EUROPEAN COMMISSION

CASE DMA.100109 – Apple – Online Intermediation Services – app stores – AppStore – Art. 5(4)

(Only the English text is authentic)

Digital Markets Act

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

Article 29(1), point (a), 30(1), point (a), and 31(1), point (h) Regulation (EU) 2022/1925

Date: 23/04/2025

EUROPEAN
COMMISSION

Brussels, 23.4.2025
C(2025) 2090 final

COMMISSION IMPLEMENTING DECISION

of 23.4.2025

pursuant to 29(1), point (a), 30(1), point (a), and 31(1), point (h) of Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector

Case DMA.100109 – Apple – Online Intermediation Services – app stores – AppStore – Art. 5(4)

(Only the English text is authentic)

TABLE OF CONTENTS

COMMISSION IMPLEMENTING DECISION

of 23.4.2025

pursuant to 29(1), point (a), 30(1), point (a), and 31(1), point (h) of Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector

Case DMA.100109 – Apple – Online Intermediation Services – app stores – AppStore – Art. 5(4)

(Only the English text is authentic)

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), in particular Article 29 thereof,[1]

After consulting the Digital Markets Act Committee,

Whereas:

1. INTRODUCTION

(1) This Decision, adopted pursuant to Articles 29(1), point (a), 30(1), point (a), and 31(1), point (h) of Regulation (EU) 2022/1925, is addressed to Apple Inc., which is headquartered in Cupertino, California, United States of America. Apple Inc. is the ultimate parent company of a group of companies (hereinafter referred to as "Apple"). Apple designs, manufactures, and markets mobile communication and media devices, personal computers, and portable digital music players. It sells a variety of related software, services, peripherals, networking solutions, and third-party digital content and applications. Apple sells its products worldwide through its retail stores, online stores, and direct sales force, as well as through third-party cellular network carriers, wholesalers, retailers, and value-added resellers.

(2) This Decision finds that Apple does not comply with Article 5(4) of Regulation (EU) 2022/1925 in relation to its App Store core platform service ("CPS"). Under that provision, gatekeepers must allow business users, free of charge, to communicate and promote offers to end users acquired via its CPS or through other channels, and to conclude contracts with those end users, regardless of whether, for that purpose, they use the CPSs of the gatekeeper. As explained in this Decision, Apple limits the ability of app developers distributing software applications ("apps") on Apple's CPS App Store to direct end users acquired via that CPS or through other channels ("acquired users") to offers within or outside of their apps ("steer" or "steering") in order to conclude contracts within or outside of their apps following that steering

[1] OJ L 265, 12.10.2022, p. 1.

("steered transactions"). Apple also charges a fee in relation to steered transactions that goes beyond the possible remuneration for the initial acquisition of that end user facilitated by Apple.

(3) This Decision is structured as follows:

- Section 2 summarises the procedure leading to the adoption of this Decision;
- Section 3 sets out the legal framework for the assessment of Apple's compliance with Article 5(4) of Regulation (EU) 2022/1925 in relation to the App Store CPS;
- Section 4 describes Apple's business terms and conditions relevant for assessing compliance with Article 5(4) of Regulation (EU) 2022/1925 in relation to its App Store CPS;
- Section 5 concludes that Apple has not complied with Article 5(4) of Regulation (EU) 2022/1925 in relation to the App Store CPS;
- Section 6 rebuts Apple's allegations of procedural shortcomings;
- Section 7 concludes on the duration of the infringement of Article 5(4) of Regulation (EU) 2022/1925;
- Section 8 identifies the addressees of this Decision;
- Section 9 explains the methodology for setting the fine and the amount of the fine imposed;
- Section 10 outlines the cease and desist order imposed by this Decision and the requirement for Apple to provide explanations on how it plans to comply with this Decision;
- Section 11 describes the periodic penalty payments necessary to compel Apple to bring the non-compliance with Article 5(4) of Regulation (EU) 2022/1925 effectively to an end.

2. PROCEDURE

(4) On 5 September 2023, the Commission adopted a decision designating Apple as a gatekeeper pursuant to Article 3(4) of Regulation (EU) 2022/1925 (the "Designation Decision")[2]. The Designation Decision lists the following CPS that are provided by Apple and which individually constitute an important gateway for business users to reach end users: (i) its online intermediation service App Store[3]; (ii) its operating system iOS; and (iii) its web browser Safari. On 29 April 2024, the Commission adopted a decision amending the Designation Decision by listing Apple's operating system iPadOS as an important gateway for business users to reach end users[4].

(5) Pursuant to Article 3(10) of Regulation (EU) 2022/1925, Apple has to comply, since 7 March 2024, with the obligations laid down, in particular, in Article 5(4) of Regulation (EU) 2022/1925, notably in relation to its App Store CPS for which it was designated as a gatekeeper in the Designation Decision.

---

2 Decision C(2023) 6100 final.

3 According to recital 38 of the Apple designation decision, "*The Commission further considers that, contrary to the views of Apple, the App Store constitutes a single online intermediation CPS, irrespective of the device through which that service can be accessed*."

4 Decision C(2024) 2500 final.

(6) On 7 March 2024, Apple submitted to the Commission a compliance report pursuant to Article 11(1) of Regulation (EU) 2022/1925 ("the Apple Compliance Report")[5]. The Commission has analysed that report to determine whether the measures implemented by Apple ensure and demonstrate compliance, as of 7 March 2024, with the obligations laid down in Article 5(4) of Regulation (EU) 2022/1925 in relation to its App Store CPS.

(7) On 25 March 2024, the Commission adopted a decision opening proceedings pursuant to Article 20(1) of Regulation (EU) 2022/1925 with a view to the possible adoption of a decision pursuant to Articles 29 and 30 of that Regulation in relation to Apple's compliance with Article 5(4) of Regulation (EU) 2022/1925 (the "Opening Decision")[6].

(8) In the context of those proceedings, the Commission sent five requests for information ("RFIs") to Apple on 25 March 2024, on 25 April 2024, on 16 May 2024, on 26 June 2024 and on 3 September 2024. Apple responded to the RFI of 25 March 2024 in various instalments, on 18 April 2024, on 23 April 2024, on 7 May 2024, and on 23 May 2024. Apple responded to the RFI of 25 April 2024 on 14 May 2024. Apple responded to the RFI of 16 May 2024 on 22 May 2024. Apple responded to the RFI of 26 June 2024 on 16 July 2024. Apple responded to the RFI of 3 September 2024 in various instalments, on 23 September 2024 and on 3 October 2024.

(9) On 17 April 2024, the Commission sent an RFI to eleven original equipment manufacturers ("OEMs") of smartphones for sale in the Union.

(10) On 18 April 2024, the Commission held a virtual state of play meeting with Apple in relation to the Opening Decision.

(11) On 22 May 2024, a virtual meeting took place, at Apple's request, between Apple and the Commission to discuss the Commission's interpretation of Article 5(4) of Regulation (EU) 2022/1925.

(12) On 24 June 2024, the Commission adopted preliminary findings pursuant to Article 29(3) of Regulation (EU) 2022/1925 in the context of the proceedings referred to in recital (7) of this Decision (the "Preliminary Findings"[7]). In the Preliminary Findings, the Commission reached the preliminary conclusion that none of the three sets of business terms and conditions governing Apple's relationship with app developers using the App Store comply with Article 5(4) of Regulation (EU) 2022/1925. Those three sets of business terms and conditions are the following: (i) the business terms and conditions pre-dating 7 March 2024 ("the Original Business Terms"); (ii) the business terms and conditions introduced after 7 March 2024 to comply with Regulation (EU) 2022/1925 ("the New Business Terms"); and (iii) the business terms and conditions introduced after 7 March 2024 that are specifically applicable to music streaming services ("the New Music Streaming Business Terms") (together, the "Three App Store Business Terms").

(13) On 25 June 2024, Apple's external legal counsel requested, on behalf of Apple, access to the documents referenced in the Preliminary Findings in accordance with

---

5 Apple Compliance Report, 7 March 2024, […].

6 Decision C(2024) 2056 final.

7 C(2024) 4508 final.

Article 8(1) and (2) of Implementing Regulation (EU) 2023/814[8], as well as full access to all documents contained in the Commission's file, in accordance with Article 8(3) of Implementing Regulation (EU) 2023/814.

(14) On 25 June 2024, the Commission provided Apple's external legal counsel, via OneDrive, with non-confidential versions of all documents referenced and relied upon in the Preliminary Findings, as well as a file index.

(15) Apple's external legal counsel was granted full access to the Commission's file at the Commission's premises via a data room that took place between 26 June 2024 and 11 July 2024 ("the Data Room") pursuant to the terms of disclosure as laid down in the Commission's decision of 25 June 2024 ("the Terms of Disclosure")[9]. On 11 July 2024, the Commission approved the report drafted by Apple's external legal counsel summarising its findings and conclusions regarding the content of (and documents in) the Commission's file ("the Data Room Report")[10], which could thus be shared with Apple.

(16) On 25 July 2024, the Commission sent a letter to Apple regarding several possible breaches of the data room rules as laid down in the Terms of Disclosure[11]. In particular, the Commission expressed concerns in relation to the sharing of information from the data room with people who were not legally entitled, at the moment when the information was shared, to receive any of the information concerned. The letter requested Apple to explain how it intended to ensure compliance with the Terms of Disclosure going forward. Both Apple[12] and its external legal counsel[13] responded on 8 August 2024.

(17) On 29 July 2024, Apple responded to the Preliminary Findings[14].

(18) On 8 August 2024, Apple announced new possible changes to the business terms and conditions governing Apple's relationship with app developers using the App Store, including its steering rules, for which it was inviting feedback from the market[15]. Apple has not implemented those changes to date and those changes are, therefore, not covered by the present Decision.

(19) On 7 March 2025, Apple submitted to the Commission its second annual compliance report pursuant to Article 11(1) of Regulation (EU) 2022/1925 ('the 2025 Compliance Report'). In this report, Apple refers to its announcement of 8 August 2024 of *"proposed changes to the ability of developers to communicate and promote offers available outside of the app from within the app for digital goods or services."*[16]. While Apple refers to the proposed changes in its 2025 Compliance Report, Apple also indicates that it has not yet implemented any changes to the

---

8 Commission Implementing Regulation (EU) 2023/814 of 14 April 2023 on detailed arrangements for the conduct of certain proceedings by the Commission pursuant to Regulation (EU) 2022/1925 of the European Parliament and of the Council (OJ L 102, 17.4.2023, p. 6, ELI: http://data.europa.eu/eli/reg_impl/2023/814/oj).

9 Decision C(2024)4556 final, […].

10 […].

11 […].

12 […].

13 […].

14 […].

15 Apple, "Updates to the StoreKit External Purchase Link Entitlement", […], (accessed on 20 August 2024). See also Apple, "Alternative payment options on the App Store in the European Union", […], (accessed on 20 August 2024).

16 Apple 2025 Compliance Report, 7 March 2025, Annex 5 to Section 2, paragraph 6, […].

measures it has already put in place on 7 March 2024 in order to ensure compliance with Article 5(4) of Regulation (EU) 2022/1925.

3. RELEVANT LEGAL FRAMEWORK

(20) Pursuant to Article 29(1), point (a), of Regulation (EU) 2022/1925, where the Commission finds that a gatekeeper does not comply with any of the obligations laid down in Article 5, 6 or 7 of that Regulation, it shall adopt an implementing act setting out its finding of non-compliance (the "non-compliance decision"). In such a non-compliance decision, the Commission shall, pursuant to Article 29(5) of Regulation (EU) 2022/1925, order the gatekeeper to cease and desist with the non-compliance and to provide explanations on how it plans to comply with that decision. The Commission may also impose a fine, pursuant to Article 30(1), point (a), of Regulation (EU) 2022/1925, and impose periodic penalty payments, pursuant to Article 31(1), point (h) of that Regulation, to compel a gatekeeper to comply with such a non-compliance decision.

(21) Pursuant to Article 5(4) of Regulation (EU) 2022/1925, a gatekeeper shall allow business users, free of charge, to communicate and promote offers, including under different conditions, to end users acquired via its CPS or through other channels, and to conclude contracts with those end users, regardless of whether, for that purpose, they use the CPSs of the gatekeeper.

(22) In relation to Article 5(4) of Regulation (EU) 2022/1925, recital 40 of that Regulation explains that *"[t]he business users of those gatekeepers should be free to promote and choose the distribution channel that they consider most appropriate for the purpose of interacting with any end users that those business users have already acquired through core platform services provided by the gatekeeper or through other channels. This should apply to the promotion of offers, including through a software application of the business user, and any form of communication and conclusion of contracts between business users and end users. An acquired end user is an end user who has already entered into a commercial relationship with the business user and, where applicable, the gatekeeper has been directly or indirectly remunerated by the business user for facilitating the initial acquisition of the end user by the business user. Such commercial relationships can be on either a paid or a free basis, such as free trials or free service tiers, and can have been entered into either on the core platform service of the gatekeeper or through any other channel*."

(23) Where the CPS at issue is a software application store ("app store"), business users of that CPS are the developers of apps that make their apps and digital goods and services available to end users through the gatekeeper's app store ("app developers"). In that context, it follows from Article 5(4) of Regulation (EU) 2022/1925 that gatekeepers should allow app developers that distribute their app(s) through the gatekeeper's app store to steer acquired end users and to subsequently conclude contracts with them (either within or outside the app), i.e., steered transactions, without the gatekeeper charging any fee besides, where applicable, the remuneration due to the gatekeeper for facilitating the initial acquisition by the business user of the end user (i.e., the matchmaking).

(24) For the purposes of this Decision[17], the communication or the promotion of an offer by the app developer to an acquired end user, within an app downloaded from the App Store is considered steering. The conclusion of a contract, within or outside the app downloaded from the App Store, following steering is a steered transaction. For the purposes of this Decision, "within the app" means that steering and steered transactions take place without the user leaving the app, via any form of technology that is not Apple's app store payment service ("IAP"), for instance through web view[18]. Conversely, "outside the app" means that the user is steered to a destination outside the app such as a website in order to conclude the steered transaction. As made clear by the wording of Article 5(4) of Regulation (EU) 2022/1925, steering and steered transactions should be allowed free of charge.

(25) Pursuant to Article 8(1) of Regulation (EU) 2022/1925, the gatekeeper shall ensure and demonstrate compliance with the obligations laid down in Articles 5, 6 and 7 of that Regulation. Moreover, the measures implemented by the gatekeeper to ensure compliance with that obligation shall be effective in achieving the objectives of that Regulation and of the relevant obligation.

4. APPLE'S BUSINESS TERMS AND CONDITIONS RELEVANT FOR ASSESSING COMPLIANCE WITH ARTICLE 5(4) OF REGULATION (EU) 2022/1925 IN RELATION TO THE APP STORE CPS

(26) This Decision finds that Apple's Original Business Terms, its New Business Terms, and its New Music Streaming Business Terms do not comply with Article 5(4) of Regulation (EU) 2022/1925.

(27) According to the Apple Compliance Report, app developers have the option to remain under the Original Business Terms, or to adhere to the New Business Terms or, if they provide music streaming services, to the New Music Streaming Business Terms[19]. Apple further offers a "one-time" possibility to app developers who have chosen to adopt the New Business Terms to back-track and revert to the Original Business Terms if they do not want to remain bound by the New Business Terms[20].

4.1. The Original Business Terms

(28) The Original Business Terms are mainly laid down in the Apple Developer Program License Agreement ("the DPLA")[21] and in the App Review Guidelines ("the

---

17 For the avoidance of doubt, this Decision is without prejudice to Apple charging a fee for the services provided through IAP.

18 Web view is a functionality that allows apps to display web content more easily and directly within the app and, depending on the specific web view tool used, it can be defined as a view, system application, component, element, or application programming interface ("API") that allows app developers to render web pages within an app.

19 Apple Compliance Report, Annex 1 to Section 2 – Overview of Apple's changes to its business practices in the context of the DMA, page 22, […].

20 Apple, 'Update on apps distributed in the European Union', response to question; "*What if I change my mind about being under the new EU business terms and want to switch back*", accessible here: https://developer.apple.com/support/dma-and-apps-in-the-eu/#dev-qa (accessed on 14 May 2024), […]. The possibility to back-track and revert to the Original Business Terms does not exist for app developers having opted into the New Music Streaming Business Terms.

21 Apple Developer Program License Agreement, version of 22 December 2023, accessible at: https://developer.apple.com/support/terms/apple-developer-program-license-agreement/#A1, (accessed on 14 May 2024). […].

Guidelines")[22]. They apply notably to situations where the app developer offers in-app purchases of digital goods and services using IAP. As can be seen from the excerpts below, the DPLA and the Guidelines govern in-app purchases using IAP only. They do not offer the possibility for app developers to steer users within the app to offers within or outside the app without using IAP.

(29) According to Schedule 2, paragraph 3.11, of the DPLA (emphasis added):

> *"Subscription services purchased within Licensed Applications must use In-App Purchase. In addition to using the In-App Purchase API, a Licensed Application may read or play content (magazines, newspapers, books, audio, music, video) that is offered outside of the Licensed Application (such as, by way of example, through Your website) provided that You do not link to or market external offers for such content within the Licensed Application. You are responsible for authentication access to content acquired outside of the Licensed Application."*[23]

(30) According to Sections 3.1.1. and 3.1.3. of the Guidelines:

> "*3.1.1 In-App Purchase: If you want to unlock features or functionality within your app, (by way of example: subscriptions, in-game currencies, game levels, access to premium content, or unlocking a full version), you must use in-app purchase. Apps may not use their own mechanisms to unlock content or functionality, such as license keys, augmented reality markers, QR codes, cryptocurrencies and cryptocurrency wallets, etc. […] [A]pps and their metadata may not include buttons, external links, or other calls to action that direct customers to purchasing mechanisms other than in-app purchase*."[24] [emphasis added]
>
> "*3.1.3 Other Purchase Methods: The following apps may use purchase methods other than in-app purchase. Apps in this section cannot, within the app, encourage users to use a purchasing method other than in-app purchase, except as set forth in 3.1.3(a). Developers can send communications outside of the app to their user base about purchasing methods other than in-app purchase*."[25]

(31) Under the Original Business Terms, app developers pay Apple a commission fee of 30 % or 15 % for in-app purchases of digital goods and services[26].

(32) The Apple Compliance Report states that "*Apple has always prevented developers from incorporating in-app advertising encouraging users to make a purchase outside of the App Store. This includes calls to action such as buttons that link to a website or other external links in-app*"[27]. [emphasis added]

---

22 App Review Guidelines, version of 5 April 2024, accessible at: https://developer.apple.com/app-store/review/guidelines/, (accessed on 14 May 2024). […].

23 DPLA, […].

24 Such a "call to action" could, for example, consist in an "e-mail me" button within the app.

25 Apple App Review Guidelines, […].

26 Schedule 2, paragraph 3.4(a) of the Apple Developer Program License Agreement, version of 22 December 2023, accessible at: https://developer.apple.com/support/terms/apple-developer-program-license-agreement/#A1, (accessed on 14 May 2024). […].

27 Apple Compliance Report, Annex 5 to Section 2 – Art. 5(4) DMA, page 35, paragraph 7, […].

4.2. The New Business Terms

(33) As outlined in Apple's Compliance Report, Apple adopted the New Business Terms with a view to complying with Regulation (EU) 2022/1925. App developers who want to steer users and conclude steered transactions need to adhere to the New Business Terms[28].

(34) To ensure compliance with Article 5(4) of Regulation (EU) 2022/1925, Apple has implemented the measures listed in recital (35) and (36) of this Decision[29].

(35) The New Business Terms for apps distributed via the App Store in the Union provide for three different fees which are independent from one another (but which the app developer may have to pay cumulatively depending on its business model and the number of times its app is downloaded)[30]:

(a) a commission fee on end users' purchases, either within the app installed in the App Store ("in-app purchases") or outside the app for transactions completed by end users within 7 calendar days after link-out from the developer's app, of digital goods and services from app developers of (i) 17 % of the purchase price; or of (ii) 10 % of the purchase price for app developers participating in Apple's 'App Store Small Business Program' and for recurring subscriptions after one year[31] (together, the "Commission Fee")[32];

(b) a fee on any in-app purchases equal to 3 % of the purchase price for those app developers offering apps on the App Store that use the App Store's payment processing service ("IAP"). Apple offers app developers a binary choice regarding in-app purchases: either they use IAP, or they offer their own payment system. App developers wishing to steer and conclude steered transactions cannot use IAP.

(c) a "Core Technology Fee" ("CTF") for apps distributed through the App Store or through any alternative app marketplace or web. The CTF only applies to apps downloaded by end users in the Union on devices running

---

28 App developers who want to rely on IAP for in-app purchases of digital goods and services (outside any steering scenario) can also adhere to the New Business Terms. However, they will be subject to a different fee structure than under the Original Business Terms (for instance, they might also need to pay the Core Technology Fee").

29 Apple Compliance Report, Annex 1 to Section 2 – Overview of Apple's changes to its business practices in the context of the DMA, page 18, Table 1; as well as Annex 5 to Section 2 – Art. 5(4) DMA, pages 34-37, […].

30 Apple Compliance Report, Section 2 – Information on compliance with the obligations laid down in Arts. 5 to 7 of Regulation (EU) 2022/1925, page 9, paragraph 23, [...]. As explained in more detail in recital (35)(b) of this Decision, Apple does not offer app developers that have opted to offer end users Apple's IAP to complete transactions the possibility to offer link-outs. Under the New Business Terms, an app developer selling digital goods and services having opted for IAP will pay the Commission Fee, the fee for the payment processing service and, possibly, the Core Technology Fee. A developer selling digital goods and services that has decided to offer link-outs, and therefore has opted not to use Apple's IAP will only pay the Commission Fee and, possibly, the CTF (but not the fee for the payment processing service).

31 Apple Compliance Report, Annex 18 to Section 2 – Art. 6(12) DMA, page 111, paragraph 19, […]. The Small Business Program is available to app developers with revenues not exceeding USD 1 million.

32 Apple Compliance Report, Annex 5 to Section 2 – Art. 5(4) DMA, page 36, paragraph 10, fourth bullet point, [...]. See Addendum, pages 1-2. [...]. Apple defines "linking out" as using a link from a developer's app that is distributed through the App Store to take end users to a website that the app developer owns, or has responsibility for, to purchase digital goods and services from the app developer (see Addendum, page 1, under definition of "*"Link Out" or "Linking Out"*". […]).

on certain iOS and iPadOS versions. The CTF amounts to EUR 0.50 for each "annual install" (that is to say, for the first time an iOS app is installed, re-installed or updated by an end user with an Apple account in the Union in a 12-month period) exceeding a threshold of one million first annual installs[33]. In case of alternative app marketplaces, the CTF is due for every install of such a marketplace.

(36) Apple imposes, in particular, the following conditions on app developers that want to make use of the possibility to offer their end users to link-out:

(a) the link provided by the app developer can only direct the end user to the developer's website, without any redirect or intermediate links or landing page;

(b) app developers may only include one link per Union storefront, per app[34];

(c) the link must open a new window in the default browser on the device and may not open a web view;

(d) each time an end user of an app offering digital goods and services links out, it should be presented with a warning prompt ("*disclosure sheet*" as per Apple's vocabulary) informing them "*that they will no longer be transacting with Apple if they purchase digital goods or content on the developer's website*."[35] This disclosure sheet is illustrated below[36]:

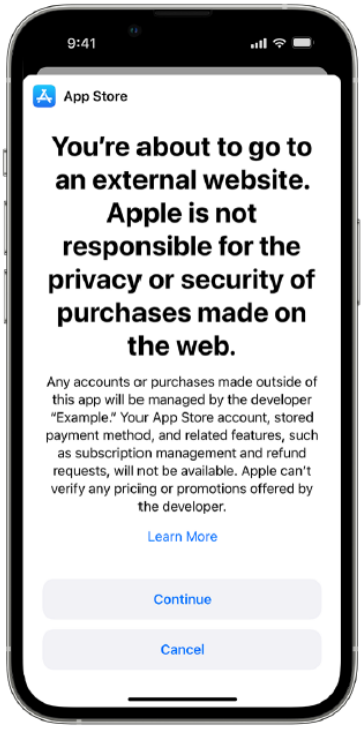
---

33 According to Apple, "*The first time an app is installed by an account in the EU in a 12-month period. After each first annual install, the app may be installed any number of times by the same account for the next 12 months with no additional charge.*" Apple Compliance Report, Section 2 – Information on compliance with the obligations laid down in Arts. 5 to 7 of Regulation (EU) 2022/1925, page 9, footnote 6, […]. On 2 May 2024, Apple announced some further changes to the CTF. See: https://developer.apple.com/news/?id=d0z8d8rx, […], (accessed on 6 May 2024).

34 And more specifically, per binary. See Apple's response to RFI No 2 of 25 April 2024, submitted on 14 May 2024, paragraph 7.3, […]. See also paragraph 7.1 where "*Apple defines "binary" as the file that encompasses each app's distinct code. Every app binary has its own App Store page and, when installed, will appear as a separate app on the iPhone.*"

35 Apple Compliance Report, Annex 5 to Section 2 – Art. 5(4) DMA, page 35, paragraph 10, third bullet point, […].

36 Apple Compliance Report, Annex 5 to Section 2 – Art. 5(4) DMA, page 36, figure 1, […].



According to the Apple Compliance Report, "*Apple has built a system to surface messaging to users that click on a link out of the app. The messaging will inform users that they will no longer be transacting with Apple if they purchase digital goods or content on the developer's website*"[37];

(e) the link may not include additional parameters, such as for example data that the acquired end user may have provided when signing-up to the app, in the uniform resource locator ("URL")[38]. This means that app developers cannot pre-populate fields on the destination page with data from their app[39].

(37) The New Business Terms are notably contained in the Alternative Terms Addendum for Apps in the EU to the DPLA ("the Addendum")[40]. Unless they conflict with the Addendum, the DPLA and Guidelines are also an integral part of the New Business Terms[41]. The Addendum govern the situation in which an app developer directs an end user to the app developers' website after the end user has clicked on a link within the app in order to conclude a contract with it (and the Commission Fee attached to such transaction). The Addendum is silent on other steering possibilities. The Addendum does not cover the situation whereby the app developer wants to promote in the app an offer to the end user concerning the conclusion of a contract outside the app, for example, by displaying an informative pop-up message (about price and

---

37 Apple Compliance Report, Annex 5 to Section 2 – Art. 5(4) DMA, page 35, paragraph 10, third bullet point, […].

38 Apple Compliance Report, Annex 5 to Section 2 – Art. 5(4) DMA, page 35, paragraph 10, second and third bullet points, […].

39 Apple's response to RFI No 2 of 25 April 2024, submitted on 14 May 2024, paragraph 3.6, […].

40 Alternative Terms Addendum for Apps in the EU (to the Apple Developer Program License Agreement), version of 2 May 2024, accessible at: https://developer.apple.com/contact/request/download/alternate_eu_terms_addendum.pdf, (accessed on 14 May 2024). […].

41 Addendum, […]: "*Defined terms not defined herein shall have the same meaning as set forth in the Developer Agreement. In the event of a conflict between this Addendum and the Developer Agreement (including the App Review Guidelines), this Addendum will control with respect to such conflict.*"

where to make the purchase outside the app), without offering a link-out. Similarly, the Addendum does not cover the situation whereby the app developer wants to communicate and interact with the end user in its app concerning the conclusion of a contract outside the app, for example, by adding a call to action button (such as an "email-me" button)[42]. Finally, the Addendum does not cover the situation whereby the app developer offers a possibility to the end user to conclude contracts within its app without having to use IAP. All of these other forms of communication, promotion, or conclusion of contracts with end users remain governed by the DPLA and the Guidelines, according to which they are prohibited.

4.3. The New Music Streaming Business Terms

(38) The New Music Streaming Business Terms are a specific set of optional terms and conditions regarding steering for music streaming services in the EEA[43]. Only app developers whose music streaming app is available on the App Store when accessed from devices running on either iOS or iPadOS in the EEA can opt for the New Music Streaming Business Terms[44].

(39) The New Music Streaming Business Terms are primarily laid down in the Music Streaming Services Entitlement Addendum for EEA Apps (the "Music Streaming Addendum")[45].

(40) Under the New Music Streaming Business Terms, Apple charges a commission fee of 27 % for transactions concluded after link-out[46]. The commission fee is due to Apple for transactions completed on the app developer's external website within 7 calendar days after a link-out. Each subsequent auto-renewal after the subscription is initiated is also a transaction triggering the payment of a commission fee. In practice, if an end user subscribes to a premium version of a music streaming app following a link-out within 7 calendar days, the music streaming service provider will pay the commission fee every time the subscription automatically renews (typically every month) for as long as the end user is subscribed to the premium version of the app.

(41) Under the New Music Streaming Business Terms, Apple imposes several conditions on music streaming app developers that want to offer their end users the possibility to link-out, some of which differ from the conditions for steering as set out in the New Business Terms[47]:

(a) the link provided by the music streaming app developer can only direct the end user to the developer's website without any redirect or intermediate links or landing page;

(b) the link must open a new window in the default browser on the device; it may not open a web view and may not include additional data in the URL;

---

42 Button which, when clicked, would prompt the app developer to send an email to the end user with additional information (for instance, about promotions).

43 See "Distributing music streaming apps in the EEA that provide an external purchase link", accessible here: https://developer.apple.com/support/music-streaming-services-entitlement-eea/ (accessed on 17 May 2024), […].

44 Music Streaming Addendum, section 2.2, […].

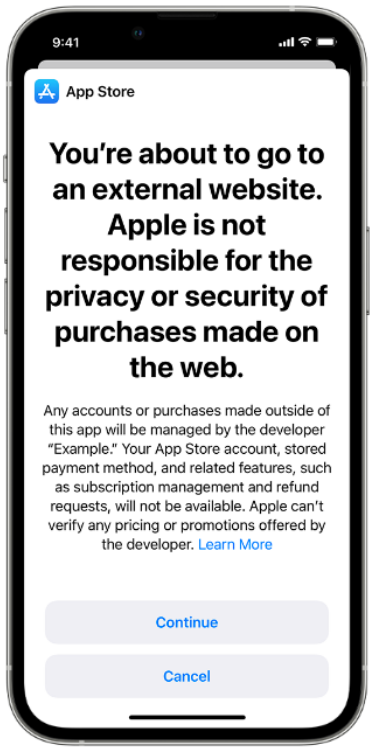
45 Music Streaming Services Entitlement Addendum for EEA Apps, version of 29 April 2024, […].

46 This fee is reduced to 12 % if the app developer is part of the App Store Small Business Program. The fee is also 12 % in the event of auto-renewal during the second year or later of an auto-renewing subscription. [...], under '*Commission, transaction reports, payments, and taxes*'.

47 […]. See also Music Streaming Addendum, section 3, […].

(c) music streaming app developers can only link-out to five destination URLs per storefront;

(d) when an end user taps on a link in the developer's music streaming app to make a purchase on the developer's website, the app developer must display a disclosure sheet within its app explaining to the end user that s/he will be accessing that website to make a purchase through a source other than Apple (i.e., an obligation for the app developer to display a disclosure sheet)[48]. The disclosure sheet is illustrated below[49].



4.4. Apple's announcement of 8 August 2024 regarding its steering rules

(42) On 8 August 2024, Apple announced further possible changes to its App Store business terms (the "8 August 2024 Draft Terms")[50].

(43) The 8 August 2024 Draft Terms provide that app developers can:

(a) communicate and promote offers for purchases available at a destination of their choice, including an alternative app store, another app, or a website, and the offer can be accessed outside the app or via a web view that appears in the app;

(b) design and execute within their apps the communication and promotion of offers. This includes providing information about prices of subscriptions or any other offer available both within or outside the app, and providing explanations or instructions about how to subscribe to offers outside the app;

(c) choose to use an actionable link that can be tapped, clicked, or scanned, to take users to their destination;

(d) use any number of URLs;

48 […], under "*Displaying the disclosure sheet*". See also Music Streaming Addendum, section 3.3, […].
49 […].
50 […].

(e) implement links with additional data, redirects, and intermediate links to landing pages.

(44) The 8 August 2024 Draft Terms also contain a new fee structure whereby app developers offering the possibility to steer may be subject to an "initial acquisition fee" and a "store services fee".

(45) Apple sought public feedback on those possible changes from 8 August 2024 onwards. At the time of adoption of this Decision, Apple has not implemented those changes to date and the 8 August 2024 Draft Terms are therefore not in force.

(46) This Decision does not assess the effective compliance of the 8 August 2024 Draft Terms with Article 5(4) of Regulation (EU) 2022/1925.

5. ASSESSMENT UNDER ARTICLE 29 OF REGULATION (EU) 2022/1925

5.1. Preliminary remarks

(47) Apple appears to acknowledge that some of its App Store business terms do not ensure effective compliance with Article 5(4) of Regulation (EU) 2022/1925[51], but it argues that "*Apple's terms should properly be considered as a package of terms, where all developers have the option to use these additional ways to communicate and promote offers if they choose*."[52].

(48) This argument cannot be accepted.

(49) In particular, Apple is wrong in claiming that offering one set of App Store business terms allowing for steering and steered transactions makes up for the lack of steering options in the other App Store business terms that can also be used by the app developers.

(50) First, all App Store business terms should individually comply with Regulation (EU) 2022/1925. That Regulation was adopted to address, among other things, the unfair practices of gatekeepers and it is the duty of the gatekeeper to ensure that it does not prevent any of its users from fully exercising their rights under that Regulation. It would defeat the purpose of Regulation (EU) 2022/1925 to allow a gatekeeper to maintain any such unfair practices on the basis that its users would have elected to submit to such practices.

(51) Second, Apple is not giving a genuine option to app developers as the choice between the different sets of business terms and conditions is not neutral. Thus, adhering to the New Business Terms entails financial costs, such as the payment of the CTF, which is not due under the Old Business Terms, therefore creating additional disincentives for app developers to opt for the New Business Terms[53].

(52) Third and in any event, as explained in the subsections below, none of the applicable business terms and conditions are compliant with Article 5(4) of Regulation (EU) 2022/1925. Under the Original Business Terms, there is no possibility for app developers to use any kind of steering within the app and Apple does not contest that those terms accordingly do not comply with Article 5(4) of Regulation (EU) 2022/1925. Under the New Business Terms (or, for some app developers, the New

---

51 See for instance the title of Section D of Apple's response to the Preliminary Findings, referring to "*business terms that do not allow access to some Article 5(4)) Solutions*".

52 Apple's response to the Preliminary Findings, […], paragraph 199.

53 See in this regard Commission Decision C(2024) 4509 final of 24 June 2024 in Case DMA. 100206 – Apple – new business terms.

Music Streaming Terms), the steering provided for does not comply with Article 5(4) of Regulation (EU) 2022/1925 in view of the many restrictions imposed by Apple in this regard.

(53) Consequently, it is appropriate to assess whether each of the three sets of business terms comply with Article 5(4) of Regulation (EU) 2022/1925 separately.

5.2. The Original Business Terms do not comply with Article 5(4) of Regulation (EU) 2022/1925

(54) It follows from the wording of the DPLA and of the Guidelines, reproduced in recitals (29) to (31) of this Decision, that, contrary to Article 5(4) of Regulation (EU) 2022/1925, the Original Business Terms do not allow for any steering by app developers whatsoever.

(55) Under the Original Business Terms, as explicitly acknowledged by Apple, "*Apple's App Store […] limits the in-app promotion and communication of offers available outside of an app to end users.*"[54] and "*Apple has always prevented developers from incorporating in-app advertising encouraging users to make a purchase outside of the App Store. This includes calls to action such as buttons that link to a website or other external links in-app.*"[55]. Accordingly, the Original Business Terms prohibit app developers from directing end users, from within apps downloaded from the App Store, to offers outside of these apps in order to conclude contracts, such as by using hyperlinks to external purchasing methods outside the app, "buy buttons" or "email me buttons". App developers are also prohibited from any sort of communication and promotion within the app regarding offers outside the app. For example, they are not allowed to have "calls to actions" or messages within the app informing end users that cheaper or better deals exist outside the app. Finally, app developers are also prohibited from concluding contracts within the app via web view.

(56) The Commission therefore concludes that Apple, with the Original Business Terms, does not comply with Article 5(4) of Regulation (EU) 2022/1925, since those terms completely prevent app developers from communicating and promoting, within the app, offers that can be purchased outside the app, and to conclude contracts with acquired end users following such communication or promotion of offers, either within or outside the app. This is not contested by Apple.

5.3. The New Business Terms do not comply with Article 5(4) of Regulation (EU) 2022/1925

(57) The Commission finds that Apple, with the New Business Terms, does not comply with Article 5(4) of Regulation (EU) 2022/1925, since those terms (i) restrict the app developers' ability to communicate and promote offers in the app regardless of whether, for that purpose, they use the App Store; and (ii) do not allow app developers to conclude contracts "free of charge" and instead impose a fee for steered transactions, without merely seeking a remuneration for facilitating the initial acquisition of the end user by the app developer. The Commission's reasoning in support of each of these findings are set out in the subsections below.

(58) As a preliminary remark, the Commission recalls, as explained in recital (37) of this Decision, that, for app developers adhering to the New Business Terms, the DPLA and the Guidelines continue to apply alongside the Addendum for matters not

---

54 Apple Compliance Report, Annex 5 to Section 2 – Art. 5(4) DMA, page 34, paragraph 4, […].

55 Apple Compliance Report, Annex 5 to Section 2 – Art. 5(4) DMA, page 35, paragraph 7, […].

covered by the Addendum (and where they do not conflict with the Addendum). To the extent that the Addendum only allows app developers to link-out to a website that the developer owns or has responsibility for (subject to the corresponding Commission Fee charged by Apple), the DPLA and Guidelines continue to govern all other ways by which app developers may communicate, promote offers and conclude contracts with acquired end users. As explained in Section 5.2 of this Decision, the DPLA and the Guidelines do not at all allow app developers to communicate, promote offers, and conclude contracts with end users following steering, regardless of the choice of distribution channel, and to engage in any form of communication and conclusion of contracts for that purpose, contrary to what Article 5(4) of Regulation (EU) 2022/1925 requires. This is sufficient to find that the New Business Terms do not comply with Article 5(4) of Regulation (EU) 2022/1925.

5.3.1. Apple does not allow business users to communicate and promote offers

5.3.1.1. The Commission's position

(59) Article 5(4) of Regulation (EU) 2022/1925 obliges a gatekeeper to allow business users, free of charge, to communicate and promote offers to end users acquired via its CPS or through other channels (and to conclude contracts with end users), regardless of whether, for that purpose, they use the CPS of the gatekeeper or not. Recital 40 of Regulation (EU) 2022/1925 explains, in this respect, that app developers should be free to promote and choose the distribution channel that they consider most appropriate for the purpose of interacting with end users, to promote offers and to engage in *"any form of communication"* with end users.

(60) The Commission is of the view that app developers distributing their apps through the App Store should be free to decide how they communicate with end users and promote any offers to them, including under different conditions (for instance, at different prices), and to choose the distribution channel they consider the most appropriate for that purpose. The gatekeeper should in turn ensure, as part of its compliance with Article 5(4) of Regulation (EU) 2022/1925, that business users and end users are allowed in practice, including technically and contractually, to avail themselves of the rights resulting from that provision.

(61) Article 5(4) of Regulation (EU) 2022/1925 guarantees business users this ability *"regardless of whether, for that purpose they use the core platform services of the gatekeeper"*. Accordingly, the Commission is of the view that this provision does not distinguish between communications and promotions of offers (and conclusion of contracts following steering) taking place within or outside the app. Gatekeepers should allow such communications, promotions (and conclusion of contracts following steering), free of charge, irrespective of where they take place, within or outside the app. This is confirmed by recital 40 of that Regulation, which specifically refers to the "*promotion of offers, including through a software application*" of the app developer, providing that end users should be *"free (...) to enter into contracts with [business users] either through the core platform services of the gatekeeper, if applicable, or from a direct distribution channel of the business user or another indirect channel that such business user uses"*.

(62) Unless a distribution channel or form of communication or promotion is explicitly excluded from the scope of Article 5(4) of Regulation (EU) 2022/1925, and there is nothing in that provision that would suggest that that is the case, gatekeepers should allow app developers to use any channel or form of communication or promotion of their liking to engage with end users.

(63) The Commission further notes that there is no security exception in Article 5(4) of Regulation (EU) 2022/1925. Indeed, Article 5(4) of Regulation (EU) 2022/1925, in contrast to certain other provisions of that Regulation, such as Article 6(3), (4) or (7), does not explicitly provide that the gatekeeper may take restrictive measures to protect security when complying with its obligation under that provision. The absence of such a security exception in Article 5(4) of Regulation (EU) 2022/1925 suggests that the legislature did not consider that the implementation of Article 5(4) of Regulation (EU) 2022/1925 could entail security risks which would merit such an exception. In any event, any alleged security considerations could only justify restrictions on the freedom to communicate, promote offers and conclude contracts as required by Article 5(4) of Regulation (EU) 2022/1925 if such restrictions are objectively necessary and proportionate to protect the end user's security. Apple has not substantiated any security considerations, leave alone how these would be objectively necessary and proportionate for the claimed purpose.

5.3.1.2. Apple's arguments

(64) Apple contests the Commission's interpretation of the scope of Article 5(4) of Regulation (EU) 2022/1925. According to Apple, it is only "*required to allow developers an effective possibility to communicate with end users and promote offers outside the App Store. Apple is also required to allow developers to contract with end users outside of the app*."[56]. Apple argues that the Commission wrongly seeks to "*enlarge the scope of a straightforward provision into a much more complex means of control over the App Store – preventing Apple from exercising any control over the means or content of communications / promotions, and going beyond that, to require technical facilitation to enable contracting and a 'seamless' user experience.*"[57].

(65) First, regarding the meaning of "*allow*", Apple argues that it is "*required to 'allow' developers to contract with end users within or outside of the app, as it has always done*" and not to "*technically enable or actively facilitate the transfer of end users from an app to an environment outside the app*."[58]. In other words, Apple simply has "*to give permission for someone to do something*."[59]. Apple further claims that what it is "*required to do is to give developers the possibility to convey information (including about offers) and (by reference to the 'conclusion of contracts') to reach agreements.*"[60]. Similarly, according to Apple, Article 5(4) of Regulation (EU) 2022/1925 only has the purpose to "*ensure that gatekeepers allow (i.e., give the possibility for) business users to conclude agreements with end users*" but does not "*require Apple to permit every means for reaching an agreement and does not seek to add any other requirement*"[61].

(66) Apple contends that its view that it is not required to technically enable any additional methods of communication and promotion under Article 5(4) of Regulation (EU) 2022/1925 is supported by the language used in Article 6(3) and (4) of that Regulation, which, according to Apple, contains an obligation to facilitate, contrary to Article 5(4)[62].

---

56 Apple's response to the Preliminary Findings, […], paragraph 126.
57 Apple's response to the Preliminary Findings, […], paragraph 127.
58 Apple's response to the Preliminary Findings, […], paragraphs 130 and 131.
59 Apple's response to the Preliminary Findings, […], paragraph 133.
60 Apple's response to the Preliminary Findings, […], paragraph 132.
61 Apple's response to the Preliminary Findings, […], paragraphs 142 and 143.
62 Apple's response to the Preliminary Findings, […], paragraph 147.

(67) Second, regarding the meaning of *"communicate"* and "*promote*", Apple argues that "*communicate"* means *"allowing developers to convey information to end users.*"[63] and "promote" would be "*a more specific form of "communicate"*"[64], i.e. a "*commercial communication*" as defined under the Digital Services Act[65]. For Apple, "*Article 5(4) is therefore concerned with allowing […] developers to convey information to end users, including information that encourages end users to take up offers. It does not require Apple to permit every communication or promotion. It does not require the provision of particular technology to transmit or convey that information.*"[66].

(68) According to Apple, the above would demonstrate that "*Article 5 obligations are intended to be self-executing and straightforward. […] It is consistent with the self-executing nature of Article 5(4) that this provision should be interpreted in a straightforward manner*"[67]. The Commission's interpretation adds "*technical complexity*"[68] and would be inconsistent with the scope of Article 5(4) of Regulation (EU) 2022/1925.

(69) Third, Apple argues that the lack of any security exception in Article 5(4) of Regulation (EU) 2022/1925, contrary to Article 6(3) and (4) of that Regulation, means that Apple should be allowed to impose restrictions on app developers' ability to steer and conclude steered transactions[69]. Those restrictions would be required to safeguard end users' security.

(70) In view of the above, Apple concludes that the Commission's "*sweeping interpretation of the communication / promotion and contracting obligation in Article 5(4) goes significantly further than the text of the provision, and is not supported by the context or the legislative history*."[70].

5.3.1.3. The Commission's assessment of Apple's arguments

(71) The Commission considers that none of Apple's arguments described in recitals (64) to (70) of this Decision convincingly put into question the Commission's assessment as described in Section 5.3.1.1 of this Decision.

(72) First, regarding Apple's interpretation of 'allowing', pursuant to Article 8(1) of Regulation (EU) 2022/1925, the measures implemented by the gatekeeper to ensure compliance with their obligations under Articles 5, 6 and 7 of that Regulation are to be effective in achieving the objectives of the Regulation and of the relevant obligation. The relevant test to establish compliance is therefore not whether steering and steered transactions are theoretically permitted by Apple's terms and conditions, but whether Apple allows in practice, including through contractual or technical means, business users to steer acquired end users.

---

63 Apple's response to the Preliminary Findings, […], paragraph 136.

64 Apple's response to the Preliminary Findings, […], paragraph 138.

65 Apple's response to the Preliminary Findings, […], paragraph 138c. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ L 277, 27.10.2022, p. 1, ELI: http://data.europa.eu/eli/reg/2022/2065/oj).

66 Apple's response to the Preliminary Findings, […], paragraph 139.

67 Apple's response to the Preliminary Findings, […], paragraphs 145 and 146.

68 Apple's response to the Preliminary Findings, […], paragraph 146.

69 Apple's response to the Preliminary Findings, […], paragraph 128.

70 Apple's response to the Preliminary Findings, […], paragraph 159.

(73) If an app developer wants to engage in a specific form of communication and conclusion of contracts following steering, whether within or outside the app, then Apple shall *"allow"* it to do so. This means that Apple should not do anything that would prevent that this specific form of communication or contracting effectively works. For instance, if app developers want to use a particular technology or means in order to inform users, Apple must ensure that end users will see the information in the way intended by the app developer. If, for example, the app developer wants to inform users via a pop up message with sound explaining what actions the user should follow in order to benefit from a promotion, then Apple should ensure that the end user is actually shown that pop up message with sound explaining what actions s/he should follow in order to benefit from a promotion. Any other interpretation would mean that Apple could undermine the effectiveness of the obligation laid down in Article 5(4) of Regulation (EU) 2022/1925.

(74) The Commission considers that the fact that Article 6(3) and (4) of Regulation (EU) 2022/1925 specifically refers to technically enabling the un-installation of software applications and installation and effective use of third-party software applications or software application stores respectively does not exclude that gatekeepers may be required to ensure, as part of their compliance with other obligations in Articles 5, 6 and 7 of Regulation (EU) 2022/1925, that business users and end users are technically allowed to avail themselves of the rights resulting from those obligations. If the opposite were the case, the objective of Regulation (EU) 2022/1925 and the obligations therein would be rendered ineffective for the reasons explained in recitals (59) to (62) and (72) to (73) of this Decision. The fact that Article 6(3) and (4) of Regulation (EU) 2022/1925 specifically refers to technical enabling merely reflects the fact that compliance with those two provisions may require significant technical changes from gatekeepers due to the technical nature of operating systems in controlling the basic functions of the hardware or software and enabling software applications to run on it. By contrast, in the context of Article 5(4) of Regulation (EU) 2022/1925, fewer technical changes may be required from the gatekeeper than under Article 6(3) and (4) since the way in which the app developer wants to communicate, promote and allow the conclusion of contracts with end users following steering is already coded in the app itself.

(75) Second, regarding Apple's interpretation of 'communication' and 'promotion', recital 40 of Regulation (EU) 2022/1925 explains that app developers and acquired end users should be able to choose and promote the distribution channel of their choice and engage in any form of communication and promotion. It follows that communications and calls for actions promoting certain distribution channels may not be restricted by Apple in any way. Further, neither Article 5(4) of Regulation (EU) 2022/1925 nor recital 40 of that Regulation indicate that the term *"communicate"* should be limited, as claimed by Apple, to "commercial communications" as defined in Directive 2000/31/EC[71] which has also been included in Regulation (EU) 2022/2065. The fact that the proposals for Regulation (EU) 2022/1925 and Regulation (EU) 2022/2065 were published by the Commission on the same date does not change the fact that those are separate regulations pursuing different objectives. Accordingly, there is no basis for Apple's claim that Article 5(4)

[71] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ L 178, 17.7.2000, p. 1, ELI: http://data.europa.eu/eli/dir/2000/31/oj).

and recital 40 of Regulation (EU) 2022/1925 should be interpreted in view of the concept of *"commercial communications"* as contained in Regulation (EU) 2022/2065, to which Article 5(4) and recital 40 of Regulation (EU) 2022/1925 moreover do not refer.

(76) For the reasons set forth in recital (62) of this Decision, gatekeepers should allow app developers in practice (i.e. including technically and contractually) to use any channel or form of communication or promotion of their liking to engage with end users.

(77) On that basis, contrary to what Apple claims[72], 'email me buttons', 'buy buttons' and 'link outs' should be allowed since they are ways for app developers, not only to communicate information to end users but also, if not mainly, to promote offers to end users. They are calls for action promoting certain channels for the distribution of digital content and the conclusion of contracts following steering. For example, Apple itself refers to buttons and external links as a form of call to action targeting end users[73].

(78) In this respect, the legal context in which Article 5(4) of Regulation (EU) 2022/1925 must be interpreted does not support Apple's argument. The Commission notes that there is no definition nor reference in Regulation (EU) 2022/1925 to *"self-executing"* provisions. The fact that the obligation laid down in Article 5(4) of Regulation (EU) 2022/1925 is, in principle, not qualified as an obligation susceptible of being further specified does not entail that it needs to be interpreted differently to any other provision of that Regulation. As set out in Section 5.3.1.1 of this Decision, Article 5(4) of Regulation (EU) 2022/1925 and recital 40 of that Regulation, support the Commission's interpretation that app developers should be effectively allowed in practice to engage in any form of communication and promotion with their acquired end users.

(79) Third, the Commission considers that Apple's concerns on possible security exceptions in relation to the purported *"self-executing"* nature of Article 5(4) of Regulation (EU) 2022/1925 are unfounded. Apple has not substantiated any security concerns. Apple simply states that some limitations, such as linking out only to a website that the app developer owns or has responsibility for, are allegedly grounded in security reasons. However, Apple does not explain why the app developer's website is more secure than a third party website which the app developer has taken the conscious decision to link out to. It also does not explain why this limitation is objectively necessary and proportionate to protect the end user's security and therefore has not provided any adequate justifications in this regard.

5.3.2. Apple does not allow business users to conclude contracts regardless of the distribution channel

5.3.2.1. The Commission's position

(80) For the same reasons as set out in Section 5.3.1.1, app developers should be free to engage, as mentioned in recital 40 of Regulation (EU) 2022/1925, in *"any form of […] conclusion of contracts"* with acquired end users following steering.

(81) As mentioned in recitals (60), (62), (72) and (73) of this Decision, gatekeepers need to allow in practice, including technically and contractually, the conclusion of

[72] Apple's response to the Preliminary Findings, […], paragraph 166, 168 and 169.

[73] See Sections 3.1.1. and 3.1.3. of the Guidelines.

contracts following steering without any obstacles. Read in conjunction with the preceding requirement that gatekeepers shall allow the communication and promotion of offers, this means that gatekeepers shall effectively allow the promotion of certain channels or modalities for the conclusion of contracts following steering with end users. For example, if an app developer wants to allow the conclusion of a contract following steering via web view (for instance, because the user experience is better), then Apple should allow it.

(82) Moreover, the fact that Article 5(4) and recital 40 of Regulation (EU) 2022/1925 do not specify the means of contracting which must be allowed by the gatekeeper does not mean that the gatekeeper is allowed to restrict certain types of contracting.

(83) Similarly, Article 5(4) of Regulation (EU) 2022/1925 does not differentiate between the conclusion of contracts following steering within or outside the app. App developers should not be restricted in their capacity to, for instance, promote offers within the app and to conclude contracts within the app[74], if they so wish. Recital 40 of Regulation (EU) 2022/1925 makes clear that app developers should be free to steer acquired end users "*including through a software application of the business user*". Therefore, app developers cannot be prevented from concluding contracts within the app.

(84) Finally, the Commission's position set out in recitals (62) and (63) of this Decision also applies in relation to the conclusion of contracts following steering.

5.3.2.2. Apple's arguments

(85) Apple argues that it should "*merely […] allow (i.e., give the possibility for) business users to conclude agreements with end users*"[75] and that "*allowing the conclusion of contracts is clearly different to enabling or facilitating the means of contracting or enabling or facilitating the movement of an end user from operating in-app to engaging with an environment outside the app*."[76]. On the contrary, Article 5(4) of Regulation (EU) 2022/1925 "*does not extend to means of contracting*"[77]. Apple also argues that Article 5(4) cannot be read as allowing transactions following steering to take place within the app[78].

5.3.2.3. The Commission's assessment of Apple's arguments

(86) It follows from Section 5.3.2.1 that it is for the app developer and the end user to choose the form of contracting, not for the gatekeeper.

(87) If Apple were permitted, in its terms and conditions and in practice, to restrict (or effectively refuse to allow) the ways in which business users and acquired end users can conclude contracts, this would enable it to undermine the application of Article 5(4) of Regulation (EU) 2022/1925 and undermine the effectiveness of that provision. Article 5(4) of Regulation (EU) 2022/1925 does not allow for any restriction imposed by the gatekeeper on the business users' and acquired end users' choice of distribution channels, including as regards the means and form of contracting.

---

74 In this context, and as explained in recital (24) of this Decision, 'within the app' means the conclusion of a contract, within the app (for instance, via web view), following steering. This scenario should not be confused with the purchase of digital goods or services, within the app, using Apple's IAP.

75 Apple's response to the Preliminary Findings, […], paragraph 141.

76 Apple's response to the Preliminary Findings, […], paragraph 142.

77 Apple's response to the Preliminary Findings, […], paragraph 143.

78 Apple's response to the Preliminary Findings, […], paragraph 165.

(88) For the same reasons, Apple is also mistaken in arguing that it "*cannot be required under Article 5(4) to 'allow' '' in app contracting*"[79].

(89) It follows from the principles set out in recital (83) of this Decision that app developers cannot be prevented from concluding contracts following steering within the app. Allowing only steering and steered transactions outside the app is not sufficient to comply with the obligation set out in Article 5(4) of Regulation (EU) 2022/1925.

5.3.3. Assessment of Apple's restrictions to steering and steered transactions under the New Business Terms.

5.3.3.1. The Commission's position

5.3.3.1.1. Apple's restriction regarding the destination page after a link-out

(90) First, Apple's requirement under the New Business Terms that app developers may only link-out to a website that these developers own or for which they have responsibility does not comply with Article 5(4) of Regulation (EU) 2022/1925. Such a requirement restricts the app developers' ability to freely communicate, promote offers and conclude contracts with end users because it limits app developers' and end users' freedom to use any alternative distribution channel of their choice.

(91) In this respect, the Commission takes the view that for app developers to be able to freely choose via which distribution channel they communicate and promote their offers, they should be able to redirect their end users to any alternative distribution channel of their choice. This means that linking-out should not be limited to a website which the app developer owns or for which it has responsibility. Indeed, alternative distribution channels for app developers to communicate, promote offers, and conclude contracts with their end users may also consist of access through any app stores of that app developer, or third party app stores, third party websites or, as clarified by recital 40 of Regulation (EU) 2022/1925, any other indirect channel that the app developer does not own but chooses to use, including where apps may be available for downloading.[80]

(92) Second, Apple's restriction on app developers to only link-out to one URL per Union storefront, per app, amounts to an unjustified restriction of those app developers' ability to engage in "*any form of communication and conclusion of contracts*" with end users within their apps, as mentioned in recital 40 of Regulation (EU) 2022/1925. For app developers to be able to freely choose how they communicate and promote their offers, they should not be limited in the number of URLs to which they can link end users.

(93) That restriction imposed by the New Business Terms effectively limits the number of specific offers to which an app developer can link-out. Indeed, linking-out to a page of their choice is one of several ways in which app developers can communicate,

---

79 Apple's response to the Preliminary Findings, […], paragraph 165.

80 This does not, however, mean that Apple is necessarily entitled to charge a fee for initial acquisition when steering to destinations where apps may be downloaded. Any such steering, including to alternative app stores and apps distributed through alternative app stores, must also be free of charge, as set out below in Section 5.3.4 of this Decision. In this context, the Commission further notes that whether a gatekeeper is entitled to charge an initial acquisition fee and / or other fees in case of such steering has to be assessed in light of the specific circumstances of the steering at issue, and in particular in light of whether the gatekeeper in such cases has actually facilitated the initial acquisition of an end user that has not previously been acquired by the app developer.

promote offers, and conclude contracts with those end users. Where app developers have multiple offers to promote to end users, the limitation of one URL per Union storefront means that app developers would be required to link-out those end users to a single general page containing those multiple offers per Union storefront, rather than being able to tailor their communication and promotion to different and specific offers.

(94) That same restriction may increase the number of steps an end user must take before being able to navigate to the specific offer promoted by the app developer and taking a specific action or conclude a contract, as this general page may contain information that is unrelated to the specific offer that the developer is promoting. This makes the process of promoting offers and concluding contracts unduly difficult for app developers, as well as for end users who they need to navigate to a specific offer and subsequently navigate to a payments page to purchase digital goods or services, as opposed to being able to access the specific offer or purchase such digital goods or services directly following a link out.

(95) Consequently, the restriction regarding the number of URLs makes the steering process unduly difficult, thereby reducing the attractiveness of the linking-out functionality as compared to using the App Store as a distribution channel, since the latter allows end users to perform a specific action promoted by the app developer with fewer steps. Without being able to link-out end users to multiple pages of their choice, app developers are deprived from directly interacting with their customers in the way they deem most appropriate. Apple's New Business Terms therefore prevent app developers from choosing their preferred distribution channel and engaging in *"any form of communication"* of their choice with their end users.

(96) Further, Apple has provided no justification why the limit to the number of links app developers can include in their app is objectively necessary and proportionate, beyond a mere assertion that each link requires vetting during the 'App Review', to protect end users.

(97) Third, under the New Business Terms, Apple explicitly prohibits app developers to open a web view after a link-out in their app[81]. Web view is a technology that apps leverage to display web content more conveniently, thus avoiding that the navigation of web content becomes unduly difficult for end users.

(98) The Commission takes the view that such a prohibition amounts to an unjustified restriction of app developers' ability to communicate, promote offers and conclude contracts with end users. For app developers to be able to choose freely the distribution channel through which they communicate and promote offers, they should also be able to direct end users to a page displayed via web view.

(99) In addition, such a prohibition makes the process of accessing and benefiting from promoted offers and concluding contracts following steering unduly difficult for end users. Article 5(4) of Regulation (EU) 2022/1925 requires Apple to allow the promotion of offers and the conclusion of contracts following steering regardless of whether for that purpose the App Store is used or not. Recital 40 of Regulation (EU) 2022/1925 explains that this promotion of offers can also occur "*through a software application of the business user*", which, read in conjunction with Article 13(4) of Regulation (EU) 2022/1925, means that the process of benefiting from promoted offers and concluding contracts should not be unduly difficult for end users. Thus,

81 Addendum, Section 3.3.B. […].

preventing web view goes against the objective of Article 5(4) of Regulation (EU) 2022/1925, as specified in recital 40 of that Regulation, namely to allow app developers to be free to promote and choose the distribution channel that they consider the most appropriate for interacting with end users.

(100) Similarly to the restriction regarding the number of URLs, prohibiting web view makes the process of accessing and benefiting from promoted offers and concluding contracts unduly difficult for end users. Indeed, web view is one of the many forms of communication and conclusion of contracts following steering that app developers can engage in with end users. Gatekeepers should thus allow app developers to use that channel or form of communication to engage with end users.

5.3.3.1.2. Apple's disclosure sheet after a link-out

(101) The Commission takes the view that Apple's repeated imposition of the disclosure sheet after every link-out, reproduced in recital (36)(d) of this Decision, constitutes an unjustified restriction on the developer's ability to freely communicate, promote offers and conclude contracts with end users. It also disincentivises app developers and end users from using any alternative distribution channel for communicating and promoting offers and/or from interacting and transacting. The imposition of such a disclosure sheet, in particular its wording, makes the exercise of the rights provided by Article 5(4) of Regulation (EU) 2022/1925 unduly difficult for both app developers and end users.

(102) First, the requirement for the app developers to display a standard disclosure sheet every time[82] end users click on "Continue" after a link-out restricts app developers' ability to freely engage in *"any form of communication and conclusion of contracts"* with their end users and makes the conclusion of a contract after linking-out unduly difficult for end users. In particular, there does not appear to be any need for a frequent and recurrent display of such a disclosure sheet, which is presented every time an end user links-out, since an end user that has previously linked-out will already have seen the disclosure sheet and will thus have been sufficiently informed that clicking on "Continue" results in leaving the App Store.

(103) Second, Apple's design and wording of the disclosure sheet is not neutral and objective and thereby may deter end users from exercising their right under Article 5(4) of Regulation (EU) 2022/1925. In particular, by emphasising in bold lettering and in a distinctly bigger font that "*You're about to go to an external website. Apple is not responsible for the privacy or security of purchases made on the web*", Apple suggests that end users run a risk by linking-out, rather than to inform the end users simply and in a neutral and objective manner that s/he will be transacting with the app developer directly instead of with Apple. The choice of design and wording suggests that there is an unsubstantiated risk to the privacy and security of end users outside of the App Store, for which Apple is not responsible. The mere fact that the link-out is to a third-party app developer cannot be considered as a justified reason to argue that that link-out is, for this reason alone, non-secure. Such a bias in the end-user messaging ultimately risks unfairly reinforcing Apple as a gatekeeper and limits the ability of third-party app developers to effectively steer end users.

(104) The recurrent nature of the disclosure sheet, as well as its wording and design, makes steering by business users of Apple's App Store unduly difficult, in violation of Article 5(4) of Regulation (EU) 2022/1925.

---

[82] Apple's response to RFI No 2 of 25 April 2024, submitted on 14 May 2024, paragraph 4.2, […].

5.3.3.1.3. Apple's restriction on including additional data in the URL

(105) The Commission takes the view that Apple, by preventing app developers from including additional data in the URL in the link they provide in their app for linking out, restricts app developers' ability to communicate with and promote offers to end users, including under different conditions, as well as concluding contracts with those end users, in violation of Article 5(4) of Regulation (EU) 2022/1925.

(106) As acknowledged by Apple[83], such a restriction effectively prevents app developers from pre-populating fields in the destination page (after linking out) with data from the app, such as the end user's name or e-mail address which the user has provided to the app developer. This requires the end user to re-enter the required information each time s/he links-out, for example, to make a payment outside the app. Such a requirement unduly degrades the user experience for app developers and end users using the linking-out function by making the communication and, in particular, the conclusion of contracts after linking-out unduly difficult as compared to using Apple's IAP system, which pre-populates the relevant fields prior to concluding a transaction.

(107) This restriction thus breaches Article 5(4) of Regulation (EU) 2022/1925 since, as set out in recital 40 of that Regulation, business users of the App Store should be free to interact with end users through *"any form of communication and conclusion of contracts"* of their choice.

5.3.3.2. Apple's arguments

5.3.3.2.1. Apple's restriction regarding the destination page after a link-out

(108) Apple argues that the "*requirement that the link leads to a website that the developer owns or has responsibility for limits risks to security and privacy outside the App Store environment*"[84]. Whereas Apple reviews all apps and certain activity within the app under its 'App Review' to ensure security and to fight against fraudulent and deceptive business practices, [Confidential – contains business secrets][85]. Apple argues that it "*needs to limit the number of links that an app can have per storefront given that each link requires vetting during App Review*"[86].

(109) In relation to web view, Apple argues that "*Article 5(4) does not require link outs to open in any particular manner*"[87] and that the Commission is wrong in arguing that "*web views after link outs [are] necessary to enable a 'seamless user experience'*".[88] Web views would lead to "*consumer confusion*"[89] and go against the objective of Article 5(4) of Regulation (EU) 2022/1925 since they do not encourage multi-homing.[90] They would in any event be akin to payment services which do not fall under the scope of Article 5(4) of Regulation (EU) 2022/1925[91].

---

83 Apple's response to RFI No 2 of 25 April 2024, submitted on 14 May 2024, paragraphs 3.1-3.6, […].
84 Apple's response to the Preliminary Findings, […], paragraph 189.
85 Apple's response to the Preliminary Findings, […], paragraphs 190 and 191.
86 Apple's response to the Preliminary Findings, […], paragraph 192.
87 Apple's response to the Preliminary Findings, […], paragraph 169.
88 Apple's response to the Preliminary Findings, […], paragraph 170.
89 Apple's response to the Preliminary Findings, […], paragraph 171.
90 Apple's response to the Preliminary Findings, […], paragraph 172.
91 Apple's response to the Preliminary Findings, […], paragraph 174.

5.3.3.2.2. Apple's disclosure sheet after a link-out

(110) Apple argues that showing the disclosure sheet every time after a link-out is necessary since "*end users may not necessarily remember the information provided in the disclosure sheet when only prompted once*"[92] and "*users have not been accustomed to transacting with third-parties for sales of digital goods*"[93]. Apple also claims that "*the disclosure sheets are meant to inform end users that they are not transacting with Apple, and thus help them to make an informed decision*"[94].

(111) Finally, Apple claims that the Commission "*cannot rely on arguments that Apple has not conducted any A/B testing or any third-party consultation […] regarding the wording of the disclosure sheet in order to conclude that they are not neutral*"[95].

5.3.3.2.3. Apple's restriction on including additional data in the URL

(112) Apple argues that "*requiring that the link does not pass on additional parameters helps protect end user privacy by preventing passing personal or identifying data in URLs generated by the app*"[96] since "*the open web does not require privacy or user education or information requirements*"[97]. In other words, "*[i]f apps could open URLs for link-outs that contained additional parameters then they could pass personal information about the user of the app to their website on the open web, and the user would not have any assurance about how their information would subsequently be used*"[98].

5.3.3.3. The Commission's assessment of Apple's arguments

5.3.3.3.1. Apple's restriction regarding the destination page after a link-out

(113) First, as explained in recital (63) of this Decision, there is no security exception in Article 5(4) of Regulation (EU) 2022/1925.

(114) In any event, to the extent that alleged security considerations could justify such restrictions, Apple has failed to show that the restriction regarding the destination page after a link-out is objectively necessary and proportionate to protect end user security.

(115) Apple's reply of 22 May 2024 to the Commission's RFI of 16 May 2024[99] is merely limited to stating that the link app developers provide in their app for linking-out must "*Go directly to Your website without any redirect or intermediate links or landing page.*" According to Apple, this prevents any immediate redirection, thus providing end users with transparency and confidence that the link indeed leads to the developer's website, and limiting any risks to security and privacy outside the App Store. Apple's reply does not explain, however, why security considerations require the link to lead only to the developer's website in the first place.

(116) Apple has neither elaborated in its response to the Preliminary Findings,[100] nor in its reply of 22 May 2024 to the Commission's RFI of 16 May 2024, what the purported risks alleged by Apple are, beyond mere references to possible privacy and security

92 Apple's response to the Preliminary Findings, […], paragraph 186.
93 Apple's response to the Preliminary Findings, […], paragraph 187.
94 Apple's response to the Preliminary Findings, […], paragraph 188.
95 Apple's response to the Preliminary Findings, […], paragraph 185.
96 Apple's response to the Preliminary Findings, […], paragraph 193.
97 Apple's response to the Preliminary Findings, […], paragraph 194.
98 Apple's response to the Preliminary Findings, […], paragraph 195.
99 Referred to in Apple's response to the Preliminary Findings, […], paragraph 189.
100 Apple's response to the Preliminary Findings, […], paragraphs 189, 190 and 191.

risks and a need to fight against fraudulent and deceptive business practices, and how the restriction regarding the destination page to which a developer may link out to limits those risks. In particular, Apple has not explained why it is Apple that should be responsible for assessing and ensuring app developers' compliance with applicable legislation, such as the rules on data protection or consumer protection. Apple has also not shown that there are no less far-reaching measures that could achieve the same objectives. Apple has therefore not justified why the restriction is objectively necessary and proportionate. In the absence of such justifications, the Commission considers that any possible solution to the purported risks outlined by Apple cannot be to restrict the possibility for app developers to link-out to the distribution channel of their choice, including websites of third parties or alternative app stores, without considering more proportionate measures.

(117) In addition, the Commission notes that the New Business Terms allow app developers to include only one link in their app, whereas the Music Streaming Terms allow up to five links. Apple has not explained the reason or provided any justification for this difference.

(118) Second, the Commission considers that Apple's position on web views is not supported by Article 5(4) of Regulation (EU) 2022/1925. Apple misunderstands the scope of that provision, the wording of which is clear: Apple should not restrict the app developer's freedom to engage with end users in any manner. If an app developer believes that the best way to communicate, promote or conclude contracts with its end users is via web views, Apple cannot restrict that choice and there is nothing in Regulation (EU) 2022/1925 that would justify such restriction. The point is therefore not whether end users should be offered a seamless user experience, but that Apple should not restrict the developer's choice to communicate, promote or conclude contracts with end users in any manner.

(119) Apple's argument regarding the risk of confusion is also not supported. Apple already displays a disclosure sheet informing end users that they are transacting with the app developer and not with Apple (see Section 5.3.3.1.2 and 5.3.3.3.2 of this Decision). There is no risk of confusion if end users are duly informed about the consequences of their choices via such disclosure sheet. As stated by Apple, the intended effect of the disclosure sheet is "*that consumers understand that they are making a conscious decision to leave the App Store and that a subsequent purchase isn't backed by Apple*"[101]. An additional restriction on the type of communication (including web view), which allegedly pursues the same objective, therefore is neither objectively necessary to inform and protect end users appropriately of the alleged security risks involved in linking-out, nor proportionate in view of that objective.

(120) Third, Apple is also wrong in stating that Article 5(4) of Regulation (EU) 2022/1925 is not concerned with payment services. To the extent that app developers are entitled by that provision to conclude contracts with end users, free of charge, this provision also prevents the gatekeeper from imposing any restrictions as regards the means of payment for the purchase by the end user.

[101] Apple Compliance Report, Annex 5 to Section 2 – Art. 5(4) DMA, page 35, paragraph 10, third bullet point, […].

5.3.3.3.2. Apple's disclosure sheet after a link-out

(121) The Commission agrees that a disclosure sheet may be shown to end users, where appropriate, since it can help those users make an informed decision.

(122) However, Apple's argument that the recurrent presentation of the disclosure sheet would be necessary to inform end users as they may not remember the information that they were previously shown is unsupported and cannot be accepted. The Commission considers that end users making several purchases following steering, such as whilst playing a mobile game, are unlikely to forget information that they have been distinctively shown. Displaying the disclosure sheet every time end users are linked-out does not translate into end users making a more conscious and more informed decision, as compared to if they would be shown such a disclosure sheet the first time that they are linked out. On the contrary, it strengthens Apple's non-neutral and non-objective message shown on the disclosure sheet (as explained below) and its multiples step process, which restricts the ability of end users to effectively avail themselves of the opportunities provided by Article 5(4) of Regulation (EU) 2022/1925. Following Apple's logic, the disclosure sheet should not be shown each time the end user wants to link-out, but only when sufficient time has passed between two link-outs, in the event the end user may have forgotten the information s/he was shown during the first link-out. However, no analysis supporting such a claim was presented by Apple.

(123) Apple states that the disclosure sheet provides factual information and clarifies that Apple cannot verify the security or privacy of the purchase, and that certain Apple features will not be available for such purchases[102]. However, the tens of thousands of apps distributed through the App Store that sell "non-digital" goods and services and that already use third-party payment systems (that is to say the end user does not transact with Apple) are not required to present such a disclosure sheet at all[103].

(124) In that respect, Apple argues that, contrary to physical goods, end users have not been accustomed to transacting with third parties for sales of digital goods. This argument may support the need for Apple's informative display of disclosure sheet, however it does not support Apple's claim that the end users should be informed more than once about leaving the App Store, as otherwise they may not remember their previous consent. The end users, including those not accustomed to transacting with third-parties for the sale of digital goods, are sufficiently informed about leaving App Store the first time they do so.

(125) Apple's claim that the Commission "*cannot rely on arguments that Apple has not conducted any A/B testing or any third-party consultation […] regarding the wording of the disclosure sheet in order to conclude that they are not neutral*"[104] cannot be accepted. As stated in recital (121) of this Decision, the Commission does not take issue with the informative nature of a disclosure sheet as such. Nevertheless, to the extent Apple claims that a disclosure sheet is necessary and proportionate in the given circumstances, it is for Apple to put forward a thoroughly conducted analysis sustaining its argument. Apple has neither conducted any A/B testing, nor any other testing or consultation which could give support to its claim that the design and wording of the disclosure sheet is appropriate to inform users in a neutral and objective way, and that it does not make the link-out unnecessarily burdensome (as

102 Apple's response to RFI No 2 of 25 April 2024, submitted on 14 May 2024, paragraph 4.1, […].
103 Apple's response to RFI No 2 of 25 April 2024, submitted on 14 May 2024, paragraph 4.4, […].
104 Apple's response to the Preliminary Findings, […], paragraph 185.

explained below)[105]. Apple has failed to put forward any such substantiated analysis, other than stating that those sheets help users make a choice.

(126) Finally, Apple's claim that the objective of the disclosure sheet is to inform end users that they are not transacting with Apple does not convince. Prompting users with, for example, a message in a distinctly bigger font stating that "*You're about to go to an external website. Apple is not responsible for the privacy or security of purchases made on the web*" (as displayed in recital (36)(d) of this Decision) does not achieve the objective of informing users in a neutral manner that they are not transacting with Apple. A message informing users that they are transacting with the developer could achieve that objective, while the message shown by Apple focuses on the fact that Apple is not responsible for privacy and security of purchases made on the web, without clarifying that the transaction is taking place with the app developer. The Commission therefore considers that such a message, while not serving its alleged purpose, can discourage end users to conclude steered transactions with app developers.

(127) It follows from the above that Apple has not justified why a disclosure sheet is necessary every time an end user links-out, nor why the disclosure sheet displayed by Apple at link-out should be displayed with the design and wording chosen by Apple.

5.3.3.3.3. Apple's restriction on including additional data in the URL

(128) As explained in recital (63) of this Decision, there is no security exception in Article 5(4) of Regulation (EU) 2022/1925.

(129) In any event, Apple's restriction on including additional data in the URL as described in Section 5.3.3.1.3 of this Decision cannot be justified by Apple's alleged aim to protect end users' privacy.

(130) To the extent that there is a legal basis for the processing of personal data under Regulation (EU) 2016/679, which is for the data controller to determine, there is no justification for restricting the inclusion of additional data in the URL. This is particularly the case since the mandatory display of the disclosure sheet upon link-out introduced by Apple (as described in recital (36)(d) of this Decision), and subject to the Commission's findings that the recurrence, wording and manner of the disclosure sheet do not comply with Article 5(4) of Regulation (EU) 2022/1925), already informs end users that they will no longer be transacting with Apple after linking out.

(131) Furthermore, it could be reasonably assumed that the data that an end user has already provided to the app developer within the app will be used by the app developer to facilitate the use of the app developer's apps and services, including the conclusion of transactions. Furthermore, any processing of personal data by the app developer is covered by Regulation (EU) 2016/679, which is enforced by national data protection authorities and not by private entities, such as Apple.

(132) The Commission considers that Apple's argument that, without restricting the inclusion of additional data in the URL, Apple would need to verify, as part of the 'App Review', every additional data that app developers pass in links to check whether they infringe end users' privacy, does not justify why the restriction is

[105] Apple confirmed that it has not conducted any A/B testing regarding the design and wording of the disclosure sheet. [Confidential – contains business secrets] ([…]).

objectively necessary or proportionate, for the reasons set out in recital (96) of this Decision.

(133) Apple's suggestion that pre-populating fields "*constitutes the facilitation of contracting*"[106] does not alter the Commission's findings. The fact that Article 5(4) and recital 40 of Regulation (EU) 2022/1925 does not specifically refer to the *"facilitation"* of contracting does not mean that the gatekeeper is allowed to restrict the means of contracting. In fact, Regulation (EU) 2022/1925 does not allow for any restriction at all in this respect.

(134) In light of the above, the Commission does not consider that Apple has provided sufficient evidence indicating that the restriction on including additional data in the URL is objectively necessary and proportionate to protect end users.

5.3.4. Apple does not allow app developers to communicate, promote offers and conclude contracts "free of charge"

5.3.4.1. Article 5(4) of Regulation (EU) 2022/1925 requires gatekeepers to allow business users to conclude contracts with end users free of charge.

5.3.4.1.1. The Commission's position

(135) Article 5(4) of Regulation (EU) 2022/1925 clearly provides that the gatekeeper cannot impose a fee for steering and for steered transactions, which must remain free of charge.

(136) That "free of charge" requirement applies not only to the communication and promotion of offers, but also to the conclusion of contracts following steering, irrespective of where those contracts are concluded.

(137) It follows from Article 5(4) of Regulation (EU) 2022/1925 and recital 40 of Regulation (EU) 2022/1925 that a gatekeeper, where applicable, may however be remunerated, directly or indirectly, for the initial acquisition of the end user by an app developer. An acquired end user is any end user who has already entered into a commercial relationship, which may be on a paid or a free basis, with the business user.

5.3.4.1.2. Apple's arguments

(138) Apple argues that the "free of charge" requirement only applies to the obligation to allow the communication and promotion of offers, but not to the conclusion of contracts[107].

(139) First, Apple bases that interpretation of Article 5(4) of Regulation (EU) 2022/1925 on the syntax of the text[108].

(140) In the first place, Apple argues that the wording used in the English language version of Article 5(4) of Regulation (EU) 2022/1925 clearly does not qualify the conclusion of contracts as "free of charge", and that, if differences between language versions of that provision exist, that provision should be interpreted in the light of the general scheme and purpose of the legislation of which it forms part[109]. According to Apple, its interpretation is allegedly supported by the French and German versions of Article 5(4) of Regulation (EU) 2022/1925.

---

106 Apple's response to the Preliminary Findings, […], paragraph 166(c).

107 Apple's response to the Preliminary Findings, […], paragraph 20.

108 Apple's response to the Preliminary Findings, […], paragraphs 20, 21 and 22.

109 Apple's response to the Preliminary Findings, […], paragraph 17.

(141) In the second place, Apple argues that "*business users should be 'free' to communicate and promote offers and enter into contracts*"[110] and that Article 5(4) of Regulation (EU) 2022/1925 "*says nothing, however, about the imposition of control over gatekeepers levying charges or commission for joint value creation through the valuable benefits that the gatekeeper provides*"[111]. In other words, Apple should be free to charge a fee for transactions concluded following steering and this would be confirmed by the fact that recital 40 of Regulation (EU) 2022/1925 does "*not use the 'free of charge' language at all*."[112]. Apple also argues that the reference to "free" in the wording of recital 40, according to which "*business users should be 'free' to communicate and promote offers and enter into contracts*", does not mean that users should not have to pay charges [113].

(142) Second, Apple claims that its interpretation of Article 5(4) of Regulation (EU) 2022/1925 is also supported by the objective and legislative history of Article 5(4) of Regulation (EU) 2022/1925[114].

(143) In the first place, Apple argues that the words *"free of charge"* in Article 5(4) of Regulation (EU) 2022/1925 apply to a specific restriction aimed at preventing circumvention. Allegedly, that is, those words prevent gatekeepers from imposing a charge on app developers for including communications and promotions. Apple argues that the inclusion of those words was a limited last minute textual addition which "*was never considered in the Impact Assessment or discussed in any of the public legislative materials*"[115], and does not aim to radically alter the nature of the business models permitted under of Regulation (EU) 2022/1925, nor is there any indication that those words seek to apply to the conclusion of contracts[116]. In this regard, Apple also argues that the Commission relied, in its preliminary findings, on a non-public version of a negotiating document to sustain its interpretation of Article 5(4) of Regulation (EU) 2022/1925[117].

(144) In the second place, Apple argues that "*Article 5 obligations – unlike the obligations in, for example, Article 6 – are meant to be self-executing in nature and not "susceptible of being further specified*"[118]. According to Apple, to the extent regulating prices charged by gatekeepers is "*an inherently complex exercise fraught with uncertainties*"[119], it cannot be that Article 5(4) of Regulation (EU) 2022/1925 aims at regulating pricing. This would be confirmed by the Annexes to the Impact Assessment, which do not include price control in the "blacklist" of gatekeeper behaviour[120]. In the same vein, Apple also criticises the Commission for imposing a "*series of complex rules and requirements that apply to the nature and level of Apple's remuneration in relation to the 'matchmaking' element*."[121]. Apple argues that its position is confirmed by Article 8(2) of Regulation (EU) 2022/1925 and the

110 Apple's response to the Preliminary Findings, […], paragraph 23.
111 Apple's response to the Preliminary Findings, […], paragraph 24.
112 Apple's response to the Preliminary Findings, […], paragraph 23.
113 Apple's response to the Preliminary Findings, […], paragraph 23.
114 Apple's response to the Preliminary Findings, […], paragraph 24.
115 Apple's response to the Preliminary Findings, […], paragraph 19.
116 Apple's response to the Preliminary Findings, […], paragraph 19.
117 Apple's response to the Preliminary Findings, […], paragraph 58.
118 Apple's response to the Preliminary Findings, […], paragraph 27.
119 Apple's response to the Preliminary Findings, […], paragraph 30.
120 Apple's response to the Preliminary Findings, […], paragraphs 28 and 29.
121 Apple's response to the Preliminary Findings, […], paragraph 101.

process for requests for specification[122]. According to Apple, "*the legislature clearly intended compliance with Article 5 obligations to be simple and clear and not to give rise to complex delineations.*"[123]. The Commission cannot therefore turn Article 5(4) of Regulation (EU) 2022/1925 into a "*complex price regulation scheme*"[124].

(145) In the third place, Apple argues that the Commission's interpretation leads "*Article 5(4) to interfere with those other provisions [Articles 5(7), 6(4) and 6(12)] and to undermine the fulfilment of their objectives*"[125].

(146) Third, Apple refers to the situation in other jurisdictions which allegedly supports its argument that "*obligations in relation to anti-steering rules should not be conflated with price regulation*."[126].

(147) Fourth, Apple claims that the economic context of Article 5(4) of Regulation (EU) 2022/1925 supports its position that a gatekeeper can charge a fee for transactions concluded after steering. According to Apple, a "*reading of Article 5(4) that the "free of charge" language applies to conclusion of contracts […] takes an unsustainably broad view of a fee 'for contracting' such that gatekeepers are significantly constrained in their ability to impose transaction-based fees notwithstanding the value they provide (beyond an initial acquisition fee) is imputing to the legislature intentions it did not have*."[127].

5.3.4.1.3. The Commission's assessment of Apple's arguments

(148) Apple's arguments in support of its interpretation of Article 5(4) of Regulation (EU) 2022/1925 do not withstand scrutiny.

(149) First, contrary to what Apple argues, it is not clear from the syntax of the English language version of Article 5(4) of Regulation (EU) 2022/1925 that *"free of charge"* only applies to the communication and promotion of offers. To the contrary, the fact that *"free of charge"* is placed before both *"to communicate and promote"* and *"to conclude contracts"*, as well as the fact that there is a comma before *"and"*, means that Article 5(4) of that Regulation contains an enumeration and that *"free of charge"* applies to all that is being enumerated after.

(150) While the French and German versions of the Regulation may be ambiguous in that regard, other linguistic versions leave no room for interpretation and make clear that *"free of charge"* applies to both the communication/promotion of offers and to the conclusion of contracts. For instance, the Spanish version of the Regulation states that "*El guardián de acceso permitirá a los usuarios profesionales, de forma gratuita, comunicar y promover ofertas, en particular con condiciones diferentes, entre los usuarios finales adquiridos a través de su servicio básico de plataforma u otros canales y celebrar contratos con esos usuarios finales […].*". This is further confirmed by other linguistic versions of Regulation (EU) 2022/1925 such as the Bulgarian, Croatian, Dutch, Portuguese, Romanian, and Slovenian language versions.

(151) The Commission agrees that one specific language version of Regulation (EU) 2022/1925 should not be given priority over other language versions for the purpose

122 Apple's response to the Preliminary Findings, […], paragraph 32.
123 Apple's response to the Preliminary Findings, […], paragraph 32.
124 Apple's response to the Preliminary Findings, […], paragraph 33.
125 Apple's response to the Preliminary Findings, […], paragraph 34.
126 Apple's response to the Preliminary Findings, […], paragraph 53.
127 Apple's response to the Preliminary Findings, […], paragraph 47.

of interpreting its provisions. The case-law of the Court of Justice confirms that where inconsistencies exist between different language versions of the same legal act, a uniform interpretation must be established. In *Regina v Boucbereau*, the Court of Justice stated that "*[t]he different language versions of a Community text must be given a uniform interpretation and hence in the case of divergence between the versions the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms a part*."[128]. The Court has also made clear that "*by reason of the divergences that exist between the versions of [a] text in different languages it does not lend itself to a clear and uniform interpretation on the point in question. Accordingly, it must be interpreted by reference to the purpose and the general scheme of the implementing provisions [...]*"[129]. As explained in recitals (157) to (160) of this Decision, it is in line with the objective of Article 5(4) of Regulation (EU) 2022/1925 that the "free of charge" requirement also applies to the conclusion of contracts following steering.

(152) Furthermore, the fact that recital 40 of Regulation (EU) 2022/1925 does not refer to "*free of charge*" does not mean that this requirement does not apply to the conclusion of contracts following steering, as stated in the relevant provision, namely Article 5(4) of Regulation (EU) 2022/1925 itself. Apple's argument is in contradiction with its own argument following which "*recitals do not have legally binding force, cannot create new obligations and cannot be used to derogate from the provision or to interpret that provision in a manner contrary to its wording*"[130]. Apple cannot therefore rely on an absence of a reference to *"free of charge"* in recital 40 of Regulation (EU) 2022/1925 to derogate from the explicit wording of Article 5(4) of that Regulation, which prohibits charging a fee for steering and steered transactions.

(153) Apple is mistaken to claim that the reference to "free" in the wording of recital 40 of Regulation (EU) 2022/1925, according to which "*business users should be 'free' to communicate and promote offers and enter into contracts*"[131], does not mean not having to pay charges. The word "free" in the context of recital 40 of Regulation (EU) 2022/1925 refers to the fact that gatekeepers should allow business users to steer, that is to say business users should be free to use any distribution channel of their choice and direct end users to such distribution channel. That word does not relate to the prohibition under Article 5(4) of Regulation (EU) 2022/1925 of imposing a fee for communication or promotion of offers to end users, and for contracting.

(154) Apple is also wrong when stating that Article 5(4) of Regulation (EU) 2022/1925 says nothing "*about the imposition of control over gatekeepers levying charges or commission for joint value creation through the valuable benefits that the gatekeeper provides*." Article 5(4) of Regulation (EU) 2022/1925 states that the conclusion of contracts should be free of charge. Therefore, Apple cannot charge a fee for steering and steered transactions. However, recital 40 of that Regulation explains that Apple may be remunerated for the initial acquisition. By explicitly identifying what Apple may be remunerated for, recital 40 of Regulation (EU) 2022/1925 implies that the conclusion of contracts itself should be free of charge. Otherwise, recital 40 would

---

128 Case 30/77, *Régina v Pierre Bouchereau*, EU:C:1977:172, paragraph 14. See also case C-558/11, *SIA Kurcums Metal v Valsts ieņēmumu dienests*, EU:C:2012:721, paragraph 48.

129 See for example Case 6/74, *Johannes Coenrad Moulijn*, EU:C:1974:129, paragraphs 10 and 11. See also Case C-41/09, *Commission v Netherlands*, EU:C:2011:108, paragraph 44.

130 Apple's response to the Preliminary Findings, […], paragraph 18.

131 Apple's response to the Preliminary Findings, […], paragraph 23.

have explained that the conclusion of contracts could also (or instead of the initial acquisition) be subject to remuneration. Finally, Apple may be remunerated for other services provided that such remuneration is not related to steering or steered transactions and it is otherwise compliant with Regulation (EU) 2022/1925.

(155) Contrary to what Apple claims, Article 5(4) of Regulation (EU) 2022/1925 is clear: steering and steered transactions must be free of charge (see also recitals (135) and (136) of this Decision). In other words, the price for app developers to pay for steering and steered transactions is zero. Ensuring compliance with Article 5(4) of Regulation (EU) 2022/1925 cannot be considered to involve any complexity as Apple simply needs to abstain from imposing a fee for steering and steered transactions. While Apple may be remunerated for the initial acquisition, there is nothing in Regulation (EU) 2022/1925 and Article 5(4) thereof suggesting that Apple is obliged to do so, in particular in cases where Apple has already been directly or indirectly remunerated for facilitating the initial acquisition by a business user as set out in recital 40 of Regulation (EU) 2022/1925. It is Apple that has decided to charge a fee and therefore it needs to justify that fee in the light of its obligations under Article 5(4) and Article 8(1) of Regulation (EU) 2022/1925[132]. It is then for the Commission to assess the compliance of such fees with Article 5(4) of Regulation (EU) 2022/1925 without there being any need for the Commission to prescribe the actual fee that Apple may charge.

(156) The Commission also notes that Article 5 of Regulation (EU) 2022/1925 includes other provisions containing a free of charge criterion (that is to say, Article 5(9) and (10) of that Regulation). Contrary to Apple's view, a reference to a price (or no price) does not automatically make those provisions complex.

(157) Second, the fact that the "free of charge" requirement applies both to the communication and promotion of offers and to the conclusion of contracts following steering is in line with the objective of Article 5(4) of Regulation (EU) 2022/1925, as explained by recital 40 thereof, and the legislative history leading to the adoption of that provision.

(158) In the first place, this interpretation follows from the objective of Article 5(4) of Regulation (EU) 2022/1925 to ensure that app developers can steer "free of charge". Since the aim of steering for app developers is to conclude contracts following such steering, that requirement must therefore also apply to steered transactions. Otherwise, if gatekeepers could charge a fee every time users conclude transactions following steering, such steering cannot be considered "free of charge", in practice.

(159) According to recital 40 of Regulation (EU) 2022/1925, Article 5(4) of Regulation (EU) 2022/1925 aims to ensure that app developers should be able to use the distribution channel of their choice for the conclusion of contracts and to inform end users about the existence of channels other than the gatekeeper's CPS in order to prevent reinforcing their dependence on that CPS as a distribution channel. Similarly, end users should be able to freely choose the offers of such app developers and to enter into contracts via alternative distribution channels. The objective of Article 5(4)

132 Furthermore, under Article 5(4) of Regulation (EU) 2022/1925 read together with recital 40 of that Regulation, Apple may only seek remuneration for facilitating the initial acquisition, but not for services provided to app developers that go beyond the initial acquisition. In any event, Apple has not made a proposal to the Commission to charge separate fees for the possible initial acquisition and for any other services provided by Apple. Apple cannot therefore have expected the Commission to provide its preliminary views on the possible boundaries between such hypothetical fees (see Apple's response to the Preliminary Findings, […], paragraph 106).

of Regulation (EU) 2022/1925, as explained by recital 40 of that Regulation, would be undermined if app developers could not conclude contracts free of charge through other distribution channels than the gatekeeper's CPS and pass on to end users any price advantages deriving from the use of such alternative distribution channels.

(160) Accepting that a fee could be charged for the conclusion of contracts after steering would mean that app developers could not fully benefit from the (price) advantages of alternative distribution channels and from passing those advantages on to end users. As a result, app developers would have no incentive to use alternative distribution channels and means for steering end users to such alternative distribution channels or concluding contracts with them following steering, thus reinforcing their dependence on Apple's App Store and reducing the contestability of the App Store CPS. That such a charge is contrary to the objectives of Regulation (EU) 2022/1925 is confirmed by the Impact Assessment Report accompanying the Commission's proposal for Regulation (EU) 2022/1925 (the "Impact Assessment"), which describes the 'anti-steering' rules as an example of unfair practices by which "*gatekeepers prevent business users from directing acquired consumers to offers other than those provided on the platform, even though such alternative offers may be cheaper or otherwise potentially more attractive*"[133].

(161) In the second place, the Commission considers that Apple misreads the legislative history surrounding the addition of the *"free of charge"* requirement to Article 5(4) of Regulation (EU) 2022/1925. The Commission's Proposal for a Regulation on contestable and fair markets in the digital sector of 15 December 2020[134] ("the Proposal") did not include a 'free of charge' requirement in its Article 5, point (c) (now Article 5(4) of Regulation (EU) 2022/1925)[135].

(162) A note from the Secretariat General of the Council to the Committee of Permanent Representatives of 18 March 2022 explains the proposed introduction of the 'free of charge' requirement by the Council. According to that note, the 'free of charge' requirement was introduced in order to avoid that gatekeepers circumvent the obligation to allow business users to conclude contracts with end users by charging a fee for steered transactions that could disincentivise such transactions: "*S'agissant de l'article 5.c [now article 5(4)], accepter l'ajout convenu au niveau technique d'une condition de gratuité pour éviter la possibilité de contournement de cette obligation par les contrôleurs d'accès en fixant une commission pour les transactions réalisées en dehors du service de plateforme essentiel dont le montant pourrait faire obstacle à l'effectivité de l'obligation.*"[136]. (emphasis added) This text makes clear that the addition of "*free of charge*" was aimed at (also) targeting any commission fee applied by the gatekeeper for steering, as well as steered *transactions*, as defined in

---

133 Commission staff working document impact assessment report accompanying the document proposal for a Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act), SWD/2020/363 final, 15 December 2020, paragraph 39, […].

134 COM/2020/842 final.

135 Article 5(c) of the Proposal stated that gatekeepers shall "*allow business users to promote offers to end users acquired via the core platform service, and to conclude contracts with these end users regardless of whether for that purpose they use the core platform services of the gatekeeper or not […].*"

136 Council of the European Union, Interinstitutional file: 2020/0374(COD), 7294/22, 18 March 2022, paragraph 16, […]. Free translation into English: "*As regards Article 5(c), accept the additional wording agreed at technical level of a condition of free of charge to avoid the possibility of circumvention of this obligation by gatekeepers by setting a commission for transactions outside the core platform service the amount of which could hinder the effectiveness of the obligation.*"

Recitals (2) and (24) of this Decision (by referring to *"... pour les transactions réalisées [...]*").

(163) Shortly after the note of 18 March 2022 was sent, the Council sent a letter, on 11 May 2022, to the European Parliament with a compromise text of the Proposal. Article 5(4) of that text was amended to provide that "*The gatekeeper shall allow business users, free of charge, to communicate and promote offers, including under different conditions, to end users acquired via its core platform service or through other channels, and to conclude contracts with those end users, regardless of whether, for that purpose, they use the core platform services of the gatekeeper*."[137] (emphasis added). Apple is mistaken when it argues that the Commission relied on a non-public version of a negotiating document to sustain its interpretation of Article 5(4) of Regulation (EU) 2022/1925[138]. The note from the Secretariat General of the Council to the Committee of Permanent Representatives of March 2022 to which Apple refers is accessible online and therefore fully public[139].

(164) The position of the European Parliament adopted at first reading on 5 July 2022[140] confirmed the revised text of the provision, including the "free of charge" requirement.

(165) The legislative history of Article 5(4) of Regulation (EU) 2022/1925 thus shows that charging a fee for steering, as well as for steered transactions was perceived as an obstacle to the effectiveness of that provision, which led the Union legislature to introduce the "free of charge" requirement for both steering and steered transactions.

(166) Apple's claim that this addition "*was never considered in the Impact Assessment or discussed in any of the public legislative materials*" must be rejected[141]. Under Union law, impact assessments examine whether there is a need for Union action and analyse the possible impacts of available solutions. Impact Assessments are carried out during the preparation phase before the Commission finalises a proposal for a legislative instrument. The aim of an impact assessment is therefore not to analyse in detail every provision of a proposal, but rather to justify taking legislative action in a particular area. Impact assessments cannot preclude the ability of the Union legislature to modify the Commission's proposal. In any event, the "*free of charge*" requirement was not in the Commission's proposal, but was added by the co-legislators later in the legislative process for the reasons set out in recital (162) of this Decision. It is therefore logical that it is not addressed in the Impact Assessment.

(167) Furthermore, the addition of the wording "*free of charge*" was ultimately discussed between and agreed by the co-legislators. Apple cannot ignore the will of the Union legislature that decided to add this requirement deliberately to Article 5(4) of Regulation (EU) 2022/1925.

---

137 Council of the European Union, Interinstitutional file: 2020/0374(COD), 8722/22, [...]

138 Apple's response to the Preliminary Findings, […], paragraph 58.

139 […]. The online version of document is available here: https://data.consilium.europa.eu/doc/document/ST-7294-2022-INIT/fr/pdf (accessed on 21 August 2024).

140 European Parliament, Document EP-PE_TC1-COD(2020)0374, […]. Article 5(4) in that document reads as follows: "*The gatekeeper shall allow business users, free of charge, to communicate and promote offers, including under different conditions, to end users acquired via its core platform service or through other channels, and to conclude contracts with those end users, regardless of whether, for that purpose, they use the core platform services of the gatekeeper*."

141 Apple's response to the Preliminary Findings, […], paragraph 19.

(168) Apple is therefore wrong in stating that "*the context of Article 5(4) concerns communication / promotion of offers*"[142]. Both Article 5(4) and recital 40 of Regulation (EU) 2022/1925 not only contain obligations about the communication and the promotion of offers but also, very clearly, about the conclusion of contracts. There is therefore no basis to claim that this provision focuses solely on the communication and the promotion of offers.

(169) In the third place, contrary to what Apple claims, the Commission's interpretation of Article 5(4) of Regulation (EU) 2022/1925 also does not blur the boundaries between that provision and Articles 5(7), 6(4) and 6(12) of that Regulation. Each of those provisions relates to different obligations, such as obligations allowing steering, prohibiting tying with other services (including alternative payment methods), allowing alternative app stores/downloading from the web, allowing interoperability and granting fair, reasonable, and non-discriminatory general conditions of access to app stores, respectively. Apple does not explain why the Commission's interpretation would blur the boundaries between those provisions.

(170) It is also unclear how Apple's argument according to which "*Article 5(4) and Article 5(5) were originally drafted together and eventually separated*"[143] supports its claim that Apple can charge a fee for the conclusion of contracts following steering. As already set out in recital (61) of this Decision, on the one hand, Article 5(4) of Regulation (EU) 2022/1925 requires the gatekeeper to ensure that app developers can communicate and promote offers, and conclude contracts, free of charge, irrespective of whether this takes place within or outside the app. Article 5(5) of Regulation (EU) 2022/1925, on the other hand, provides that the gatekeeper shall allow end users to access and use, through its CPSs, content, subscriptions, features or other items, by using the app of an app developer, including where those end users acquired such items from the relevant app developer without using the CPSs of the gatekeeper. Article 5(5) of Regulation (EU) 2022/1925 therefore contains a substantially different obligation from the one stated in Article 5(4) of that Regulation.

(171) Third, Apple's reference to the situation in other jurisdictions does not affect the Commission's interpretation of Article 5(4) of Regulation (EU) 2022/1925[144]. The Commission's assessment in this Decision is based on the interpretation of that provision and Apple's obligations under that provision, not on the position and interpretation of other legislation in other jurisdictions.

(172) Fourth, the economic context of Article 5(4) of Regulation (EU) 2022/1925 does not support Apple's position that Apple can charge a fee for transactions concluded after steering. The Commission does not contest the benefits and innovation that app stores, such as Apple's App Store, bring to business users and end users. The Commission, however, contests Apple's statement according to which a "*crucial mechanism that aligns the quality and innovation efforts of developers and the platform owner is revenue sharing on the transactions*."[145]. There are many ways for gatekeepers to monetise the services that they provide and to finance innovation. By means of Article 5(4) of Regulation (EU) 2022/1925, Apple is only restricted in charging a fee for a subset of transactions, that is to say transactions concluded after

142 Apple's response to the Preliminary Findings, […], paragraph 24.
143 Apple's response to the Preliminary Findings, […], paragraphs 35, 36 and 37.
144 Apple's response to the Preliminary Findings, […], paragraph 53.
145 Apple's response to the Preliminary Findings, […], paragraph 45.

steering. That provision does not restrict other ways of monetisation that Apple may consider.

5.3.4.1.4. Conclusion

(173) In light of recitals (148) to (172) the Commission considers that nothing in the syntax, objective, legislative history, or economic context of Article 5(4) of Regulation (EU) 2022/1925 supports Apple's claims that the *"free of charge"* requirement only applies to the obligation for gatekeepers to allow the communication and promotion of offers, but not the conclusion of contracts by business users with end users following steering. On the contrary, it is clear that Article 5(4) of Regulation (EU) 2022/1925 provides that steering and all steered transactions must be free of charge. The situation in other jurisdictions cannot change that assessment.

5.3.4.2. The Commission Fee provided for by the New Business Terms does not allow app developers to conclude contracts "free of charge".

5.3.4.2.1. The Commission's position

(174) The Commission takes the view that the Commission Fee charged under the New Business Terms prevents app developers from concluding contracts with end users "free of charge" in breach of Article 5(4) of Regulation (EU) 2022/1925[146]. As explained in recital (35)(a) of this Decision, the Commission Fee applies to all transactions that are completed by all end users within 7 calendar days after each link-out from the app developer's app, irrespective of the point in time at which the end user links-out (for example one week or three years after having installed the app and thus having become an acquired user of the app developer). The Commission Fee is a recurrent payment obligation which is due for as long as the end user uses the app. Similarly, the Commission Fee is due for all auto-renewing subscriptions when the initial subscription was concluded within seven days after a link-out.

(175) Moreover, as explained in Section 5.2 of this Decision, steering within the app to offers within or outside the app is not allowed under the Original Business Terms. Consequently, to avail themselves of their right to steer under Article 5(4) of Regulation (EU) 2022/1925, app developers must accept the New Business Terms and thus be subject to the Commission Fee. In other words, app developers of apps distributed on the App Store cannot avail themselves of the possibility to effectively communicate and promote offers to, as well as conclude contracts with, end users after steering, regardless of the distribution channel, without paying the Commission Fee to Apple on a recurrent basis.

(176) Besides being contrary to the letter of Article 5(4) of Regulation (EU) 2022/1925, Apple's Commission Fee also undermines the objective of that provision, as explained in recitals (157) to (160) of this Decision. App developers may have no or a significantly reduced incentive to steer end users to alternative distribution channels if Apple is able to charge them a recurrent fee as a result of a conclusion of any contract with an end user within 7 calendar days after steering for as long as that end user uses the app (besides the possible remuneration for the initial acquisition, which is allowed under Article 5(4) of Regulation (EU) 2022/1925).

[146] For the sake of clarity, the present decision does not cover the fee imposed by Apple for using IAP or the CTF, as described in recitals (35)(b) and (35)(c) of this Decision, which are being examined separately.

(177) Therefore, the Commission takes the view that the Commission Fee that Apple imposes on transactions resulting from contracts concluded by app developers with end user within a window of 7 calendar days after a link-out (including automatically renewed subscriptions), irrespective of when the app was installed and when the end user was initially acquired, is incompatible with the "free of charge" requirement in Article 5(4) of Regulation (EU) 2022/1925. This is the case given that the Commission Fee cannot be considered as remuneration for facilitating the initial acquisition of the end user by the app developers, as explained in section 5.3.4.3 of this Decision.

5.3.4.2.2. Apple's arguments

(178) Apple argues that the Commission has not proven "*that commission-based charging undermines the objectives of Article 5(4) by reducing incentives for developers to steer their users to alternative distribution channels*"[147].

5.3.4.2.3. The Commission's assessment of Apple's arguments

(179) As already explained in Section 5.3.4.1 of this Decision, Apple is wrong in interpreting the "free of charge" requirement in Article 5(4) of Regulation (EU) 2022/1925 as not extending to the conclusion of contracts following steering. According to that provision, Apple cannot charge a commission fee for transactions concluded following steering (other than for the initial acquisition).

(180) Apple's argument in relation to commission-based charging is misguided. If app developers have to pay a commission fee to Apple when steering end users to cheaper or more attractive offers, the incentive to steer is clearly undermined, since the revenues that the app developer could have generated from the end user via steering are reduced.

5.3.4.3. The Commission Fee cannot be considered as remuneration for facilitating the initial acquisition of the end user by the app developers.

5.3.4.3.1. The Commission's position

(181) As explained in recitals (22) and (137) of this Decision, recital 40 of Regulation (EU) 2022/1925 accepts that gatekeepers may, where applicable, be "*directly or indirectly remunerated by the business user for facilitating the initial acquisition of the end user by the business user*". Accordingly, the Commission has assessed whether the Commission Fee should be regarded as Apple's remuneration for facilitating, through the App Store, the initial acquisition of an end user by an app developer.

(182) The Commission's view is that a commission fee that is due over an unduly long period of time from the moment when an end user installs an app and is initially "acquired" by the business user, such as the Commission Fee which is a recurrent fee payable on any transaction concluded within seven days after linking-out for as long as the end user uses the app, cannot be considered as remuneration for the initial acquisition of that end user.

(183) The Commission therefore takes the view that the Commission Fee does not constitute remuneration that Apple may seek for facilitating the initial acquisition of the end user by the app developer. This is based on the following considerations.

(184) First, the use of the term *"initial"* in recital 40 of Regulation (EU) 2022/1925 shows that Apple should not charge a commission fee when an already acquired customer

147 Apple's response to the Preliminary Findings, […], paragraph 80.

has been steered, without considering when the end user installed the app and was initially acquired by the business user, and certainly not on a recurrent basis for an indefinite period of time. As it is commonly understood, "initial" relates to an event occurring at the beginning, in this case close in time to the moment when the end user is acquired, but before s/he has been steered.

(185) In other words, any possible fee for the initial acquisition must be linked in time to the actual facilitation of such initial acquisition of the end user by the app developer and cannot apply throughout the overall lifetime of the ensuing commercial relationship between the end user and the business user. In particular, allowing an initial acquisition fee to be charged for a duration that goes beyond a limited initial time window following the acquisition of an end user by an app developer would not only run counter to the notion of "initial" as set out in recital 40 of Regulation (EU) 2022/1925, but would also allow the app store provider to charge for a part of the lifetime of the commercial relationship between the end user and the business user that is not directly linked to the initial acquisition and thus goes beyond the facilitation service provided by an online intermediation service.

(186) In line with recital 40, end users can be considered to be initially *"acquired"* by app developers using the App Store when they enter, for the first time, into a commercial relationship with the developer by way of, for example, installing a free app or purchasing a paid app through the App Store. Therefore, the reference to an *"initial"* acquisition in recital 40 of Regulation (EU) 2022/1925 implies that Apple can only be remunerated for the services it provides to enable the first (i.e., initial) matchmaking between an app developer and an end user, even if such remuneration can be deferred for a certain period of time (e.g., when a transaction is concluded within a relatively short time after the initial acquisition of the end user takes place).

(187) In light hereof, the Commission Fee cannot be considered as a remuneration of the initial acquisition as its temporal scope is too far removed from the moment when the end user was acquired by the app developer. This is particularly the case since (i) the Commission Fee is applied irrespective of when the end user installs an app and when s/he is initially acquired by the business user (e.g., even if the transaction takes place several years after that moment) and (ii) the Commission Fee is due for an indefinite period of time, so long as the end user continues using the app and concludes steered transactions. Under those conditions, the Commission Fee seriously disincentivises business users to avail themselves of the opportunities provided by Article 5(4) of Regulation (EU) 2022/1925.

(188) Second, the reference to *"initial"* acquisition in recital 40 of Regulation (EU) 2022/1925 also implies that an end user can only be acquired once and that the gatekeeper may only be remunerated in relation to that acquisition. Indeed, each transaction concluded by the same end user who has already entered into a commercial relationship with an app developer does not amount to a new acquisition of that same end user. Therefore, remuneration for an initial acquisition cannot take the form of a recurrent fee. For the reasons set out in recitals (176), (177) and (187) of this Decision, such remuneration would also defeat the purpose of Article 5(4) of Regulation (EU) 2022/1925 and run counter to the objective of only remunerating the gatekeeper for the initial acquisition (i.e., matchmaking) of an end user which is facilitated by the gatekeeper.

(189) Accordingly, the Commission takes the view that Apple's decision to charge a fee for every subsequent automatic renewal of a subscription by an acquired end user, for as long as that end users uses the app and concludes steered transactions, is

incompatible with Article 5(4) of Regulation (EU) 2022/1925. Indeed, an acquired end user can only be initially acquired once, which may be the case, for example, when it first installs the app and establishes a commercial relationship with the app developer, on either a pay or a free basis, as explained in recital 40 of Regulation (EU) 2022/1925. Each subsequent renewal of a subscription, whether it is automatic or not, no longer constitutes an initial acquisition and should not be compensated separately, since it is a transaction by an already acquired end user for the purposes of Article 5(4) of Regulation (EU) 2022/1925.

(190) The notion of *"initial acquisition"* cannot be considered to cover subsequent transactions, such as auto-renewals, merely on the basis that such subsequent transactions are linked to or are the direct result of a previous transaction and/or contractual relationship that itself may fall within the notion of *"initial acquisition"*[148]. If this were there case, it would imply that each auto-renewed subscription would be subject to the Commission Fee for as long as the end user uses the app, which however does not amount to remuneration for facilitating the initial acquisition, as set out in recitals (181) to (189) of this Decision.

(191) Article 5(4) of Regulation (EU) 2022/1925 also does not entitle Apple to obtain remuneration for the subsequent and on-going "*overall value which the developer obtains from the referral by Apple*"[149]. This overall value is unrelated to the initial acquisition for which a remuneration may be due. Therefore, that kind of perpetual remuneration cannot be considered as the remuneration for the facilitation of the initial acquisition within the meaning of Article 5(4) of Regulation (EU) 2022/1925.

(192) The fact that the Commission Fee is not charged by Apple where an end user concludes a contract with the app developer 7 calendar days or more after a link-out does not change the Commission's view that such fee does not amount to remuneration for facilitating the initial acquisition This is because the Commission Fee is imposed by Apple indefinitely after the initial acquisition and on a recurrent basis following every link-out, and thus remunerates Apple for more than just the initial acquisition.

(193) Furthermore, the Commission considers that it is for Apple to determine and justify the fee it considers adequate to remunerate facilitating the initial acquisition[150], something which Apple has not contested. To be considered as remuneration for facilitating the initial acquisition, a commission fee should (i) be related both in time and in scope to the initial acquisition; (ii) be commensurate to the initial value of the matchmaking function and must take into account any direct or indirect remuneration received from business users for facilitating the initial acquisition[151]; and (iii) not remunerate the gatekeeper for its gatekeeper value.

(194) Apple claims that the "*value of initial purchase is a poor measure of value delivered by App Store*" and only represents a "*small fraction of acquisition value to developer*"[152]. However, beyond general references to an abstract notion of value

148 [Confidential – contains business secrets].

149 [Confidential – contains business secrets]; and Apple Compliance Report, Annex 5 to Section 2 – Art. 5(4) DMA, page 36, paragraph 10, fifth bullet point, […].

150 This can be, for example, an upfront fixed fee or a percentage fee payable over a certain (limited) period of time.

151 In this exercise, Apple can refer to relevant benchmarks, such as agreements concluded between app developers and OEMs for the pre-installation of their apps. The Commission considers that such a benchmark may be a relevant proxy.

152 [Confidential – contains business secrets].

provided by the App Store, Apple has failed to provide an alternative proxy that could serve, in Apple's view, as a basis for determining the value of its matchmaking function. Instead, Apple has chosen to implement a fee mechanism that does not comply with the *"free of charge"* requirement for steering laid down in Article 5(4) of Regulation (EU) 2022/1925 and that cannot be seen as a possible remuneration for the initial acquisition within the meaning of recital 40 of that Regulation.

(195) The Commission also takes the view that Apple's recurrent Commission Fee on transactions after link-out is not compliant with Article 5(4) of Regulation (EU) 2022/1925 to the extent that it also applies to end users whose initial acquisition by an app developer on the App Store was already facilitated by Apple (including prior to 7 March 2024) and for which Apple has already been remunerated, by way of its standard commission fee on in-app purchases using IAP for digital goods and services under the Original Business Terms, as described in recital (31) of this Decision. Article 5(4) of Regulation (EU) 2022/1925 obliges gatekeepers to ensure that the *"free of charge"* requirement applies to end users who have already been acquired. The Commission considers that this obligation is not limited only to end users that have been acquired after 7 March 2024. Accordingly, Apple may not impose the Commission Fee on app developers for an indefinite period of time in relation to end users that have been acquired, but link-out for the first time, after 7 March 2024.

(196) For the sake of clarity, the same is true for the Commission Fee that Apple charges app developers in relation to end users that have to pay to download an app through the App Store (so-called "paid apps"). In such an instance, the end user is acquired when it makes a payment to the app developer to download the app and Apple has already been remunerated (through the Commission Fee on the purchase price of the app) for facilitating such initial acquisition, and accordingly, no further payment can be due as remuneration for the initial acquisition.

(197) Third, gatekeepers are, in the context of Article 5(4) of Regulation (EU) 2022/1925, also prohibited from charging for "gatekeeper value". Gatekeeper value is the value of the CPS provided by a gatekeeper, on top of its market value, because of its position as an important gateway for business users to reach end users, which forces both groups to rely on that CPS. This prohibition follows from the objective of Regulation (EU) 2022/1925 to create contestable and fair markets, as illustrated by recital 13 of that Regulation, which explains that "[o]*ften, there is only one or very few large undertakings providing those digital services. Those undertakings have emerged most frequently as gatekeepers for business users and end users, with far-reaching impacts. In particular, they have gained the ability to easily set commercial conditions and terms in a unilateral and detrimental manner for their business users and end users. Accordingly, it is necessary to focus only on those digital services that are most broadly used by business users and end users and where concerns about weak contestability and unfair practices by gatekeepers are more apparent and pressing from an internal market perspective."*.

(198) In the specific context of Article 5(4) of Regulation (EU) 2022/1925, an initial acquisition fee that reflects gatekeeper value would further entrench the gatekeeper position, since the gatekeeper would essentially disincentivise the use of other distribution channels. That provision therefore prohibits the charging of such a fee.

5.3.4.3.2. Apple's arguments

(199) First, Apple argues that the Commission misinterprets the notion of "initial acquisition" and what Apple can charge for. In particular, Apple criticises the

Commission's position that the initial acquisition fee must be commensurate to the value of the matchmaking function and that any possible fee must not go "*further than what could be considered as the possible remuneration for facilitating the initial acquisition of end users by the app developers*"[153].

(200) According to Apple, the Commission's "*interpretation of Article 5(4) is not supported by, or consistent with the language of Article 5(4) and is contrary to what the Article was intended to achieve within the framework of the DMA*"[154], since such an interpretation would prohibit Apple from being remunerated for the *"very significant value and services Apple provides to developers"*[155]. Furthermore, Apple argues that its decision to apply its commission-based charging structure to transactions made after link-outs is simply an application of its existing business model[156]. According to Apple, imposing "*a prohibition on certain forms of monetisation*" under Article 5(4) of Regulation (EU) 2022/1925 is contrary to that Regulation's objective of enabling *"different business and charging models*" in digital markets[157]. Apple also considers that it is unclear how the Commission's interpretation of Article 5(4) of Regulation (EU) 2022/1925 would apply to other CPSs[158]. Apple further claims that the "*language of 'initial acquisition' simply provides some limitation on the obligations of gatekeepers to allow the communication / promotion of offers (and the conclusion of contracts). It explains the trigger for Article 5(4) obligations to apply. It doesn't have anything to do with charging.*"[159]. Apple also argues that it is for the Commission to provide an indication of what might be an appropriate fee for the acquisition of users through the download of a free app[160]. According to Apple, the Commission has not clarified what constitutes an appropriate benchmark for determining a possible remuneration for the initial acquisition. Apple argues that it was entitled to receive guidance on relevant benchmarks before the compliance deadline of 7 March 2024 and, in any event, before the opening of the non-compliance investigation in relation to Article 5(4) of Regulation (EU) 2022/1925, and, failing that, in the Preliminary Findings[161].

(201) Second, Apple claims that the Commission's interpretation of Article 5(4) of Regulation (EU) 2022/1925 would require Apple to provide IAP free of charge. According to Apple, since that provision refers to app developers concluding contracts with end users "*regardless of whether, for that purpose, they use the core platform services of the gatekeeper*" and if contracting must be free of charge, then Apple's IAP must also be free of charge.

(202) Third, Apple argues that the notion of "*steered transactions*" does not appear in Article 5(4) of Regulation (EU) 2022/1925 and recital 40 of that Regulation[162]. According to Apple, the Commission introduced the unclear concept of *"steered transactions"* to distinguish in-app transactions carried out through IAP from offers alternative to the in-app transactions carried out by alternatives to IAP[163].

---

153 Apple's response to the Preliminary Findings, […], paragraph 109.
154 Apple's response to the Preliminary Findings, […], paragraph 72.
155 Apple's response to the Preliminary Findings, […], paragraph 74.
156 Apple's response to the Preliminary Findings, […], paragraphs 74 and 75.
157 Apple's response to the Preliminary Findings, [...], paragraphs 33, 75 and 76.
158 Apple's response to the Preliminary Findings, [...], paragraph 79.
159 Apple's response to the Preliminary Findings, [...], paragraph 82.
160 Apple's response to the Preliminary Findings, [...], footnote 46.
161 Apple's response to the Preliminary Findings, [...], paragraph 107.
162 Apple's response to the Preliminary Findings, [...], paragraph 96.
163 Apple's response to the Preliminary Findings, [...], paragraphs 96 to 100.

(203) Apple further argues that it does not charge a fee "*for the conclusion of contracts*", "*for steering*", "*for steered transactions*" or "*for the conclusion of contracts for steered transactions*", but rather charges fees for the "*significant value and services it provides to app developers*"[164].

(204) Fourth, Apple argues that the Commission's interpretation of Article 5(4) of Regulation (EU) 2022/1925 is incompatible with other provisions of that Regulation applicable to app stores, such as Article 5(5) and (7) and Article 6(4) and (12)[165]. More specifically, Apple argues that the legislator intended Article 6(12) of Regulation (EU) 2022/1925 to deal with pricing and commission fees and that this provision does not rule out commission-based charging[166]. In relation to Article 5(5) of Regulation (EU) 2022/1925, Apple argues that since that provision lacks any reference to a *"free of charge"* requirement, the gatekeeper is free to charge a fee in relation to purchases of content made entirely outside of the app[167]. In relation to Article 5(7) of Regulation (EU) 2022/1925, Apple claims that the objective of that provision would be undermined because there would be no incentive for app developers to use alternative payment services[168]. Finally, according to Apple, the objective of Article 6(4) of Regulation (EU) 2022/1925 would be undermined because the Commission would effectively impose a zero-monetisation requirement in relation to facilitating transactions, and potential entrants will therefore have less incentive to enter the market and compete with Apple[169].

(205) Fifth, Apple argues that the Commission's "*interpretation of Article 5(4) and Recital 40 is inconsistent with Article 16 of the Charter and the principle of proportionality*."[170]. According to Apple, it is "*ostensibly required to undertake complex organisational changes by fundamentally changing its business model to a uniform, non-differentiable model despite its Article 16 Charter right to determine its own business model*."[171]. This would be in breach of Article 16 of the Charter of Fundamental, as ruled by the Court of Justice.[172] Apple further argues that the Commission "*is required to investigate these matters properly because it is required to interpret Article 5(4) in light of general principles of EU law, such as the principle of proportionality and fundamental rights*" and that "*Apple competes on the basis of providing particularly high security and user privacy. Restrictions on its ability to compete on this basis clearly engages Apple's freedom to conduct its business under Article 16 of the Charter.*"[173]. Finally, Apple argues that the Commission's "*interpretation is also disproportionate to the stated objective of the DMA / Article 5(4) and is as such inconsistent with Article 16 and Article 52(1) of the Charter.*"[174].

5.3.4.3.3. The Commission's assessment of Apple's arguments

(206) None of Apple's arguments call into question the Commission's position as set out in Section 5.3.4.3.1. of this Decision.

---

164 Apple's response to the Preliminary Findings, [...], paragraph 100.
165 Apple's response to the Preliminary Findings, [...], paragraph 112 to 119.
166 Apple's response to the Preliminary Findings, [...], paragraph 113 and 114.
167 Apple's response to the Preliminary Findings, [...], paragraph 115, 116 and 117.
168 Apple's response to the Preliminary Findings, [...], paragraph 118.
169 Apple's response to the Preliminary Findings, [...], paragraph 119.
170 Apple's response to the Preliminary Findings, [...], paragraph 121.
171 Apple's response to the Preliminary Findings, [...], paragraph 123.
172 Apple's response to the Preliminary Findings, [...], paragraph 122.
173 Apple's response to the Preliminary Findings, [...], paragraph 180.
174 Apple's response to the Preliminary Findings, [...], paragraph 125.

(207) First, Apple's interpretation of the notion of "initial acquisition" and what Apple can charge for such an acquisition is incorrect.

(208) In the first place, the Commission's position stems from the fact that recital 40 of Regulation (EU) 2022/1925 refers to possible remuneration for *"facilitating the initial acquisition"*. Being remunerated for a given service entails that such remuneration is commensurate to the value of such a service. In other words, the remuneration needs to reward the service of assisting with the initial acquisition of an end user by a business user. This means that the initial acquisition fee cannot relate to the value of the commercial relationship with the end user overall, i.e. the incremental monetary value of an end user to the app developer as measured by e.g. anticipated future revenues or other metrics such as data generation or the contribution to network effects. Taking into account these two points of reference would compensate for services other than the initial acquisition or for value other than the value of that acquisition.

(209) By contrast, the value of an end user to an app developer depends on a number of factors that are not influenced by the app store that intermediated the initial acquisition of that user. For instance, whether an app developer manages to convert an end user from a non-paying end user to a paying one depends on the efforts and investments of the app developer and takes place after the initial acquisition of an end user. Accordingly, the full commercial value of an acquired end user cannot be determined at the time of the acquisition and is generated by the app developer, after and thus irrespective of the facilitation service provided by the app store at the time of the facilitation of the initial acquisition.

(210) The fact that the initial acquisition fee must not be based on the lifetime value of end users or the value of subsequent transactions by the acquired user following the initial acquisition follows from the requirement under Article 5(4) of Regulation (EU) 2022/1925 that steering and steered transactions are to be free of charge with regard to acquired end users. A commission fee that is based on the lifetime value of end users would mean that app developers are charged a commission fee with regard to end users even after they have already been acquired. Such a commission fee would not be related in time and scope to the initial acquisition.

(211) In the second place, the fact that Apple has so far operated a business model whereby it charged a recurrent commission fee on all transactions for digital services and goods made through its App Store does not in itself justify applying a similar business model when attempting to comply with the obligation laid down in Article 5(4) of Regulation (EU) 2022/1925 to enable steering and steered transactions[175]. The consequence of that provision is that Apple, in the case of steering and steered transactions, may only be remunerated for the initial acquisition of the end user by the app developer regardless of the business model it has chosen. As set out in recital (187) of this Decision, the Commission Fee that Apple charges app developers goes beyond a possible remuneration for the initial acquisition.

(212) Contrary to Apple's view[176], the Commission does not consider that the specific aim of Regulation (EU) 2022/1925 is to ensure that undertakings designated as gatekeepers are free to implement the business and charging models of their choice. On the contrary, that Regulation imposes a number of obligations and prohibitions on gatekeepers with the general aim of ensuring contestable and fair markets in the

175 Apple's response to the Preliminary Findings, [...], paragraphs 74 and 75.

176 Apple's response to the Preliminary Findings, [...], paragraphs 33, 75 and 76.

digital sector across the Union, to the benefit of business users and end users, as set out in Article 1(1) and recital 31 of that Regulation, including when this requires gatekeepers to change their business model. The Union legislature is permitted to place such restrictions on an undertaking's freedom to conduct a business, provided those restrictions are laid down by law, respect the essence of that freedom, and, subject to the principle of proportionality, are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others[177].

(213) Contrary to Apple's claim[178], the Commission has not argued that Apple is prohibited from being remunerated under Article 5(4) of Regulation (EU) 2022/1925. Rather, the Commission's position is that the Commission Fee goes beyond the possible remuneration for the initial acquisition which is permitted by that provision.

(214) Apple's argument that it is unclear how the Commission's interpretation of Article 5(4) of Regulation (EU) 2022/1925 would apply to other CPSs must be rejected[179]. The application of Article 5(4) of Regulation (EU) 2022/1925 to CPSs other than Apple's App Store CPS is not in the scope of this Decision.

(215) In the third place, Article 5(4) of Regulation (EU) 2022/1925 provides that steering and steered transactions must be free of charge for acquired end users. The reference to initial acquisition in recital 40 of that Regulation explains the concept of acquired end users and that Apple is not entitled to charge the app developer for steering and concluding contracts with such users.

(216) Apple correctly notes that the gatekeeper is not entitled to charge any fee if the initial acquisition happened without the involvement of the gatekeeper[180]. Indeed, the inclusion of the words *"if applicable"* in recital 40 of Regulation (EU) 2022/1925 in relation to remuneration for the initial acquisition acknowledges that there may be instances where the gatekeeper was not involved in facilitating the initial acquisition and that, therefore, the gatekeeper may not seek remuneration in such instances. Apple also acknowledges[181] that an initial acquisition can, by definition, happen only once. The user can therefore be considered acquired even if there was no involvement from Apple, where the user has already been acquired by the app developer prior to downloading its app through the App Store.

(217) The Commission, however, disagrees with Apple's view[182] that it is for the Commission to provide an indication of what might be an appropriate fee for the acquisition of users through the download of a free app. Rather, it is for Apple to decide whether it considers it necessary to charge such a fee and subsequently to determine a fee that is limited in time and scope and commensurate to the value of the initial acquisition in compliance with Article 5(4) of Regulation (EU) 2022/1925. It is for the Commission to assess whether the fee in question complies with the obligation laid down in that provision.

(218) Second, the Commission does not argue that Apple's IAP should be free of charge. A payment service, such as IAP, does not fall within the scope of Article 5(4) of Regulation (EU) 2022/1925, as it does not constitute steering or steered transactions,

177 Case C-570/19, *Irish Ferries*, EU:C:2021:664, para 170 and the case-law cited.
178 Apple's response to the Preliminary Findings, [...], paragraph 77a.
179 Apple's response to the Preliminary Findings, [...], paragraph 79.
180 Apple's response to the Preliminary Findings, [...], paragraphs 88 to 91.
181 Apple's response to the Preliminary Findings, [...], paragraph 91.
182 Apple's response to the Preliminary Findings, [...], footnote 46.

which are to be free of charge under that provision. Rather, IAP is covered by Article 5(7) of Regulation (EU) 2022/1925, since it is a payment service provided by Apple for iOS users making in-app purchases without steering, and which does not require that such service is provided *"free of charge"*.

(219) Third, as regards Apple's criticisms on the notion of "steered transactions" used by the Commission, as explained in recitals (2) and (24) of this Decision, that notion refers to transactions or the conclusion of contracts occurring after an end user has been directed by the app developer through communications or promotions in the app (for example, calls to action) to offers (within or outside the app), irrespective of whether such transactions or conclusion of contracts ultimately occur within or outside the app (see recitals (61) and (83) of this Decision). The concept of "steered transactions" does not refer to transactions or the conclusion of contracts which rely exclusively on IAP as no steering takes place in this context.

(220) The Commission cannot be criticised for explaining the boundaries of the potential remuneration for *"initial acquisition"* as this clarification is relevant for determining what Apple is not entitled to charge for under Article 5(4) of Regulation (EU) 2022/1925. As set out in recital (173) of this Decision, Apple is not entitled to charge any fee to app developers that direct acquired end users to offers within or outside their App Store distributed apps in order to conclude contracts. For the reasons set out in recitals (135) to (180) of this Decision, the Commission considers that Apple, through the Commission Fee, charges app developers a fee in the scenarios outlined in recital (203). As further explained in Section 5.3.4.3.1 of this Decision, Apple has not explained how the purported "*significant value and services it provides to app developers*" relate to the initial acquisition for which Apple is entitled to be remunerated, where applicable.

(221) As regards Apple's claim that the Commission has not provided sufficient guidance to Apple on relevant benchmarks for determining a possible remuneration for the initial acquisition, the Commission notes that under Article 8(1) of Regulation (EU) 2022/1925, Apple is under the obligation to ensure and demonstrate compliance with Article 5(4) of that Regulation as of 7 March 2024. Furthermore, under Article 11 of Regulation (EU) 2022/1925, Apple is required to provide the Commission with a report describing in a detailed and transparent manner the measures it has implemented to ensure compliance with Article 5(4) of that Regulation by 7 March 2024. It is thus for Apple to ensure and demonstrate compliance with Article 5(4) of Regulation (EU) 2022/1925, which Apple has failed to do. There is nothing in Regulation (EU) 2022/1925 in general or Article 5(4) thereof in particular that would require the Commission to provide guidance to Apple in relation to compliance solutions that Apple should implement to ensure and demonstrate compliance with Article 5(4) of Regulation (EU) 2022/1925.

(222) In particular, the Commission is under no obligation to specify how much Apple should charge app developers, if Apple eventually opted to charge a fee for initial acquisition (which is not mandatory under Regulation (EU) 2022/1925). Nevertheless, the Commission indicated benchmarks in the Preliminary Findings that may serve as a relevant proxy[183]. The Commission also provided guidance to Apple in the Preliminary Findings, by clarifying that to be considered as actual remuneration for facilitating the initial acquisition, a fee should be related in time to

[183] Preliminary Findings, footnote 60.

the initial acquisition and be commensurate to the value of the matchmaking function[184].

(223) Fourth, the Commission's interpretation of Article 5(4) of Regulation (EU) 2022/1925 is consistent with other provisions of that Regulation.

(224) In the first place, the Commission rejects Apple's argument in relation to the compatibility of Article 5(4) of Regulation (EU) 2022/1925 with Article 6(12) of that Regulation. Apple's compliance with Article 6(12) of Regulation (EU) 2022/1925 is not in the scope of this Decision. The Commission is therefore not required to assess whether Apple's fee structure is compliant with Article 6(12) of Regulation (EU) 2022/1925 within the framework of this Decision. The sole fact that Article 6(12) of that Regulation does not explicitly rule out commission-based charging does not automatically mean that Article 5(4) of that Regulation does not limit the scope of services that gatekeepers can charge for in the context of steering and conclusion of contracts following steering, since such steering and conclusion of contracts are to be free of charge. Article 6(12) of Regulation (EU) 2022/1925 does not concern steering, but rather the general conditions of access for business users to gatekeepers' app stores. That provision therefore contains a substantially different obligation from the one stated in Article 5(4) of Regulation (EU) 2022/1925.

(225) In the second place, the Commission rejects Apple's argument in relation to the interplay between Article 5(4) of Regulation (EU) 2022/1925 and Article 5(5) of that Regulation. The fact that Article 5(5) of Regulation (EU) 2022/1925 lacks any *"free of charge"* language does not entitle Apple to charge a fee for steering or steering transactions, for the reasons set out in recital (170). Article 5(5) of Regulation (EU) 2022/1925, provides that the gatekeeper shall allow end users to access and use, through its CPSs, content, subscriptions, features or other items, by using the app of an app developer, including where those end users acquired such items from the relevant app developer without using the CPSs of the gatekeeper. Article 5(5) of Regulation (EU) 2022/1925 therefore contains a substantially different obligation from the one stated in Article 5(4) of that Regulation

(226) In the third place, Apple's argument on the compatibility of the objective of Article 5(7) of Regulation (EU) 2022/1925 with that of Article 5(4) of that Regulation is also to be rejected for the reasons set out in recitals (169) and (218) of this Decision[185].

(227) In the fourth place, Apple's argument on the compatibility of the objective of Article 6(4) of Regulation (EU) 2022/1925 with that of Article 5(4) of that Regulation, is to be rejected[186]. First, the Commission is not required, within the framework of either Regulation (EU) 2022/1925 or this Decision, to perform an economic assessment of whether and to which extent Article 5(4) of that Regulation could impact third party app stores' incentive to compete with Apple. Second, while Apple's compliance with Article 6(4) of Regulation (EU) 2022/1925 is not within the scope of this Decision, the Commission considers that it does not *"impose a zero-monetisation requirement in relation to facilitating transactions"* in the context of steering in relation to end users that have not yet been acquired by the business user. There is nothing in this Decision that could be construed in this manner. The Decision does not prohibit Apple from being remunerated for the initial acquisition under Article 5(4) of Regulation (EU) 2022/1925. Third, as set out in recitals (90) and (91) of this

184 Preliminary Findings, paragraph 116c.

185 Apple's response to the Preliminary Findings, [...], paragraph 118.

186 Apple's response to the Preliminary Findings, [...], paragraph 119.

Decision, Apple should allow app developers to steer to any distribution channel of their choice, including to websites and app stores operated by the developer or third parties, free of charge. Therefore, the Commission's interpretation of Article 5(4) of Regulation (EU) 2022/1925 supports the objective of Article 6(4) of that Regulation, since it reinforces the ability of app developers to use alternative distribution channels for the distribution of apps and the ability of end users to choose between different apps from different distribution channels.

(228) Fifth, Apple is wrong to claim that the Commission's interpretation of Article 5(4) of Regulation (EU) 2022/1925 breaches its freedom to conduct a business as enshrined in Article 16 of the Charter. As a preliminary matter, such a claim concerns the legality of the provision itself, rather than its application to Apple in relation to the conduct at issue, so that it exceeds what can be taken into account for the purposes of establishing whether Apple has complied with that provision in the present case.

(229) In any event, the rights and freedoms recognised by the Charter do not constitute unfettered prerogatives and may be restricted, provided that the restrictions correspond to objectives of general interest pursued by the measure in question and that they do not involve, with regard to the objectives pursued, a disproportionate and intolerable interference which infringes upon the very substance of the rights guaranteed[187]. Where several rights and fundamental freedoms protected by the Union legal order are at issue, the assessment of the possible disproportionate nature of a measure of Union law should be carried out with a view to reconciling the requirements of the protection of those different rights and freedoms and striking a fair balance between them[188].

(230) In relation to Article 16 of the Charter, the Court has already made clear that "*the freedom to conduct a business may be subject to a broad range of interventions on the part of public authorities that may limit the exercise of economic activity in the public interest*"[189]. In this regard, the co-legislators have already weighed the public interests the legislation at issue seeks to protect against the private interests of economic operators impacted by that legislation. Moreover, when legislating, the co-legislators have already had regard to the principle of proportionality and to the fundamental rights at stake.

(231) In any event, the Commission's interpretation of Article 5(4) of Regulation (EU) 2022/1925, as applied in this Decision, respects Apple's freedom to conduct a business. In accordance with Article 52(1) of the Charter, the Commission has assessed whether any restriction on Apple's freedom to conduct a business that may be brought about by this Decision: (i) is provided for by law; (ii) corresponds to objectives of general interest recognised by the Union; (iii) does not constitute a disproportionate and intolerable interference, impairing the very substance of those rights; and (iv) is necessary to protect the rights and freedoms of others.

(232) Therefore, any limitations of Apple's freedom to conduct a business set out in this Decision strike a fair balance between the fundamental rights and freedoms at stake.

---

187 See for example, Case C-544/10, *Deutsches Weintor*, EU:C:2012:526, paragraph 54, and Case C-348/12 P, *Council of the European Union v Manufacturing Support & Procurement Kala Naft Co., Tehran*, EU:C:2013:776, paragraph 122.

188 See for example, Case C-283/11, *Sky Österreich*, EU:C:2013:28, paragraph 60.

189 Case C-201/15, *Anonymi Geniki Etairia Tsimenton Iraklis (AGET Iraklis) v Ypourgos Ergasias, Koinonikis Asfalisis kai Koinonikis Allilengyis*, EU:C:2016:972, paragraph 86.

(233) Except for a sweeping statement, Apple has not provided justifications as to why complying with Article 5(4) of Regulation (EU) 2022/1925, as interpreted by this Decision, infringes the essence of Apple's freedom to conduct a business. Apple merely states that the Commission "*do[es] not leave to Apple to determine the specific measures to be taken to achieve the result sought by Article 5(4) which would be best adapted to the resources and abilities available to Apple*"[190]. However, this statement does not undermine the reasoning on why the measures taken by Apple do not comply with Article 5(4) of Regulation (EU) 2022/1925. Apple makes no serious attempt to substantiate this generalisation.

(234) Furthermore, the case-law Apple refers to[191] is not transferable to the present case. Article 5(4) of Regulation (EU) 2022/1925 is limited in scope and provides clearly for what gatekeepers should allow. In *Scarlet Extended*[192], the provision at stake was a directive, whose scope was much broader (Article 3(1) of Directive 2004/48): "*Member States shall provide for the measures, procedures and remedies necessary to ensure the enforcement of the intellectual property rights covered by this Directive. Those measures, procedures and remedies shall be fair and equitable and shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays*." The contested measure (the injunction from the Belgian judge) was also very wide in scope ("*bring to an end the copyright infringements established in the judgment of 26 November 2004 by making it impossible for its customers to send or receive in any way files containing a musical work in SABAM's repertoire by means of peer-to-peer software, on pain of a periodic penalty*"[193]). The Court ruled that the injunction amounted to active monitoring of all the data relating to each of Scarlet's customers in order to prevent any future infringement of intellectual-property rights. That injunction would therefore require Scarlet to carry out general monitoring, something which is prohibited by Article 15(1) of Directive 2000/31.

(235) In the case at hand, Apple is not required to do anything that would run counter to Union law.

(236) Finally, the Commission's interpretation of Article 5(4) of Regulation (EU) 2022/1925, as set out in this Decision, is not disproportionate to the stated objective of that Regulation. As explained in recitals (57) to (235) of this Decision, Apple does not allow business users to effectively communicate, and promote offers to and conclude contracts with end users, regardless of the distribution channel; and (ii) to conclude contracts following steering *"free of charge"* (since it imposes a Commission Fee that cannot be considered remuneration for facilitating the initial acquisition of the end user by the app developers).

5.3.5. Conclusion on Apple's restrictions to steering and steered transactions under the Original Business Terms and the New Business Terms

(237) In light of recitals (54) to (236) of this Decision, the Commission concludes that neither the Original Business Terms, nor the New Business Terms comply with Article 5(4) of Regulation (EU) 2022/1925.

(238) First, the Original Business Terms, to the extent they continue to apply, do not allow for any form of steering within the app, thus prohibiting for example, any

190 Apple's response to the Preliminary Findings, [...], paragraph 124.
191 Apple's response to the Preliminary Findings, [...], footnote 59.
192 Case C-70/10, *Scarlet Extended SA*, EU:C:2011:771.
193 Case C-70/10, *Scarlet Extended SA*, EU:C:2011:771, paragraph 23.

communication about prices or the possibility for the app developer to include calls to action.

(239) Second, the New Business Terms do not comply with Article 5(4) of Regulation (EU) 2022/1925 in that they do not allow app developers to freely communicate and promote offers using any form of communication and do not allow the conclusion of contracts in view of the restrictions those terms contain in relation to the destination page after a link-out (including as regards the app developer's ability to steer and conclude steered transactions in web view), the recurrent presentation of a disclosure sheet after link-out, and the inclusion of additional data in the URL. The New Business Terms also do not allow the conclusion of contracts following steering *"free of charge"* since Apple imposes a Commission Fee that cannot be considered remuneration for facilitating the initial acquisition of the end user by the app developers.

5.4. The New Music Streaming Business Terms do not comply with Article 5(4) of Regulation (EU) 2022/1925

(240) As explained in recital (41) of this Decision, Apple imposes under the New Music Streaming Business Terms several requirements on music streaming developers that wish to steer.

(241) First, the link provided by the music streaming developer can only direct the end user to the developer's website without any redirect or intermediate links or landing page. App developers can also link-out to only five destination URLs per storefront. For the same reasons as those set out in recitals (90) to (100) of this Decision, the Commission takes the view that such restrictions are incompatible with Article 5(4) of Regulation (EU) 2022/1925.

(242) Second, the music streaming app must open a new window in the default browser on the device and may not open a web view. For the same reasons as those set out in recitals (97) to (119) of this Decision, the Commission takes the view that such restrictions are incompatible with Article 5(4) of Regulation (EU) 2022/1925.

(243) Third, when an end user taps on the link provided by the music streaming developer, a disclosure sheet is displayed by Apple (as shown in recital (41)(d) of this Decision). The wording and frequency of the disclosure sheet under the New Music Streaming Business Terms and New Business Terms are the same. For the same reasons as those set out in recitals (101) to (104) of this Decision, the Commission takes the view that the recurrent nature of the disclosure sheet, as well as its wording and design, is incompatible with Article 5(4) of Regulation (EU) 2022/1925.

(244) Fourth, as explained in recital (40) of this Decision, Apple charges a recurrent Commission Fee for steered transactions if concluded within a 7 calendar day window period, for as long as the end user uses the app. For the same reasons as those set out in Section 5.3.4 of this Decision, the Commission takes the view that charging such a Commission Fee is incompatible with Article 5(4) of Regulation (EU) 2022/1925 inasmuch as it (i) amounts to charging a fee for steering and steered transactions, which has to be free of charge pursuant to that provision, and (ii) cannot be considered as a possible remuneration for facilitating the initial acquisition of the end user by the developer.

(245) For the reasons set out in recitals (240) to (244) of this Decision, the Commission concludes that the New Music Streaming Business Terms are in breach of Article 5(4) of Regulation (EU) 2022/1925.

(246) In its response to the Preliminary Findings, Apple states that "*Apple's arguments as set out in this Response on the scope of the obligation in Article 5(4) and flaws in the EC's approach apply to both the New Business Terms and the New Music Streaming Business Terms.*"[194].

(247) For the same reasons as set out in Section 5.3 of this Decision, Apple's arguments in relation to the New Music Streaming Business Terms should be dismissed. Consequently, the Commission concludes that the New Music Streaming Business Terms do not comply with Article 5(4) of Regulation (EU) 2022/1925.

6. APPLE'S ALLEGATIONS OF PROCEDURAL SHORTCOMINGS ARE UNFOUNDED

(248) In its response to the Preliminary Findings, Apple raised two alleged procedural shortcomings, namely: (i) an alleged lack of access to all relevant documents in the case file; and (ii) an alleged lack of reliability of the minutes summarising several meetings between the Commission and third parties[195].

(249) As a general rule, the Commission considers that, as set out in Article 8(5) of Implementing Regulation (EU) 2023/814, a request for documents may only be made within one week of receiving access to the file under the terms of disclosure. The Commission extended the deadline to make such a request upon the Apple's external counsel's requests, until 11 July 2024. Apple's external counsel never made a request for access to the file after that deadline. In any event, for the reasons set out below, Apple's arguments are unfounded.

6.1. The Commission's case file is complete

(250) The information contained in the Commission's file in this case (i.e. Case DMA.100109) comprised – from the outset – all documents which had been obtained, produced and/or assembled during the Commission's investigation and that related to the subject matter of its investigation, i.e. all documents concerning Apple's non-compliance with Article 5(4) of Regulation (EU) 2022/1925. All the evidence related to the facts or law set out in the Preliminary Findings were included in the file[196].

(251) Following Apple's request during the Data Room, in the spirit of efficiency and good cooperation during the investigation, the Commission provided Apple's external legal counsel with additional documents that did not relate to the subject matter of Case DMA.100109 but that made passing references to Apple's compliance with Article 5(4) of Regulation (EU) 2022/1925. Those documents were filed in cases relating to Apple's compliance with Article 5(7) and Article 6(4) and (12) of Regulation (EU) 2022/1925[197].

(252) Apple "*has concerns with the [Commission]'s methodology for the composition of the investigation file in this case*"[198]. For that reason, Apple claims, "*it asked the [Commission] for several missing documents in a series of ad hoc requests*"[199].

---

194 Apple's response to the Preliminary Findings, [...], paragraph 12.

195 Apple's response to the Preliminary Findings, [...], paragraphs 235 to 242.

196 See, for instance, and by analogy, Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, *Aalborg Portland A/S*, EU:C:2004:6, paragraph 126.

197 For instance, minutes of meetings with third parties or submissions of third parties where the prime focus was another obligation of Regulation (EU) 2022/1925 but where Article 5(4) of that Regulation was alluded to in passing.

198 Apple's response to the Preliminary Findings, [...], paragraphs 235.

199 Apple's response to the Preliminary Findings, [...], paragraphs 237.

Apple argues that the Commission has not put forward any "*compelling explanation for the basis on which these additional documents were selected*"[200]. The Commission's file is complete and Apple's external counsel even had access to documents that were not part of the file. As explained in recital (251) of this Decision, the additional documents that were accessed by Apple's external counsel during the Data Room[201] had been obtained, produced and/or assembled during the Commission's investigation in other cases than Case DMA.100109, did not relate to the subject matter of that investigation, and only tangentially referred to Article 5(4) of Regulation (EU) 2022/1925. The Commission sufficiently explained to Apple's external legal counsel why those documents were not part of the case file in Case DMA.100109, how the Commission identified them, and why the Commission nonetheless decided to make them available to Apple's external counsel in the Data Room.

(253) In addition to reviewing a complete file, Apple's external legal counsel was also able to review, and did review, those additional documents in the Data Room, and had the opportunity to make submissions to the Commission in relation to those documents, but did not.

6.2. Apple was given proper access to the minutes relevant to the investigation

(254) In respect of certain minutes of meetings between the Commission and third parties to which Apple had access, Apple argues that (i) some minutes were merely internal notes which were not approved by third parties participating in the meetings; (ii) some minutes did not have a clear drafting date and were sent to third parties participating in the meetings only after Apple asked to see the relevant cover email; and (iii) some minutes appear to have been drafted only after Apple requested to review them[202].

(255) Under Apple's broad claims, Apple seems to be complaining about six meeting minutes:

(a) minutes of a meeting with [Third Party 24] of 25 April 2024, which were finalised on 10 July 2024;

(b) minutes of a meeting with [Third Party 12] of 4 December 2023 which were finalised on 22 December 2023;

(c) minutes of a meeting with [Third Party 11] of 9 February 2024, which were finalised on 5 July 2024;

(d) minutesof a meeting with [AN3P2] of 16 November 2022, which were finalised on 2 July 2024;

(e) minutes of a meeting with [Third Party 15] of 17 May 2024, which were finalised on 1 July 2024; and

(f) minutes of a meeting with [Third Party 15] of 5 March 2024, which were finalised on 12 March 2024.

(256) Article 22 of Regulation (EU) 2022/1925 states that the Commission may interview any natural or legal person which consents to being interviewed, for the purpose of collecting information, relating to the subject-matter of an investigation. In this

200 Apple's response to the Preliminary Findings, [...], paragraphs 237.
201 See for example, Data Room report, [...], page 11.
202 Apple's response to the Preliminary Findings, [...], paragraph 240.

regard, the Commission is entitled to record the relevant interviews by any technical means.

(257) First, none of the meetings in question collected information in relation to the investigation relating Apple's compliance with its obligations under Article 5(4) of Regulation (EU) 2022/1925, but took place in the context of other investigations. Consequently, none of the minutes that Apple complains about were used as evidence against Apple for the purposes of this Decision.

(258) Second, Article 22 of Regulation (EU) 2022/1925 does not, contrary to what Apple appears to suggest, impose on the Commission an obligation to confirm interview records with the interviewee, but only refers to the fact that the Commission is entitled to record the interview by any technical means.

(259) In any event, in the present circumstances, Apple's complaints regarding the creation and confirmation of the minutes with the meeting participants are in any event unfounded.

(260) As regards Apple's argument on the belated preparation of meeting minutes, all the minutes in question were finalised based on contemporaneous notes of the case teams (i.e., internal notes taken during the meetings). Moreover, the content of what was discussed during those interviews is fully reflected in specific documents in the investigation file and in any event the Commission obtained the relevant third party's agreement to the content of the minutes[203]. Apple's external legal counsel was able to review the minutes of all those meetings, demonstrating that the minutes did not contain any evidence that could be favorable to Apple and thus could have been of use for its defence.

(261) In light of explanations provided in recitals (248) to (260), the Commission has not committed any procedural breach in conducting its investigation.

7. DURATION OF APPLE'S NON-COMPLIANCE

(262) The Commission finds that Apple's non-compliance with Article 5(4) of Regulation (EU) 2022/1925 commenced on the date that that provision became applicable to it, that is on 7 March 2024, which is six months after the App Store was listed in the Apple designation decision. This non-compliance is still ongoing at the date of adoption of this Decision.

8. ADDRESSEES

(263) The Commission concludes that the non-compliance with Article 5(4) of Regulation (EU) 2022/1925 should be imputed to Apple Inc. as (i) the undertaking designated as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925, (ii) the company which – for the entire period of the infringement – issued and was (and continues to be) party to the DPLA, formulated and continues to formulate the App Store Review Guidelines, and conducted and continues to conduct app reviews based on them and as (iii) the entity which (directly or indirectly) wholly owned and continues to fully own Apple Distribution International Limited, which is the entity providing the App Store CPS in the Union[204].

---

[203] Case T-604/18, *Google*, EU:T:2022:541, paragraph 944.

[204] See Exhibit 21.1 of Apple's Annual Report of November 2023, where Apple Distribution International Limited, incorporated in Ireland, is listed among the subsidiaries of Apple Inc.

9. FINES

9.1. Principles

(264) Under Article 30(1)(a) of Regulation (EU) 2022/1925, the Commission may by decision impose fines on gatekeepers where it finds that the gatekeeper, intentionally or negligently, fails to comply with any of the obligations laid down in Articles 5, 6 and 7 of that Regulation. Fines under Regulation (EU) 2022/1925 are ultimately aimed at ensuring effective compliance by the gatekeepers with their obligations under applicable laws and prevention of non-compliant conduct that could undermine the objectives of applicable law (i.e. in the present case Regulation (EU) 2022/1925).

(265) According to Article 30(4) of Regulation (EU) 2022/1925, in fixing the amount of a fine, the Commission shall take into account the gravity, duration, and recurrence of the non-compliance. In general, fines shall be effective, proportionate, and dissuasive[205]. The Commission must ensure that any aggravating or mitigating circumstances are also reflected in the fines imposed. In doing so, the Commission must set the fines at a level sufficient to ensure deterrence.

(266) Any fine imposed by the Commission shall not exceed 10 % of the gatekeeper's total worldwide turnover in the preceding financial year. Additionally, the Commission must ensure, that its fines are compatible with the principles of equal treatment and proportionality[206], while having, at the same time, the necessary deterrent effect[207].

9.2. Intent or negligence

(267) As mentioned in recital (264) of this Decision, a fine may be imposed on gatekeepers that "intentionally or negligently" fail to comply with any of the obligations laid down in Articles 5, 6 and 7 of Regulation (EU) 2022/1925.

9.2.1. Apple's arguments

(268) Apple claims that it "*has not acted intentionally or negligently*"[208]. In support of its arguments, Apple relies on the alleged "*highly complex approach*" of the Preliminary Findings[209], the "*lack of clarity and vague explanations advanced*" by the Commission[210], the fact that the Commission relied on non-public documents to support its interpretation of Article 5(4) of Regulation (EU) 2022/1925[211], and Apple's good faith engagement with the Commission[212]. Apple also argues that Regulation (EU) 2022/1925 "*is a novel ex-ante regulatory regime, and [that] the Article 5(4) investigation is part of the first wave of non-compliance investigations that has been opened by the [Commission]*", thus justifying the fact that no fine is required, consistent with the findings of the Court in *Clearstream*[213].

---

205 Case T 203/18, *VQ v ECB*, EU:T:2020:313, Case T-578/18, *CA Consumer Finance v ECB*, EU:T:2020:306 and Case T-576/18, *Crédit Agricole v ECB*, EU:T:2020:304.

206 See, for instance and by analogy, Case T-92/13, *Philips v Commission*, EU:T:2015:605, paragraph 194 and the case-law cited therein.

207 See, for instance and by analogy, Case T-59/07, *Polimeri Europa v Commission*, EU:T:2011:361, paragraph 243 and the case-law cited therein.

208 Apple's response to the Preliminary Findings, [...], paragraph 211.

209 Apple's response to the Preliminary Findings, [...], paragraph 212.

210 Apple's response to the Preliminary Findings, [...], paragraph 213.

211 Apple's response to the Preliminary Findings, [...], paragraph 214.

212 Apple's response to the Preliminary Findings, [...], paragraph 215.

213 Apple's response to the Preliminary Findings, [...], paragraph 216.

9.2.2. The Commission's assessment of Apple's arguments

(269) The Commission finds that Apple has acted at the very least negligently, as it could not have been unaware[214] that the measures described in Section 4 of this Decision did not comply with Article 5(4) of Regulation (EU) 2022/1925.

(270) First, Apple does not dispute that the Original Business Terms do not comply with Article 5(4) of Regulation (EU) 2022/1925 in that they totally prohibit steering within the app and Apple could not be unaware that all the conditions imposed by it under the New Business Terms and the New Music Streaming Business Terms restrict the developer's ability to steer.

(271) The Preliminary Findings explain in a concise manner why, for each of the three Business Terms, Apple infringed Article 5(4) of Regulation (EU) 2022/1925. This does not amount to a "*highly complex approach*" or an "*extensive reasoning [that] illustrates that this is far from a case of straightforward breach*"[215].

(272) Second, the Commission is under a legal obligation, under Regulation (EU) 2022/1925, to provide written guidance to Apple only when issuing Preliminary Findings on how it interprets Article 5(4) of that Regulation. Nonetheless, the Commission discussed Apple's compliance solution for Article 5(4) of Regulation (EU) 2022/1925 with Apple on numerous occasions, both prior to and after the 7 March 2024 compliance deadline (for example, meeting of 16 October 2023[216], meeting of 14 November 2023[217], state of play meeting of 18 April 2024[218], meeting of 22 May 2024[219]). Notwithstanding the Commission's recurrent feedback to Apple indicating that the three Business Terms described in this Decision do not comply with Article 5(4) of Regulation (EU) 2022/1925, Apple did not make substantial changes to its three Business Terms.

(273) Third, as explained in recital (163) of this Decision, Apple is mistaken when it argues that the Commission relied on a non-public version of a negotiating document to sustain its interpretation of Article 5(4) of Regulation (EU) 2022/1925. The note from the Secretariat General of the Council to the Committee of Permanent Representatives of March 2022 to which Apple refers is accessible online and fully public[220].

(274) Fourth, the fact that Regulation (EU) 2022/1925 is a new instrument does not, by any means, prevent the Commission from imposing fines on Apple.

(275) Regulation (EU) 2022/1925 itself provides for the possibility to impose fines for non-compliance with Article 5 thereof. The Regulation does not condition the imposition of a fine on the existence of established precedents. The Court has confirmed that the fact that "*the Commission and the EU Courts have not yet had the opportunity to rule specifically on particular conduct does not preclude, in itself, the possibility that an undertaking may have to expect its conduct to be declared incompatible*" with Union law[221]. "*That fact is therefore not such as to exempt the*

---

214 See e.g., Case C-807/21, *Deutsche Wohnen SE*, EU:C:2023:950, paragraph 76 and the case-law cited therein.

215 Apple's response to the Preliminary Findings, [...], paragraph 212.

216 [...].

217 [...].

218 [...].

219 [...].

220 See footnote 139 of this Decision.

221 Case C-746/21 P, *Altice Group Lux Sàrl*, EU:C:2023:836, paragraph 197.

undertaking concerned from its liability"[222]. Apple simply refers to the novelty of the case, without explaining to what extent the alleged novelty, if any, justifies no fine for established non-compliance.

(276) Fifth, Apple's reference to the *Clearstream* judgment[223] does not support its claim that no fine at all can be imposed in the event of a novel infringement. That case relates to a different conduct, a different set of rules and a different industry. It is therefore not transposable to the situation at stake. The judgment of the General Court in *Bytedance*, regarding Regulation (EU) 2022/1925 specifically, is relevant in this regard since the General Court ruled that "*[t]hat conclusion [that the applicant's arguments are inadmissible] is not called into question by the applicant's argument that, by referring to certain judgments concerning competition law and State aid, such arguments and evidence are admissible, even if they are submitted for the first time before the Court. […] However, that case-law concerns legal frameworks and fields of law which are different from those covered by the DMA, the latter being characterised, […] by strict requirements governing the rebuttal of the presumptions laid down in Article 3(2) of the DMA, in terms of procedural requirements as well as burden and standard of proof. That case-law is therefore not applicable in the present case*."[224].

(277) In any event, novelty was only one of several criteria that led the Commission not to impose a fine in *Clearstream*. The Commission additionally relied on the fact that the infringement had terminated (at least already at the time of the statement of objections) and the fact that cross-border clearing and settlement in the Union were at a crossroads.

(278) It follows that Apple could not have been unaware that the maintenance of the three Business Terms described in this Decision, as well as the rules set out in these business terms respectively, could lead to a breach of Article 5(4) of Regulation (EU) 2022/1925.

9.3. Calculation of the fine

9.3.1. Determination of the fine

9.3.1.1. Gravity of the non-compliance

9.3.1.1.1. The Commission's position

(279) Regulation (EU) 2022/1925 lists the gravity of the non-compliance as one of the key criteria to determine the level of the fine for non-compliance. In the present case, the Commission concludes that several factors are relevant to assess the gravity of Apple's non-compliance with Article 5(4) of Regulation (EU) 2022/1925 in relation to the App Store CPS.

(280) First, Apple's non-compliance with Article 5(4) of Regulation (EU) 2022/1925 has covered the whole of the Union as the restrictions described in Section 5 of this Decision are the same across the Union.

(281) Second, Apple's non-compliance with Article 5(4) of Regulation (EU) 2022/1925 potentially affects a significant number of end users established or located in the Union. Pursuant to the latest Transparency Report prepared by Apple in relation to

222 Case C-746/21 P, *Altice Group Lux Sàrl*, EU:C:2023:836, paragraph 197.

223 Apple's response to the Preliminary Findings, [...], paragraph 216.

224 Case T-1077/23, *Bytedance v Commission*, EU:T:2024:478, paragraphs 236 and 237.

its obligations under Regulation (EU) 2022/2065, the App Store had on average over 130 million recipients in the Union during the relevant period[225].

(282) Apple's non-compliance with Article 5(4) of Regulation (EU) 2022/1925 also potentially affects a significant number of app developers ([Confidential – contains business secrets]) offering or intending to offer apps with a steering possibility within the Union[226].

(283) Third, the Commission considers that Apple has violated Article 5(4) of Regulation (EU) 2022/1925 through a number of measures laid down in the New Business Terms that constitute its single overall compliance solution since 7 March 2024, such as restrictions concerning the landing page after link-out (for example, the limitation to a single landing page), the use of an unjustified disclosure sheet and the imposition of a recurrent Commission Fee on transactions after steering. These measures individually as well as part of a single overall compliance solution are all non-compliant with Apple's obligation under Article 5(4) of Regulation (EU) 2022/1925. The Commission considers that Apple has violated Article 5(4) of Regulation (EU) 2022/295 also through a number of measures laid down in the New Music Streaming Business Terms. The Commission finally notes that Apple does not contest that its Original Business Terms do not comply with Article 5(4) of Regulation (EU) 2022/1925 in that they totally prohibit steering within the app.

(284) When assessing the gravity of Apple's non-compliance with Article 5(4) of Regulation (EU) 2022/1925, the Commission must ensure that fines have a sufficiently deterrent effect in relation to Apple, but also in relation to other designated gatekeepers to avoid future breaches of Regulation (EU) 2022/1925.

(285) In that regard, the link between, on the one hand, the undertaking's size and global resources and, on the other, the need to ensure that a fine has a deterrent effect cannot be denied. Accordingly, when the Commission calculates the amount of the fine it may take into consideration, inter alia, the size and the economic power of the undertaking concerned.".[227]

(286) Apple is one of the largest technology companies in the world by turnover. Apple's turnover in the business year ending 28 September 2024 was USD 391 035 000 000 (approx. EUR 360 729 787 500)[228]. Apple had an estimated market capitalisation of USD 3 278 000 000 000 on 23 March 2025 (approx. EUR 3 027 560 800 000[229]), making it the most valuable company in the world in terms of market capitalisation[230]. As a result, Apple can be regarded as a very large company with significant economic power.

---

225 See Section 7.1. of the Transparency Report, page 7, [...].

226 [Confidential – contains business secrets].

227 See, by way of analogy, Case T-332/09, *Electrabel*, EU:T:2012:672, paragraph 282.

228 Apple's Form 10-K Annual Report Pursuant To Section 13 or 15(D) of the Securities Exchange Act of 1934 for the fiscal year ended 28 September 2024, page 35, [...], accessible at: https://d18rn0p25nwr6d.cloudfront.net/CIK-0000320193/faab4555-c69b-438a-aaf7-e09305f87ca3.pdf (accessed on 28 October 2024). ECB exchange rate for Apple's FY 2024 is on average USD 1 = EUR 0.9225. See [...].

229 Companies Market Cap, 'Market Cap', [...], accessible at : https://companiesmarketcap.com/apple/marketcap/ (accessed on 24 March 2025). ECB exchange rate of 21 March 2025 is USD 1 = EUR 0.9236. See [...].

230 Companies Market Cap, 'Largest Companies by Marketcap', [...], accessible at : https://companiesmarketcap.com/ (accessed on 24 March 2025).

(287) In light of the above, the gravity of Apple's non-compliance with Article 5(4) of Regulation (EU) 2022/1925 should be considered as serious.

9.3.1.1.2. Apple's arguments

(288) Apple contests the seriousness of its non-compliance because the Commission has not identified criteria determining the gravity of non-compliance. Further, the novelty of the provisions of Regulation (EU) 2022/1925 and the legal uncertainty characterising Article 5(4) of that Regulation must, Apple claims, lead to the conclusion that any violation of that provision cannot be particularly serious[231].

(289) Apple also argues that the "*obligations are not sufficiently crystallised to qualify any alleged violation of Article 5(4) at this early stage as "particularly serious"*."[232].

(290) Finally, Apple argues that the Commission was under an obligation to make an assessment of the impact of the non-compliance [233].

9.3.1.1.3. The Commission's assessment of Apple's arguments

(291) First, Regulation (EU) 2022/1925 does not contain more specific rules regarding the relevant criteria for imposing fines than what is described in Article 30 thereof. It is settled case law that "*in assessing the gravity of an infringement for the purpose of fixing the amount of the fine, the Commission must take into consideration not only the particular circumstances of the case but also the context in which the infringement occurs and must ensure that its action has the necessary deterrent effect, especially as regards those types of infringement which are particularly harmful to the attainment of the objectives of the Community*."[234].

(292) Second, there is no obligation in Regulation (EU) 2022/1925 for the Commission to establish a binding or exhaustive list of relevant criteria to determine the gravity of non-compliance. The Union Courts have established, even when fining guidelines exist, such as in the area of Union competition rules, that there is no need for a binding or exhaustive list of the criteria to be applied when determining the gravity of an infringement[235]. Apple has not put forward any arguments explaining why this should be the case in the context of Regulation (EU) 2022/1925.

(293) Third, as explained in recital (270) of this Decision, Apple does not dispute that the Original Business Terms do not comply with Article 5(4) of Regulation (EU) 2022/1925 in that they totally prohibit steering within the app. Apple could also not be unaware that all the conditions imposed by it under the New Business Terms and the New Music Streaming Business Terms restrict the developer's ability to steer its users. Further, for the reasons explained in recital (155) of this Decision, the implementation of Article 5(4) of Regulation (EU) 2022/1925, in turn, cannot be deemed to be overly complex or require complex technical implementing measures either.

(294) Fourth, the Commission is under no duty to investigate the impact or effect of non-compliance when determining its gravity under Regulation (EU) 2022/1925. Article 30(4) of Regulation (EU) 2022/1925 only lists gravity, duration, recurrence, not the

231 Apple's response to the Preliminary Findings, [...], paragraphs 219-220.

232 Apple's response to the Preliminary Findings, [...], paragraph 220.

233 Apple's response to the Preliminary Findings, [...], paragraph 221.

234 See, for instance and by analogy, joined cases 100 to 103/80, *SA Musique Diffusion française and others v Commission*, EU:C:1983:158, paragraph 106.

235 See, for instance, Joined Cases T-259/02 to T-264/02 and T-271/02, *Raiffeisen Zentralbank Österreich and Others v Commission*, paragraph 238 and the case-law cited.

impact or effect of the infringement as relevant criteria. It is apparent from recital 11 of that Regulation that the assessment to be carried out by the Commission is independent "*from the actual, potential or presumed effects of the conduct of a given gatekeeper covered by this Regulation on competition on a given market*".

(295) It follows from the above that Apple has not put forward any convincing arguments calling into question the serious gravity of the non-compliance.

9.3.1.2. Duration

(296) The Commission concludes that Apple's non-compliance with Article 5(4) of Regulation (EU) 2022/1925 commenced on 7 March 2024 when the obligations of that Regulation, including those pursuant to Article 5(4) thereof, began to apply to Apple. Apple's non-compliance is still ongoing at the date of this Decision. Therefore, the duration of Apple's non-compliance, as established in this Decision, was approximately 13 months.

(297) Therefore, the Commission considers that Apple's non-compliance is of medium duration.

9.3.1.3. Recurrence

(298) The recurrence factor is not relevant in the present case, since this is the first decision addressed to Apple under Article 29 and Article 30 of Regulation (EU) 2022/1925 and, to date, no other decision pursuant to Articles 29 or 30 of that Regulation has been adopted in relation to Apple.

9.3.1.4. Other relevant factors for the amount of the fine

9.3.1.4.1. Aggravating circumstances

(299) The Commission considers that there are no aggravating circumstances in this case.

9.3.1.4.2. Mitigating circumstances

9.3.1.4.2.1. The Commission's position

(300) The Commission concludes that there is a mitigating circumstance in this case. Regulation (EU) 2022/1925 has established a new framework governing the designation of gatekeepers and the obligations applicable to them[236]. This Decision is also among the very first non-compliance decisions under Regulation (EU) 2022/1925, and specifically Article 5(4) thereof. The Commission considers that this should be taken into account when assessing Apple's non-compliance with Regulation (EU) 2022/1925 at this point in time. The Commission therefore takes this factor into account when fixing the level of the fine.

9.3.1.4.2.2. Apple's arguments

(301) Apple submits that no fine at all should be imposed on it, or that, in the alternative, the Commission should take at the very least into consideration several mitigating circumstances when calculating the amount of the fine. Apple argues that "*it is clear that the novelty of [Regulation (EU) 2022/1925] and Apple's good faith efforts to engage with the EC on its interpretation should be a mitigating factor*"[237]and that "*in a string of cases the EU courts have recognised novelty as a key mitigating factor.*"[238]

---

236 Case T-1077/23, *Bytedance v Commission*, EU:T:2024:478, paragraph 233.

237 Apple's response to the Preliminary Findings, [...], paragraph 222.

238 Apple's response to the Preliminary Findings, [...], paragraph 222.

9.3.1.4.2.3. The Commission's assessment of Apple's arguments

(302) None of Apple's arguments for not imposing a fine, or for reducing the fine, are convincing.

(303) As explained in recitals (274) to (277) of this Decision, the fact that Regulation (EU) 2022/1925 is a new instrument does not, by any means, prevent the Commission from imposing fines on Apple.

(304) Notwithstanding the above, as mentioned in recital (300) of this Decision, the Commission has considered the novelty of Regulation (EU) 2022/1925 as a mitigating factor in determining the fine impose for Apple's the non-compliance.

9.3.2. Conclusion

(305) In view of the above, the Commission considers that Apple has, at the very least negligently, not complied with Article 5(4) of Regulation (EU) 2022/1925. Apple non-compliance with Regulation (EU) 2022/1925 is serious as it covered the entirety of the Union and potentially affected a significant number of business and end users in the Union. Apple's non-compliance is of medium duration. Furthermore, Apple is a large undertaking, with substantial resources, including legal resources. Finally, the Commission has taken into account the mitigating circumstance that this Decision is among the very first non-compliance decisions adopted under Regulation (EU) 2022/1925, and specifically Article 5(4) thereof.

9.4. Amount of the fine

(306) In view of the criteria described in recitals (267) to (305) of this Decision, the Commission considers it appropriate to impose a fine under Article 30(1) of Regulation (EU) 2022/1925 representing EUR 500 000 000.

(307) Apple's turnover in the business year ending 28 September 2024 was USD 391 035 000 000 (approx. EUR 360 729 787 500)[239]. The final amount of the fine set is thus below 10 % of that figure which is the maximum fine that could be imposed pursuant to Article 30(1) of Regulation (EU) 2022/1925.

(308) This amount is proportionate, as it represents a relatively small proportion of Apple's annual worldwide turnover (approx.0.14 %) and in any event significantly less than the maximum fine cap of 10 % referred to in the previous recital.

10. CEASE AND DESIST

(309) Pursuant to Article 29(5) of Regulation (EU) 2022/1925, "*[i]n the non-compliance decision, the Commission shall order the gatekeeper to cease and desist with the non-compliance within an appropriate deadline and to provide explanations on how it plans to comply with that decision*."

(310) On that basis, and since the Commission has found that Apple's non-compliance with Article 5(4) of Regulation (EU) 2022/1925 is ongoing, it is necessary to order Apple to bring the non-compliance described in Section 5 effectively to an end within 60 calendar days from the date of notification of this Decision.

---

239 Apple's Form 10-K Annual Report Pursuant To Section 13 or 15(D) of the Securities Exchange Act of 1934 for the fiscal year ended 28 September 2024, page 35, [...], accessible at: https://d18rn0p25nwr6d.cloudfront.net/CIK-0000320193/faab4555-c69b-438a-aaf7-e09305f87ca3.pdf (accessed on 28 October 2024). ECB exchange rate for Apple's FY 2024 is on average USD 1 = EUR 0.9225. See [...].

(311) In addition, it is necessary to ensure that Apple shall refrain from repeating any conduct constituting non-compliance with Article 5(4) of Regulation (EU) 2022/1925, as well as from any conduct having the same or equivalent object or effect.

(312) In line with the objectives of Regulation (EU) 2022/1925 to ensure contestable and fair markets in the digital sector, as expressed in Article 1(2) of that Regulation, and more in particular in line with the objectives of Article 5(4) of Regulation (EU) 2022/1925, namely to allow business users to communicate and promote offers to end users, including under different conditions, and to conclude contracts with end users "free of charge", Apple should:

Effective communication, promotion of offers and conclusion of contracts

(a) ensure that app developers are allowed in practice (i.e. including technically and contractually) to engage in any form of communication, promotion of offers, and conclusion of contracts following steering with end users both within and outside their app. This includes, for instance:

(i) allowing app developers to steer end users to any destination or channel of their choice (including, but not limited to, websites or app stores the app developer operates, or websites or app stores that are operated by third parties). In this regard, Apple should not, for instance, limit the number of destination pages to which the app developer can steer to or prohibit the app developer from including additional data in the URL of the destination page;

(ii) allowing app developers to steer end users to any types of offers of their choice, including offers for digital content, services and apps provided by third parties, including on alternative app marketplaces and on other apps;

(iii) conclude contracts following steering, within or outside the app, via any form of technology, including web view;

(iv) ensure that conditions surrounding the app developers' ability to effectively communicate, promote offers, and conclude contracts, regardless of the distribution channel, such as prompts or disclosure sheets, are developed and implemented in a neutral manner, based on tangible, verifiable data collected by Apple, and do not go beyond what is objectively necessary and proportionate to inform the end users that they will be transacting with the app developer instead of Apple;

Conclusion of contracts "free of charge"

(b) ensure that both (i) the communication and promotion of offers, and (ii) the conclusion of contracts following steering with end users acquired through the App Store are free of charge;

(c) ensure that any potential remuneration for facilitating the initial acquisition of end users by the app developers: (i) is related to the initial acquisition only, both in terms of time and scope, which means that it cannot be extended to already acquired end users; (ii) is commensurate to the value of the initial acquisition and must take into account any other, direct or indirect, remuneration received from business users for facilitating the initial

acquisition; and; (iii) does not remunerate the gatekeeper for gatekeeper value[240]. Apple is prohibited from imposing any other type of fee (in addition to a potential fee for initial acquisition) that covers services linked to the acquisition of end users.

11. PERIODIC PENALTY PAYMENTS

(313) In view of the seriousness of Apple's non-compliance with Article 5(4) of Regulation (EU) 2022/1925, as established in this Decision and considering that the non-compliance has been found to be on-going, the Commission concludes that it is necessary to impose periodic penalty payments pursuant to Article 31(1), point (h), of Regulation (EU) 2022/1925 if Apple were to fail to implement measures that bring the infringement effectively to an end within 60 calendar days from the date of notification of this Decision.

(314) Any periodic penalty payments that may be definitively set should be sufficient to ensure compliance by Apple with this Decision and may take account of Apple's significant financial resources (see recitals (286) and (307) of this Decision).

HAS ADOPTED THIS DECISION:

Article 1

Apple Inc. has not complied with Article 5(4) of Regulation (EU) 2022/1925 from 7 March 2024 and such non-compliance is on-going.

Article 2

For the non-compliance referred to in Article 1, a fine of EUR 500 000 000 is imposed on Apple Inc..

The fine shall be credited, in euros, within three months of the date of notification of this Decision, to the following bank account held in the name of the European Commission:

BANQUE CENTRALE DU Luxembourg
2, Boulevard Royal
L-2983 Luxembourg

IBAN: LU27 9990 0001 1400 100E
BIC: BCLXLULL
Ref.: EC/BUFI/DMA.100109

After the expiry of the period referred to in the second paragraph, interest shall automatically be payable at the interest rate applied by the European Central Bank to its main refinancing operations on the first day of the month in which this Decision is adopted, plus 3.5 percentage points.

Where an action pursuant to Article 263 of the Treaty is brought before the Court of Justice of the European Union against this Decision, the fine shall be covered by its due date, either by providing an acceptable financial guarantee or by making a provisional payment of the fine in

[240] As explained in recital (197) of this Decision, gatekeeper value is the value a service provided by a gatekeeper with a CPS has, on top of the market value of the service, because of its position as an important gateway for business users to reach end users which forces both groups to rely on the gatekeeper.

accordance with Article 108 of Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council[241].

Article 3

Apple Inc. shall within 60 calendar days of notification of this Decision, bring effectively to an end the non-compliance of Article 5(4) of Regulation (EU) 2022/1925 referred to in Article 1.

Apple Inc. shall provide the Commission with explanations on how it plans to comply with this Decision within 60 calendar days from the date of notification of this Decision.

Apple Inc. shall refrain from repeating any conduct described in Article 1, and from any conduct having the same or equivalent object or effect.

Article 4

If the addressee of this Decision fails to comply with Article 3 within 60 calendar days from the date of notification of this Decision, it shall incur periodic penalty payments not exceeding the limit stipulated in Article 31(1) of Regulation (EU) 2022/1925, from the date on which it is required to bring the non-compliance effectively to an end pursuant to Article 3, until the date on which it complies with the Decision.

Article 5

This Decision is addressed to Apple Inc., One Apple Park Way, Cupertino, CA 95014, United States of America.

Done at Brussels, 23.4.2025

For the Commission

Signed
Teresa RIBERA
Executive Vice-President

[241] Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (OJ L, 2024/2509, 26.9.2024, ELI: http://data.europa.eu/eli/reg/2024/2509/oj).