functionality, such that developers understand which services or hardware provided by Apple take advantage of the features and functionalities.

(13)   The Commission understands that so-called "frameworks" are the primary unit in which iOS and iPadOS make features and functionalities available. Frameworks are reusable software building blocks containing shared resources such as code and data that provide a programmatic interface that other software applications call upon. [3] These frameworks come pre-installed with iOS and iPadOS as part of system libraries [4]. Apple's developer documentation [5] is also primarily organised by framework, making it the main unit in which developers reason about the structure of iOS and iPadOS and through which they can use features and functionalities. Frameworks are the way developers can integrate with iOS functionalities. Next to these frameworks, the Commission understands that iOS and iPadOS contain other software components, i.e., reusable parts of the iOS and iPadOS system which offer and support iOS and iPadOS features and functionalities, including static and dynamic libraries as well as daemons (also called background processes).

(14)   The Commission understands that frameworks and libraries are comprised of symbols [6], which may also be called application programming interfaces or APIs. [7] Frameworks and libraries expose or "vend" certain symbols for use by other frameworks, libraries, daemons, and applications. Within Apple's developer documentation, each framework recursively lists the symbols that are available to developers [8].

(15)   While some frameworks, libraries, daemons, and other iOS and iPadOS components are already publicly documented in Apple's developer documentation, other components which provide features and functionalities reserved to Apple's services and hardware are currently not officially publicly documented [9]. The Commission

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[3]   See Apple's developer documentation website
https://developer.apple.com/library/archive/documentation/MacOSX/Conceptual/BPFrameworks/Concepts/WhatAreFrameworks.html, last visited 17 November 2024

[4]   See Apple's developer documentation website
https://developer.apple.com/documentation/xcode/adding-identifiable-symbol-names-to-a-crash-report, last visited 17 November 2024.

[5]   See Apple's developer documentation website https://developer.apple.com/documentation, last visited 17 November 2024.

[6]   See also Apple's developer documentation website
https://developer.apple.com/documentation/xcode/adding-identifiable-symbol-names-to-a-crash-report, last visited 17 November 2024.

[7]   Within Apple's developer documentation website https://developer.apple.com/documentation, last visited 17 November 2024, the types of symbols that are listed and named in frameworks include but are not limited to: classes, enumerations, functions, methods, properties, protocols, structures, and variables.

[8]   As an example, see Apple's developer documentation website:
https://developer.apple.com/documentation/Messages,   last visited 17 November 2024

[9]   Independent public resources document iOS frameworks that are otherwise not publicly documented based on their reverse-engineering efforts, for example

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considers that developers may benefit from having access to a high-level description of iOS and iPadOS components to enable a broad understanding of available features and functionalities, which can then be useful and sufficient for clearly identifying the relevant components within a developer's interoperability request.

(16) Nevertheless, the Commission has received developer feedback that more detailed information about specific frameworks and other components beyond a mere description of the component would be needed in some cases, to understand the full extent of features and functionalities Apple uses or has access to. This is in particular relevant when it comes to discovering parts of otherwise publicly documented frameworks and other components that provide features and functionalities reserved to Apple's services and hardware and that are not publicly documented. Where relevant and reasonable, the Commission considers that a detailed reference, including symbols, about specific components is therefore beneficial to those developers with a potential interest in interoperability who require a more in-depth understanding of those components to submit a detailed interoperability request that clearly states the concrete gap with which the developer requires interoperability, beyond what may be immediately apparent from a high-level overview of iOS and iPadOS components.

(17) Notwithstanding the previously outlined benefits of transparency with respect to reserved features and functionalities, the Commission considers it reasonable that Apple directs its efforts of producing detailed references to those iOS and iPadOS frameworks and other components for which developers express an interest in interoperability. Such information could be proactively produced by the gatekeeper with respect to all frameworks and libraries that are relevant to interoperability requests that have already been submitted. *A minima*, the Commission considers that the gatekeeper should be required to produce this information for a specific framework or library upon demand by a developer, and provide this information to that developer.

(18) A developer should be able to obtain relevant information prior to any interoperability request. Obtaining a detailed reference of iOS and iPadOS components is a prerequisite for a developer to adequately understand the extent of reserved features and functionalities. Such an adequate understanding is a prerequisite for clearly and precisely indicating to Apple the reserved feature or functionality with which the developer aims to obtain interoperability. Apple may require developers to provide more detailed information regarding their interest in obtaining interoperability with a specific feature or functionality to which the framework relates.

(19) Providing this information on demand ensures the efficient and timely production of the detailed information, as well as the proportionality of the measure by limiting disclosure to those features and functionalities for which there is a specific need, and protects the gatekeeper from having to disclose more internal information than is needed for addressing interoperability needs.

(20) In light of the above, the concrete implementation measures required to ensure sufficient transparency with respect to features and functionalities reserved to Apple are the following:

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https://theapplewiki.com/wiki/Filesystem:/System/Library/PrivateFrameworks, last visited 17 November 2024, or https://developer.limneos.net/, last visited 17 November 2024.

A. <u>General high-level list of frameworks, libraries, and daemons</u>

a) *First,* to allow developers to easily and comprehensively identify frameworks, libraries and daemons, and the features and functionalities they provide, Apple should produce a comprehensive list of all iOS and iPadOS frameworks, libraries, and daemons called by Apple's services and hardware.

b) Following the reasoning in paragraph (12), this list should contain at least (i) the name of the framework, library, or daemon; (ii) a short description of the features and functionalities provided by the framework, library, or daemon, including the framework's, library's, or daemon's main uses, capabilities and limitations; (iii) an annotation of whether the framework, library, or daemon is reserved to Apple or fully or partly available also to third parties; (iv) any terms, conditions, restrictions, or entitlements that apply to the framework's, library's, or daemon's use; (v) a list of Apple's services and hardware that use the framework, library, or daemon; (vi) whether any public framework provides the same or similar features or functionalities, and what the differences may be.

c) Apple should make the list of iOS and iPadOS frameworks, libraries, and daemons as described above available via Apple's developer portal to developers who have signed the Developer Program License Agreement and are members of the Developer Program. To make the process efficient for developers, the list of frameworks, libraries, and daemons should follow a similar style and structure to the existing developer documentation of public frameworks. This information must be presented in a clear and organised manner. Wherever the information is already made available in the existing public developer documentation, Apple may simply refer to that documentation.

B. <u>On-demand requests for detailed technical reference</u>

a) *Second,* developers should be able to identify symbols easily and comprehensively within frameworks and libraries, so as to identify and describe the corresponding reserved features and functionalities with which they wish to obtain interoperability. This should be the case also when such features or functionalities involve components that are only partially publicly documented. In such case, upon reasoned demand by the interested developer (hereinafter referred to as "reference query") Apple should produce a comprehensive technical reference for the iOS and iPadOS frameworks and libraries called by Apple's services and hardware that comprise the feature or functionality concerned by the reference query. This technical reference should be comparable in detail to the current developer documentation of public frameworks, and should contain all symbols called by Apple's services and hardware, including classes, protocols, properties, variables, methods, functions, structures, enumerations, and all other symbols contained within the framework or library.

b) Following the reasoning in paragraph (12), for each symbol, the reference should contain at least (i) the name of the symbol; (ii) a short description of the features and functionalities provided by the symbol, including the symbol's main uses, capabilities and limitations; (iii) an annotation of whether the symbol is reserved to Apple or fully or partly available also to third parties; (iv) any

terms, conditions, restrictions, or entitlements that apply to the symbol's use; (v) a list of Apple's services and hardware that use the symbol.

c) Apple should enable developers to submit a reference query to obtain the technical reference as described above. Such a reference query should contain at least the identity of the developer and the framework(s) or library/libraries for which the developer requests the technical reference. Apple may require the developer to provide more detailed information regarding their interest in obtaining interoperability with a specific feature or functionality to which the framework relates.

d) Apple should make the technical reference of the iOS and iPadOS frameworks and libraries as described above available to the developer that submitted the reference query. Apple may request the developer to conclude a non-disclosure agreement before sharing the technical reference. To make the process efficient for developers, the reference of frameworks and libraries should follow a similar style and structure to the existing developer documentation of public frameworks. This information must be presented in a clear and organised manner. Wherever the information is already made available in the existing publicly available developer documentation, Apple may simply refer to that documentation.

e) With regards to the publication of the technical reference as prescribed above, Apple will have discretion in concealing symbols or accompanying descriptions to the extent that their disclosure may raise justifiable concerns for the integrity of iOS or iPadOS. In such cases, Apple must provide a motivated reasoning for concealing the symbols or descriptions on integrity grounds.

C. Timing

a) To ensure that developers can swiftly benefit from the measures to improve their interoperability requests, Apple should complete the measures for the general high-level list described in subparagraph A above within a timeframe of **45 working days** following the notification of the Specification Decision.

b) An updated version of the list of iOS and iPadOS frameworks, libraries, and daemons should be made available via Apple's developer portal immediately when a new iOS or iPadOS version introducing or removing frameworks, libraries, or daemons is made available to developers, including beta versions. A separate changelog listing any changes should be made available on the developer portal at the same time as the updated version of the list.

c) To ensure that developers can swiftly benefit from the measures to improve their interoperability requests, Apple should complete the measures for the on-demand requests for detailed technical references described in subparagraph B within **30 working days** following the reference query for frameworks and libraries for which the technical reference had not yet been produced, and within **3 working days** following the reference query where the reference was already produced for another reference query.

d) An updated reference of iOS and iPadOS frameworks or libraries as described in subparagraph B should be made available to the developer that submitted the reference query immediately when a new iOS or iPadOS version introducing or

removing symbols in frameworks or libraries is made available to developers, including beta versions. A separate changelog listing any changes should be made available on the developer portal at the same time as the updated version of the list.

(21) This measure should be complemented by appropriate communication channels and resources as further detailed in section 3.2 below: the gatekeeper should offer adequate support and guidance to clarify any uncertainties about the features, functionalities, frameworks, libraries, daemons, and their technical references, with swift responses to developers' questions.

(22) Those clarifications on the required level of transparency should also give useful indications, beyond the scope of the present proceedings, for new features and functionalities, released after the adoption of the Specification Decision, for which Apple will equally have to ensure interoperability pursuant to Article 6(7) of Regulation 2022/1925.

3. EFFECTIVENESS AND TRANSPARENCY OF THE PROCESS VIS-À-VIS THE REQUESTING DEVELOPERS

3.1. Support for developers interested in interoperability

(23) To ensure sufficient transparency regarding the process, the gatekeeper should put in place a clearly structured, adequately documented process setting out how requests will be received, acknowledged, assessed and responded to. To that end, the Commission considers it important to supplement the information provided currently on Apple's support webpage, with the overall objective to ensure that developers considering requesting interoperability can sufficiently predict and understand the request-based process and its possible outcome on the basis of clear, comprehensive and updated information.

(24) In particular, the support webpage, which should be publicly accessible, should contain comprehensive and up-to-date information regarding the request-based process. The webpage should include clear and detailed information on how to submit a request, what information the developer should insert in the request form, a description of the phases and their deadlines as well as a clear description of the criteria and considerations that Apple would apply or take into account in its assessment of the request at the various stages should also be included.

(25) The support webpage should also include guidance on how and whom developers could contact if they have any questions on the request process or their pending request.

(26) Finally, Apple's support webpage should contain clear information about the measures that Apple would be taking with respect to protecting confidential information about the developer, in order to ensure that developers are not deterred from submitting interoperability requests (cf. section 6.2.2).

3.2. Communication, updates and feedback on the request

(27) Appropriate communication channels and feedback loops should be established to ensure the effectiveness and transparency throughout the process. This includes in particular (i) setting up a designated contact point, (ii) providing regular updates to

the developer on the status of its request and (iii) enabling the developer to provide feedback throughout the process.

Contact point

(28)   Compliance with Article 6(7) of Regulation 2022/1925 requires a reliable, responsive and accessible contact point at the gatekeeper. This is important not only for the developers but also for the gatekeeper to ensure that developers can engage meaningfully with the request-based process. To this end, Apple should ensure that developers receive timely assistance and clarification and ultimately that they can navigate the request-based process efficiently and address any issues that may arise during the assessment and implementation of their requests.

(29)   To facilitate effective communication between developers and Apple during the request-based process, a specific contact point should be designated and communicated to each requester. This designated contact point should be sufficiently equipped to respond to inquiries in accordance with the timeframe set out in section 6.1 below.

Notification and direct access to status updates

(30)   Developers should be kept sufficiently informed throughout the request-based process. They should be notified whenever there is a change to the status of their request including in relation to any updates regarding the timelines further specified in section 6.1 below. Transparency and adequate justification for any development taking longer than the 90 working days is a particularly important element of these updates (see paragraphs (54) and (55)). Further, these notifications should be specific and detailed enough so as to enable developers to adjust and respond to any changes rapidly.

(31)   To ensure that developers have visibility into the status of interoperability requests at all points during the process, Apple should maintain a dedicated space on its developer portal where the developer can directly access without the need to ask Apple all relevant information relating to the status of its request for interoperability, including but not limited to information the request's current stage, information already submitted, Apple team's reactions and input, expected timelines, and contact details.

Feedback

(32)   In a request-based interoperability process, developers should be given the opportunity to offer feedback at relevant stages of the process, in particular regarding the interoperability solution Apple intends to develop. This feedback mechanism should allow potential issues to be identified and resolved early.

(33)   The generally adopted iterative and collaborative nature of software development contributes to the transparency and predictability needed for an efficient and effective interoperability process.

(34) Except where the interoperability solution merely consists in making the internal frameworks and/or APIs available to developers, Apple should systematically provide the opportunity to the developers concerned to provide input on the envisaged technical solution in accordance with paragraph (58). Apple should take utmost account of that feedback. This mechanism requires Apple to take the feedback into account when ensuring that the technical solution adopted is both effective and adequate, meeting all technical requirements.

(35) The developer should be put in a position to provide meaningful feedback, as further described below in section 6.1, before the development of the interoperability solution starts.

    (a) Once Apple has designed the interoperability solution to address a developer's request, Apple should provide that developer with sufficiently detailed documentation on the envisaged interoperability solution. The developer should be able to assess that all aspects of its interoperability request are addressed, and that the solution is at least equally effective compared to the feature or functionality used by or available to Apple.

    (b) In cases the developer expresses concerns that the technical solution considered by Apple would not address all aspects of the interoperability request, or could otherwise be ineffective or not as effective as the internal solution available to Apple, Apple should provide to the developer a detailed explanation with respect to any limitation or restriction that may exist in the envisaged technical solution, with an appropriate justification, in light of Apple's obligation to provide effective interoperability.

    (c) Where Apple considers that it is necessary to introduce mitigation measures in order to preserve the integrity of the operating system or of its own hardware or software features, Apple should document its concerns related to the integrity of the operating system, or hardware/software features that would in their view justify that the measures taken are proportionate and necessary.

(36) Finally, in the event Apple intends to close an interoperability request based on the fact that, in its assessment, the submitted request (or specific parts thereof) is related to a feature in relation to which an interoperability solution already exists, Apple should indicate to the developer where the documentation about this solution can be found. In such a case, Apple should give the developer the opportunity to provide feedback on whether they considered that the existing solution adequately addresses their request.

4. HANDLING OF REJECTIONS

4.1. Transparency with respect to rejection of requests

(37) In case Apple decides to reject an interoperability request, it should ensure that the developer receives relevant and timely notice of such decision. In this regard, once Apple takes such decision, it should send without delay a notice to the developer including, at the minimum, the following:

a. **Reasoning and justification:** Apple must give the developer a comprehensive and detailed explanation for its refusal. This explanation must include the specific reasons for the denial, clearly outlining any criteria or requirements that were not met by the request. To ensure accountability, such criteria and requirements should correspond to those made known *ex ante* to developers interested in interoperability.

b. **Guidance:** Apple must inform (1) how and whom the developer can contact if they have questions on the rejection and (2) to whom the developers can complain if they disagree with the handling or outcome of the request.

(38)   Apple should document and retain all relevant information relating to the denied request, as such documentation might be relevant in particular in the context where a conciliation would be triggered by the developer pursuant to section 4.2.

(39)   The principles mentioned in paragraphs (37) and (38) should apply *mutatis mutandis* where Apple rejects a reference query submitted by a developer pursuant to point B of paragraph (20).

Requests falling outside the scope of article 6(7) DMA.

(40)   In the event Apple considers an interoperability request (or specific parts of an interoperability request) to be out of scope of Article 6(7) DMA the developer should receive a notice hereof without delay. It is expected this may occur within Phase II, as designed by Apple. Where relevant, Apple should indicate whether and how the request can be amended or resubmitted to meet the relevant criteria and provide guidance to the developer in that respect.

Preserving the integrity of the operating system, hardware or software features provided by the gatekeeper.

(41)   Once past the eligibility stage, in subsequent phases of Apple's designed process, integrity considerations may come into play. Under the second subparagraph of Article 6(7) DMA, the gatekeeper may take strictly necessary and proportionate measures to ensure that interoperability does not compromise the integrity of the operating system, hardware or software features provided by the gatekeeper, provided that such measures are duly justified by the gatekeeper and proportionate to the risks. Such measures can be of a technical and/or contractual nature. [10]

(42)   The gatekeeper should be able to design an interoperability solution that includes mitigating measures to adequately address the integrity concerns. If, exceptionally,

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[10]   See in this respect Recital (50) of Regulation (EU) 2022/1925 concerning Article 6(4) of that Regulation, which contains some indications on the type of measures that a gatekeeper can take to preserve the integrity of the hardware or operating system in the context of the distribution of applications outside of the gatekeeper's software application store – such indication can be relevant *mutatis mutandis* in the context of Article 6(7) of the same regulation: "*In order to ensure that third-party software applications or software application stores do not endanger the integrity of the hardware or operating system provided by the gatekeeper, it should be possible for the gatekeeper concerned to implement proportionate technical or contractual measures to achieve that goal if the gatekeeper demonstrates that such measures are necessary and justified and that there are no less-restrictive means to safeguard the integrity of the hardware or operating system. The integrity of the hardware or the operating system should include any design options that need to be implemented and maintained in order for the hardware or the operating system to be protected against unauthorised access, by ensuring that security controls specified for the hardware or the operating system concerned cannot be compromised*".

Apple considers that no reasonable mitigating measure can be envisaged, and that it is necessary to reject the interoperability request to preserve the integrity of the operating system or of the hardware or software features ([11]), it should provide a detailed reasoning to the developer and to the Commission and document its claim with respect to integrity. Furthermore, where feasible, Apple should indicate whether and how the request can be amended or resubmitted to meet the relevant criteria and provide guidance to the developer in that respect.

4.2. Conciliation process

(43) In the context of Apple's request-based system the mechanism that seems best fit to address possible disagreements and disputes is conciliation. Conciliation is a structured process in which the parties submit their dispute for negotiation and resolution with the assistance of a neutral third party, who is also an expert in the subject of the dispute who will issue a non-binding opinion if the parties are unable to resolve their dispute.

(44) The scope of the envisaged conciliation should be limited to issues of a mainly technical nature and may therefore benefit from an independent expert opinion.

(45) For example, it should be used with respect to interoperability-related requests that have been rejected due to Apple considering them not eligible from a technical perspective (i.e., the feature to which the developer has asked access is not controlled by or accessed via iOS or iPadOS). The conciliation mechanism should also be used where, despite the request being considered eligible, Apple refuses to provide interoperability, or decides to implement a restrictive interoperability solution, claiming, for instance, that this is necessary to preserve the integrity of the operating system or the integrity of the hardware or software features. The conciliation process will also be of assistance in cases where Apple plans to implement an interoperability solution that the developer considers too restrictive from a technical perspective or when Apple assigns in the project plan phase (see phase II, paragraph (59) a level of complexity to an interoperability request that the developers disagree with.

(46) By focusing on issues of a mainly technical nature, this mechanism should aim to promote greater cooperation and collaboration between Apple and the concerned developer, fostering trust and confidence and facilitating the swift resolution of complex engineering problems that generally do not require to venture into legal interpretations. The Commission may intervene in the proceedings in particular where it is concerned that the subject matter of the conciliation could go beyond technical requirements and cover questions of interpretation of Regulation (EU) 2022/1925 which should be clarified by the Commission.

Key Features of the conciliation

(47) In the context of Apple's request-based system, the key features of the conciliation should be:

    a. **General principles**: Where the developer disagrees with a decision or measure of technical nature that Apple has taken or intends to take pursuant to Article 6(7) of

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([11])   This is without prejudice to the Commission's assessment of whether the measures that a gatekeeper is entitled to take under the second subparagraph of Article 6(7) could in certain cases include the refusal to provide interoperability as requested by the developer.

Regulation (EU) 2022/1925, that developer should have the possibility to initiate the conciliation. Apple should participate in good faith to the conciliation procedure. The conciliation process should not preclude the right of either party to seek redress in court. For the avoidance of doubt, the conduct or commencement of the conciliation will not be necessary before initiating a court action.

b. **Pool of conciliators to be set up upfront by Apple**: In order to facilitate the prompt and efficient resolution of disputes, Apple should establish upfront (i.e., within three months from notification of the specification decision as per paragraph (83) letter (b) below) a panel of conciliators who can be available to intervene swiftly in the event of disputes with developers. The conciliators shall be selected by Apple through a transparent and impartial process to be communicated to the Commission. The conciliator can be an organisation, or one or several natural persons. The panel shall comprise at least five conciliators with relevant technology expertise and experienced in conciliating technology issue in the context of business-to-business disputes. To this end, the conciliators must be independent of Apple. Provisions to be communicated to the Commission must be established to ensure that conciliators in the pool are not and will not become exposed to a conflict of interest with the parties. In particular, the selected conciliators should not provide services to, or become an employee of Apple or the concerned developer, neither during its mandate as a conciliator in the pool nor for a period of three years following his/her mandate termination from the pool.

c. **Appointment of conciliator(s) by Apple and the concerned developer**: in case of a dispute the developer has the following choice concerning the appointment of conciliators:

   (i) The developer can choose a conciliator within the panel set up by Apple according to paragraph (47), letter (b) above. To this end, upon developer's request, Apple will have to promptly communicate the developer the curriculum vitae of the conciliators in the pool; or

   (ii) If the developer considers that none of the conciliators in the pool have the relevant expertise to decide on the subject matter of the dispute, it will have to promptly communicate it to Apple and, in agreement with Apple, will have to appoint a conciliator with the relevant expertise. If the parties do not reach an agreement on the name of the conciliator, each party may designate a conciliator and the two thus selected will then appoint a third conciliator that will act as the chair of the panel. Alternatively, parties also have the option to seek the assistance of a suitable institution in connection with the appointment of conciliators. The conciliator(s) chosen by Apple and the developer must be independent of Apple and the concerned developer. Provisions must be established to ensure that it is not and will not become exposed to a conflict of interest with the parties. In particular, the conciliator should not provide services to, or become an employee of Apple or the concerned developer, neither during its mandate nor for a period of three years following mandate termination.

d. **Duties and powers of the conciliator**: The conciliator's services facilitate discussions impartially, aiming to help both sides reach a mutually acceptable settlement. To this end, the conciliator with the help of the parties shall proceed

within as short a time as possible to establish the facts of the case by all appropriate means. To this end, the conciliator will encourage the parties to establish agreed factual positions. In order to enable the conciliator to fulfil this task, it should be entitled to request relevant information from the parties to the conciliation. Where the relevant information is confidential, this confidentiality should be preserved in the conciliation proceedings.

e. **Non-Binding Proposal**: At the conclusion of the procedure, the conciliator should issue a report containing (i) a factual summary of the process before him/her and (ii) a recommended solution (the "Conciliator's Report") which is not legally binding unless both parties agree to it and it is without prejudice to the Commission's competence to assess and enforce Article 6(7) Regulation (EU) 2022/1925. In this respect, either party would have the option to accept or reject the conciliator's recommended solution contained in the Conciliator's Report. The conciliator, with the assistance of the parties, will prepare a non-confidential summary of recommended solution (the "Non-confidential Version of the Conciliator's Recommended Solution"). (^{12})

f. **Settlement Agreement**: If both Apple and the developer accept the recommended solution outlined in the Conciliator's Report, this will be written up by the parties as the settlement agreement which will be binding and enforceable as a matter of contract law (the "Settlement Agreement"). The Settlement Agreement is without prejudice to the Commission's competence to assess and enforce Article 6(7) Regulation (EU) 2022/1925.

g. **Involvement of the Commission in the process:** As soon as the developer decides to engage in conciliation and contact Apple to this end, Apple will inform the Commission by providing all available details about the subject matter of the conciliation procedure. The Commission retains the possibility at any stage to intervene in the conciliation process. The Commission might *inter alia* request to participate as an observer in person or virtually at the hearing(s). Apple should communicate to the Commission the interim (where applicable) and final version of the Conciliator's Report(s) (including the Non-confidential Version of the Conciliator's Recommended Solution (cf. letter (e) above), and the Settlement agreement (cf. letter (f) above) if available. In addition, the Commission may request any other documents exchanged by the conciliator with the parties.

h. **Confidentiality:** The Parties to the conciliation and the conciliator should maintain confidentiality regarding the conduct of conciliation proceedings. The conciliation process is confidential, and therefore the Conciliator' Report and the Settlement Agreement (if available) are not to be made public. Conversely the Non-confidential Version of the Conciliator's Recommended Solution (see above under letter (e)) will be made available by Apple according to the indications provided in section 6.3, paragraph (82) below.

i. **Duration**: it is important that the conciliation process is concluded in a timely and efficient manner. Therefore, the procedure should be limited to maximum three months.

(^{12})   For the avoidance of doubt the Conciliator with the help of the parties will prepare the Non-confidential Version of the Conciliator's Recommended Solution, irrespective of whether or not the parties will subsequently accept such solution and make it binding under letter f) above.

j. **Costs**: Unless the parties agree otherwise, all costs of setting up the pool of conciliators and the conciliation process in itself would in principle be borne by Apple including if the conciliator is chosen not within the pool but in agreement with the developer or if the parties decide to seek the assistance of a suitable institution in connection with the appointment of conciliator. However in case Apple and the developer do not find an agreement on the name of the conciliator with the result that each party may have to designate a conciliator and then two thus selected will appoint a third conciliator to act as the chair of the panel (cf. letter c(ii) above), then each party will be responsible for its own costs associated with the appointed of its own conciliator and the costs of the appointed chairman will be shared equally by both parties. Each party would bear its own costs (including legal representation fees) in the process.

5.   PATHWAY TOWARDS INTEROPERABILITY BY DESIGN

5.1.   Scope, stability, and future proofness of released interoperability solutions

(48)   As an outcome to the request-based process, it is important to guarantee the effectiveness of the released interoperability solution over time. Therefore, as part of an effective process the interoperability solution should, once released, (i) be made available for use by other developers without undue restrictions, (ii) be adequately documented and maintained over time, and (iii) evolve on par with the solution available to or used by the gatekeeper.

(49)   *Erga omnes*: When the gatekeeper designs an interoperability solution as part of the request-based process, it should ensure that this solution not only addresses the request(s) of the developers which have submitted the (eligible) request(s), but can also be used in the future by other developers irrespective of the specific use cases. The design of the solution, and the conditions set by the gatekeeper for the use of this solution, should in principle allow any developer to use it, and should in principle contain no restriction with respect to the use case or purpose for which they would use the solution, except where duly justified for integrity reasons under the conditions set by the second subparagraph of Article 6(7) of Regulation (EU) 2022/1925. Apple should make all developed interoperability solutions available to both the requesting developer and all other developers at the same time, without restrictions or control on the type of use case.

(50)   **Documentation**: The gatekeeper should adequately document all developed interoperability solutions on a publicly available developer documentation portal, available to all developers, without restrictions. This documentation should be comparable in detail to the current developer documentation of public frameworks, and should contain all symbols, including classes, protocols, properties, variables, methods, functions, structures, enumerations, and all other symbols contained within the interoperability solution. This documentation should be complete and accurate, and include the necessary materials for developers to effectively implement the interoperability solution, such as tutorials or examples.

(51)   **Future-oriented**: In light of the above, once Apple has developed an interoperability solution, Apple should maintain the solution over time such that the solution and its documentation continues being available, functional, usable, and effective for all developers without interruption, irrespective of changes in Apple's platform or

operating systems. The solution should be sufficiently stable over time. Permitting for natural evolutions in software and hardware capabilities where justified for instance because a given feature has become obsolete, Apple may adjust or deprecate (parts of) an interoperability solution but should only do so in a transparent and predictable manner, i.e. with sufficient notice to third parties such that they can protect their legitimate commercial interests, and without this deprecation constituting a circumvention of Article 6(7) of Regulation (EU) 2022/1925 in the meaning of Article 13 of Regulation (EU) 2022/1925. Any changes to the interoperability solutions must be properly documented both within the main documentation and in a separate changelog.

(52)   Insofar as Apple does not use the interoperability solution that is made available to other developers, but continues to use a distinct solution for its own services or hardware to provide the same feature or functionality, Apple should maintain effective interoperability and ensure that the public solution remains equally effective with the distinct solution that it uses. To that end, Apple should ensure that any improvement to a distinct solution it uses for its own services or hardware, for instance in terms of enhanced capabilities or improved performance, is also made available as part of the public interoperability solution. Apple should make available the updated interoperability solution and documentation for the relevant feature or functionality no later than at the time the new or updated features or functionalities are made available to any of Apple's hardware and services.

6.   PREDICTABILITY AND ACCOUNTABILITY

6.1.   Timeline

6.1.1.   *Different level of complexity of interoperability requests*

(53)   To establish a predictable and reliable timeline, the Commission considers it appropriate to make a distinction between requests requiring minor engineering efforts and requests requiring a more significant one, which can objectively justify different timelines to implement interoperability solutions. As a way of example:

(a)   requests, whose solution involves Apple (i) changing policies or granting permissions where a third party is currently prevented from accessing an existing framework, or (ii) re-engineering existing iOS or iPadOS frameworks, ([13]) would in general be expected to require minor or mild engineering efforts.

(b)   requests, whose solution involves Apple (i) providing hardware specifications or (ii) developing new OS-level protections for integrity reasons, would in general be expected to require significant engineering efforts.

(54)   Since Apple should be already compliant with Article 6(7) of Regulation 2022/1925 and allow effective interoperability as of 7 March 2024, Apple should, implement requests requiring minor or mild engineering efforts (considering the engineering resources required for the specific tasks in relation to those generally available for a

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([13])   "Re-engineering existing frameworks" covers any software changes that seek to maintain and replicate the behaviour of the existing frameworks. This is agnostic to the choice of how such changes are made, such as, by "refactoring" (i.e., restructuring) the existing code. This may include the creation of a new parallel framework, in the case where this is the most appropriate way of creating an interoperability solution that provides the behaviour of the existing frameworks.

technological company such as Apple) within **90 working days** (^{14}) from the eligibility request. Taking into account the limited number of interoperability requests received by Apple since the launch of the request-based process (108 requests), relative to the overall features and functionalities controlled by Apple's OS, it is a proportionate timeframe allowing sufficient time to Apple and a reasonable expectation on the side of developers.

(55)   For requests requiring more significant engineering efforts and duly justified by Apple as part of the measure described in paragraph (30), the timeline would be extended to a maximum of **12 months** to fully implement the interoperability request. While Apple only needs to provide interoperability with existing features and functionalities already available to Apple, a period of **12 months** for objectively complex cases requiring significant engineering efforts allows Apple to have the necessary flexibility to address different types of interoperability requests.

6.1.2.   Phases timeline

(56)   Within the overall timeframe described in section 6.1.1, and building on the process stages as designed by Apple, it is appropriate to identify a specific timeline for each of the phases.

Phase I: eligibility phase

(57)   The assessment of the eligibility request aims to ensure that the requests fit within the scope of the first subparagraph of Article 6(7). In light of this, the eligibility assessment of each interoperability request can be carried out within a reasonably short period of time. This assessment, and the communication of the outcome thereof to the developer, should therefore be concluded within 20 working days, from the day a third-party developer has submitted its interoperability request.

Phase II: tentative project planning

(58)   The project plan should be completed by Apple within 30 working days, starting from the end of phase I. Apple should communicate the project plan to the developer within 3 working days following the completion of the project plan.

(59)   The project plan should indicate:

- the level of complexity (i.e. minor/mild or significant engineering efforts) of the request;

- a description of the work and resources needed to implement the request justifying the level of complexity assigned to the request;

- an indicative timeline for implementing the requests, taking into account the upper limit set out at paragraphs (54) and (55).

(60)   Phase II shall be deemed terminated when the tentative project plan is communicated to the developer. In accordance with the process described in paragraph (32) to (36) developers should be allotted a reasonable timeframe and, in any case, a minimum period of 10 working days to provide input on the suggested tentative project plan to ensure timely and constructive contributions as part of the development process.

(^{14})   Time periods will be calculated in accordance with Regulation (EEC, EURATOM)) No. 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits.

Should developers necessitate longer than 10 working days to provide feedback, they should inform Apple within this 10 working days period and the periods set out at paragraph (54) and (55) should be suspended.

(61) Developers disagreeing with the level of complexity assigned by Apple to their interoperability request in the project plan should be allowed to use the conciliation procedure as set out in section 4.2 (i.e. conciliation process).

(62) Phase III should start:

   a. at the expiry of the 10 working days; or

   b. when the developer has indicated to Apple that it would need more time to provide feedback, once the developer has submitted its feedback to Apple; or

   c. once the conciliation process is terminated, according to paragraph (61)

      Phase III: development and release

(63) Apple should develop and release ([15]) within **40 working days** all requests that require minor or mild engineering efforts, starting from the end of phase II. Requests that require significant engineering efforts should be developed and released within the timeline set by Apple in its project plan communicated to the developer, and in any event, should be released no longer than **12 months** from the submission of the interoperability request.

6.1.3. Communication

(64) To ensure smooth progress, timely communication is crucial. It is therefore appropriate to establish a timeline also for communication between Apple and the interoperability requesters.

(65) With respect to the designated contact point described in paragraph (29), Apple should reply within 5 working days to any inquiries posed by developers. This communication timeline shall not affect or suspend any of the periods or timelines established in the present section.

6.1.4. Suspension of time limits and derogation

(66) All periods set out in the present section can be suspended if developers fail to provide to Apple necessary information concerning their interoperability requests within **3 working days** from Apple's request for clarification.

(67) In strictly exceptional and duly justified cases, where, despite having taken all necessary actions to handle the request in a timely manner – including having adequately prioritised the handling of the request and mobilised sufficient resources to that effect – , Apple is not able to comply with one of the timelines set out in the present section, Apple should inform the developer and notify the Commission as early as possible, and should explain in sufficient details the objective reasons for such delay. Apple should ensure that the delay in such situation is as limited as possible.

([15])   Including the making available of the supporting documentation as per section 5.1.

6.1.5. Resources

(68) Apple must allocate sufficient resources to ensure that it can assess, handle, process, implement and release all interoperability requests falling within the scope of article 6(7) of Regulation 2022/1925 diligently.

6.2. Transparency vis à vis the broader developer community and protection of confidential information

6.2.1. Tracker system

(69) Apple should organise the requests it received in an easily accessible tracker system giving developers relevant information on the status of each interoperability request, including for each request information on its current stage and expected timeline. The tracker must be up to date and be easily accessible to all interested developers via a dedicated section on the developer portal.

(70) The tracker must be designed to facilitate easy search and retrieval of request statuses. Apple must also provide clear instructions on how developers can access and use the tracker effectively. To ensure ease of use, the tracker must be designed to allow developers to easily search and retrieve the status of requests.

(71) It is within the developer's discretion to decide whether its request should be made partly or wholly visible to other developers through the dedicated tracker system. Therefore, a request should be made visible upon consent from the requesting developer.

(72) Depending on the consent given by the developer, Apple should therefore treat the request as:

　　a. **Fully available:** A developer has given consent to make the request fully available in the dedicated tracker system. The tracker should also include the ID number of the request and the general status of the request (e.g., under review, processing). ([16])

　　b. **Partly available:** A developer gives its consent to make its request partly available in the dedicated tracker system. In such a case, the following information would be available to other developers: the ID number of the request, the general status (e.g., under review, processing) and a description of the request provided by the developer.

　　c. **Confidential:** If a developer does not give its consent to make its request available in the dedicated tracker system, Apple must keep the request confidential. In such cases Apple should only make available information such as ID number, the requested feature and general status (e.g., under review, processing). Any other information (including the developer's identity and the content of the request) must remain confidential and not be disclosed to third parties.

([16]) Apple should be able to redact information from the request which refer to confidential information about Apple, which the developer has obtained through a reference query on the technical references of a framework or library, cf. Section 2.1. In such case, Apple should notify the developer hereof.

(73)   It should be possible for other developers to refer to or indicate their interest for another developer's request, in their own request.

<u>Queries for the technical reference of a framework or library</u>

(74)   Apple should organise the requests it received in an easily accessible tracker system giving developers relevant information on the status of each received queries for the technical reference of a framework or library, cf. Section 2.1.

(75)   If a developer gives its consent to Apple, the query should be made available to other developers. This information should include the requested framework or library for which the query was made, and the general status of the query.

6.2.2.   *Protection of the developers' interests vis-à-vis the gatekeeper*

(76)   Apple should put in place effective measures to ensure that any non-publicly available information received from the developers in the context of the request form is only used by Apple for the purpose of assessing the requests and providing interoperability. Furthermore, Apple should ensure that the circulation of such information is strictly limited, on a need-to-know basis, to the teams within Apple which are responsible or involved in the handling of the interoperability requests and the development of interoperability solutions. In particular, Apple should take specific and effective measures to ensure that this information is not accessible by teams and individuals within Apple who may be involved in any capacity in the development, marketing and commercialisation of services and hardware that may potentially or actually compete with services and hardware that the developer would intend to provide. Apple should have an annual audited report on how these mechanisms are working to preserve the protection of the developers' confidential information vis-à-vis the gatekeepers.

6.3.   **Public reporting and KPIs**

(77)   Apple should make public a report (hereinafter, the "Report") on its website detailing certain KPIs on the status of all interoperability requests, having due regard to the confidentiality of the information as indicated by the requesting developers. The report should be made public on Apple's website in such a way that it is easily discoverable for both developers and the public.

(78)   Apple must make public the Report on its website detailing in an aggregated manner the status of all interoperability requests. The website must be easily accessible to the public in general, meaning that it cannot be accessible only through the means of e.g. logging into a developer account.

(79)   A new version of the Report must be published on the website by every six months, and Apple must keep all previous versions of the report available on its website. The website must be easily accessible to the general public.

(80)   Each report must include at least the following metrics concerning interoperability requests based on Article 6(7) of Regulation 2022/1925:

Total number of requests received since 7 March 2024.	[x]
Total number of pending requests.	[x]

Total number of requests which Apple considers to be within the scope of Article 6(7).	[x]
Total number of requests which Apple considers to be out of the scope of Article 6(7).	[xx]
Total number of requests which Apple considers requiring "minor or mild" engineering efforts in order to be implemented.	[xx]
Total number of requests which Apple considers requiring "significant" engineering efforts in order to be implemented.	[xx]

Number of requests currently in phase I.	[x]
Number of requests currently in phase II.	[x]
Number of requests currently in phase III.	[x]

Average time between request received and Phase I decision.	[x days]
Average time between Phase I decision and Phase II decision.	[x days]
Average time between Phase II decision and completion of Phase III.	[x days]
Percentage of requests that moved from Phase I into Phase II.	[x %]
Percentage of requests that moved from Phase II into Phase III.	[x %]
Percentage of requests that did not move from Phase I.	[x %]
Percentage of requests that did not move from Phase II.	[x %]

Total number of interoperability requests that have moved to Phase III and for which an interoperability solution has been released.	[x]

Specific KPIs on queries for the technical reference of a framework or library, cf. Section 2.1

Total number of received queries for the technical reference of a framework or library.	[x]
Total number of accepted requests.	[x]
Total number of rejected requests.	[x]

Specific KPIs for the conciliation mechanism, cf. Section 4.2

Total number of requests for which a conciliation process, was undertaken or is in the process of being undertaken.	[x]
Number of requests for which Apple and the concerned developer reached a Settlement Agreement.	[x]
Number of requests for which Apple and the concerned developer did not reach a Settlement Agreement.	[x]

(81) Where appropriate Apple may include other information, however Apple may not disclose any additional information about the developer's request without explicit consent from the developer.

(82) Furthermore, the Report should contain all Non-Confidential Versions of the Conciliator's Recommended Solutions issued in the context of the conciliation process (see above section 4.2, paragraph (47), letter (e) above) during the period covered by the Report.

7. IMPLEMENTATION AND REPORTING TO THE COMMISSION

(83) The Commission considers that Apple should implement the measures within one month from the notification of the Specification Decision, unless otherwise indicated below:

a. Apple should implement the measures specified in section 2.1 in relation to transparency with respect to features and functionalities reserved to Apple within the timeframes described in that section.

b. Apple should implement the measures specified in section 4.2 in relation to the implementation of the conciliation mechanism within 3 months from notification of the Specification Decision.

(84) For requests submitted prior to the adoption of this Specification Decision, the deadlines for the different stages specified in section 6.1 above will count as of the date of the adoption of the Specification Decision.

Reporting to the Commission

(85) Upon expiry of the implementation deadlines indicated above, Apple should communicate to the Commission all the measures that it has taken to comply with that

measure. Apple should provide the Commission with a non-confidential version of this report for publication.

(86)   In the event that Apple rejects a reference query to obtain the technical reference of a framework or library, cf. Section 2.1, or in the event that Apple rejects an interoperability request (or specific parts of an interoperability request), cf. section 4.1, Apple must notify the Commission, state reasons for the rejection, and forward all relevant material relating to the query or request and the rejection of the query or request to the Commission without undue delay.

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