



EUROPEAN COMMISSION

*CASE DMA.100011 – Alphabet – OIS Verticals,
DMA.100002 - Alphabet - OIS App Stores,
DMA. 100004 – Alphabet – Online search
engines, DMA.100005 – Alphabet – Video
sharing, DMA.100006 – Alphabet – Number-
independent interpersonal communications
services,
DMA.100009 – Alphabet – Operating systems,
DMA.100008 -- Alphabet – Web browsers,
DMA.100010 – Alphabet – Online advertising
services*

(Only the English text is authentic)

Digital Markets Act
**Regulation (EU) 2022/1925 of the European Parliament
and of the Council**

Article 3 Regulation (EU) 2022/1925

Date: 05/09/2023

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EUROPEAN
COMMISSION

Brussels, 5.9.2023
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PUBLIC VERSION

COMMISSION DECISION

of 5.9.2023

designating Alphabet as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector

DMA.100011 – Alphabet – OIS Verticals, DMA.100002 - Alphabet - OIS App Stores, DMA. 100004 – Alphabet – Online search engines, DMA.100005 – Alphabet – Video sharing, DMA.100006 – Alphabet – Number-independent interpersonal communications services, DMA.100009 – Alphabet – Operating systems, DMA.100008 – Alphabet – Web browsers, DMA.100010 – Alphabet – Online advertising services

(Only the English text is authentic)

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COMMISSION DECISION

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designating Alphabet as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector

DMA.100011 – Alphabet – OIS Verticals, DMA.100002 - Alphabet - OIS App Stores, DMA. 100004 – Alphabet – Online search engines, DMA.100005 – Alphabet – Video sharing, DMA.100006 – Alphabet – Number-independent interpersonal communications services, – DMA.100009 – Alphabet – Operating systems, DMA.100008 – Alphabet – Web browsers, DMA.100010 – Alphabet – Online advertising services

(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 3 thereof¹,

Whereas:

1. INTRODUCTION

(1) On 3 July 2023, Alphabet Inc. notified the Commission,² pursuant to Article 3(3), first subparagraph, of Regulation (EU) 2022/1925, that Alphabet Inc., together with all legal entities directly or indirectly controlled by Alphabet Inc. (hereinafter collectively referred to as “Alphabet” or “the Undertaking”),³ meets the thresholds laid down in Article 3(2) of that Regulation in relation to the following core platform services (“CPSs”): (i) its online intermediation service Google Shopping; (ii) its online intermediation service Google Play; (iii) its online intermediation service Google Maps; (iv) its online search engine Google Search; (v) its video-sharing platform service YouTube; (vi) its number-independent interpersonal communication service (“NIICS”) Gmail; (vii) its operating system Google Android; (viii) its web browser Google Chrome; and (ix) its online advertising services.

2. THE UNDERTAKING

(2) Alphabet is a global technology company which offers a wide range of products and services including software and hardware products.

(3) Alphabet’s parent company is Alphabet Inc., a publicly traded company founded in 2015 through a restructuring of Google Inc. It is headquartered in Mountain View, California, United States of America.

¹ OJ L 265, 12.10.2022, p. 1.

² Alphabet Inc., Notification pursuant to Article 3 of Regulation (EU) 2022/1925, Form for Gatekeeper Designation of Alphabet Inc. notified on 3 July 2023 (“Form GD”).

³ See Article 2, point (27) of Regulation (EU) 2022/1925.

- (4) Google Ireland Ltd is an Alphabet subsidiary established in Ireland. It is a direct subsidiary of Google Europe, Middle East and Africa Unlimited Company, also established in Ireland, and an indirect wholly-owned subsidiary of Google LLC, which is based in the United States of America.⁴
- (5) Google Ireland Ltd. operates the following Alphabet services in the Union:⁵
- (a) Google’s online intermediation services (Play Store, Shopping, Maps, Hotels, Flights, Vacation Rentals and the Chrome Web Store); content on Play Store is offered by Google Commerce Ltd, established in Ireland;
 - (b) Google’s online search engine Google Search;
 - (c) Google’s video-sharing platform service YouTube;
 - (d) Google’s services Gmail, Jibe, Chat and Meet;
 - (e) Google’s operating systems Android OS, Android Automotive OS, Android TV, Wear OS, Chrome OS, Cast OS and Fuchsia OS;
 - (f) Google’s web browser Chrome; and
 - (g) Google’s virtual assistant Google Assistant.
- (6) Alphabet’s online advertising services are operated by the following Alphabet subsidiaries in the Union:⁶
- (a) Google Ireland Ltd. operates Google Ads where the customer has chosen “business” as the purpose of use for its account. Google Commerce Ltd., established in Ireland, is the service provider where the customer has chosen “eligible non-business use” as the purpose of use for its account. Google Ireland Ltd. is also the service provider for Display & Video 360, Campaign Manager 360, and Search Ads 360.
 - (b) Google Ireland Ltd. operates Google Ad Manager where services are provided to companies in the Union, except for reseller arrangements of certain notified features in France and Italy. Google France SARL, established in France, is the reseller for certain notified features if the client company is established in France. Google Italy S.r.l., established in Italy, is the reseller for certain notified features if the client company is established in Italy. Google Ireland Ltd. is also the service provider for AdSense and AdMob.
- (7) Alphabet Inc. is the ultimate parent company of all the aforementioned Alphabet subsidiaries.

3. PROCEDURE

- (8) On 3 July 2023, Alphabet submitted a complete Form GD pursuant to Article 3(3), first subparagraph, of Regulation (EU) 2022/1925.

⁴ Form GD paragraphs 5 and 6.

⁵ Form GD paragraph 2.

⁶ Form GD paragraph 4.

- (9) On 7 July 2023, the Commission sent two requests for information to Alphabet pursuant to Article 21(2) of Regulation (EU) 2022/1925. One request concerned Alphabet’s online advertising services, the other Alphabet’s video-sharing platform service YouTube. Alphabet provided a partial response to the request for information concerning online advertising services on 12 July 2023, with the complete response following on 27 July 2023. Alphabet replied to the request for information concerning YouTube on 14 July 2023.
- (10) On 13 July 2023, Alphabet submitted an additional letter to the Commission with further quantitative evidence on Gmail to support Alphabet’s rebuttal arguments for this service put forward in the Form GD.
- (11) On 27 July 2023, the Commission sent a letter to Alphabet concerning Alphabet’s notification under Article 3(3) of Regulation (EU) 2022/1925 (“the Commission’s letter of 27 July 2023”).⁷ In that letter, the Commission set out its preliminary views on Alphabet’s possible designation as a gatekeeper pursuant to Article 3(4) of Regulation (EU) 2022/1925 and on its intention to list in Alphabet’s designation decision the following CPSs that are provided by Alphabet and which individually appear to constitute an important gateway for business users to reach end users:
- (a) Alphabet’s online intermediation service specialising in locations Google Maps;
 - (b) Alphabet’s online intermediation service (app store) Google Play;
 - (c) Alphabet’s online intermediation service specialising in products Google Shopping;
 - (d) Alphabet’s online search engine Google Search;
 - (e) Alphabet’s video-sharing platform service YouTube;
 - (f) Alphabet’s NIICS Gmail;
 - (g) Alphabet’s operating system encompassing Google Android and middleware complementing Google Android;
 - (h) Alphabet’s web browser Google Chrome; and
 - (i) Alphabet’s online advertising service.
- (12) On 4 August 2023, having been granted an extension of one working day upon its request of 30 July 2023, Alphabet submitted its written observations in response to the Commission’s letter of 27 July 2023. On 15 August 2023, Alphabet submitted some additional observations relating to its online advertising services to the Commission, after the deadline set by the Commission in its letter of 27 July 2023.

4. LEGAL FRAMEWORK FOR THE DESIGNATION OF GATEKEEPERS PURSUANT TO REGULATION (EU) 2022/1925

- (13) Article 3 of Regulation (EU) 2022/1925 sets out the rules for the designation of gatekeepers. An undertaking shall be designated as a gatekeeper under that regulation if it satisfies the requirements set out in Article 3(1) thereof. An undertaking shall be

⁷ The letter followed up on exchanges that took place with Alphabet prior to its notification.

presumed to satisfy those requirements where it meets the quantitative thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925. Pursuant to Article 3(9) of that Regulation, the designation decision shall list the relevant CPSs that are provided by the undertaking and that are an important gateway for business users to reach end users as referred to in Article 3(1)(b).

4.1. The delineation of CPSs

- (14) Article 2, point (2) of Regulation (EU) 2022/1925 lists ten CPS categories, namely: (a) online intermediation services, (b) online search engines, (c) online social networking services, (d) video-sharing platform service, (e) number-independent interpersonal communications services, (f) operating systems, (g) web browsers, (h) virtual assistants, (i) cloud computing services, and (j) online advertising services, including any advertising networks, advertising exchanges and any other advertising intermediation services, provided by an undertaking that provides any of the CPSs listed in points (a) to (i).
- (15) In order to determine whether a service provided by an undertaking is a CPS that meets the requirement set out in Article 3(1)(b) of Regulation (EU) 2022/1925, it is necessary, as a preliminary step, to proceed to the delineation of this service. To delineate a service, a number of provisions in Regulation (EU) 2022/1925 are of relevance, including in particular the following.
- (16) Section D, paragraph 2, of the Annex to Regulation (EU) 2022/1925 provides that, for the purpose of calculating the number of ‘active end users’ and ‘active business users’ under Article 3(2)(b) of that Regulation:
- undertakings shall not identify CPSs that belong to the same category of CPSs pursuant to Article 2, point (2), of Regulation (EU) 2022/1925 as distinct mainly on the basis that they are provided using different domain names, whether country code top-level domains (ccTLDs) or generic top-level domains (gTLDs), or any geographic attributes;⁸
 - undertakings shall consider as distinct those CPSs that either (i) do not belong to the same category of CPSs pursuant to Article 2, point (2), of Regulation (EU) 2022/1925, even if they are offered in an integrated way;⁹ or (ii) are used for different purposes by either their end users or their business users, or both, even if their end users and/or business users may be the same, even if the CPSs belong to the same category pursuant to Article 2, point (2), of that regulation, and even if they are offered in an integrated way.¹⁰
- (17) In light of the foregoing, CPSs may be considered distinct even if they fall within the same category of CPSs. In such cases, a relevant criterion for identifying distinct CPSs within the same category of CPSs is the purpose for which the service is used by either end users or business users, or both.¹¹ Furthermore, different services may constitute a single CPS, if they are used for the same purpose from both an end user and a business

⁸ Annex to Regulation (EU) 2022/1925, Section D, point 2(a).

⁹ Annex to Regulation (EU) 2022/1925, Section D, point 2(c)(i).

¹⁰ Annex to Regulation (EU) 2022/1925, Section D, points 2(b) and (c)(ii).

¹¹ The same applies when the undertaking provides CPSs in an integrated way.

user perspective, unless they belong to different categories of the CPSs listed in Article 2, point (2), of Regulation (EU) 2022/1925.

- (18) Moreover, Article 13(1) of Regulation (EU) 2022/1925 provides that no practice by an undertaking providing CPSs which consists of segmenting, dividing, subdividing, fragmenting or splitting those services through contractual, commercial, technical or any other means in order to circumvent the quantitative thresholds laid down in Article 3(2) of that regulation shall prevent the Commission from designating it as a gatekeeper pursuant to Article 3(4) of that regulation.
- (19) As recital (11) of the preamble to Regulation (EU) 2022/1925 points out, that regulation pursues an objective that is complementary to, but different from, that of EU competition rules, which is to protect undistorted competition on any given market. Consequently, the application of EU competition rules, including competition law precedents, is without prejudice to the application of Regulation (EU) 2022/1925, and vice versa. Accordingly, the delineation of CPSs under Regulation (EU) 2022/1925 has no bearing on the definition of the relevant market for the purpose of applying EU competition rules (and vice versa) and those two types of analyses may thus lead to different results.

4.2. The designation of gatekeepers pursuant to Article 3 of Regulation (EU) 2022/1925

- (20) According to Article 3(1) of Regulation (EU) 2022/1925, the Commission is to designate an undertaking as a gatekeeper if it fulfils three cumulative requirements, namely: (a) it has a significant impact on the internal market; (b) it provides a CPS which is an important gateway for business users to reach end users; and (c) it enjoys an entrenched and durable position, in its operations, or it is foreseeable that it will enjoy such a position in the near future.
- (21) Article 3(2) of Regulation (EU) 2022/1925 lays down a presumption that those requirements are satisfied where certain quantitative thresholds are met, namely:
- (a) an undertaking is presumed to have a significant impact on the internal market where it achieves an annual Union turnover equal to or above EUR 7.5 billion in each of the last three financial years, or where its average market capitalisation or its equivalent fair market value amounted to at least EUR 75 billion in the last financial year, and it provides the same CPS in at least three Member States;
 - (b) an undertaking is presumed to provide a CPS which is an important gateway for business users to reach end users where it provides a CPS that, in the last financial year, had at least 45 million monthly active end users established or located in the Union and at least 10 000 yearly active business users established in the Union, identified and calculated in accordance with the methodology and indicators set out in the Annex to Regulation (EU) 2022/1925;
 - (c) an undertaking is presumed to enjoy an entrenched and durable position, in its operations, or it is foreseeable that it will enjoy such a position in the near future, where the thresholds in point (b) were met in each of the last three financial years.
- (22) Pursuant to Article 3(3) of Regulation (EU) 2022/1925, an undertaking providing CPSs that meets all of the thresholds in Article 3(2) is to notify the Commission without delay and in any event within two months after those thresholds are met, by providing it with the relevant information referred to in Article 3(2). Pursuant to Article 3(4) of Regulation (EU) 2022/1925, the Commission is to designate the undertaking as a

gatekeeper without undue delay and at the latest within 45 working days after receiving the complete information referred to in Article 3(3) of that regulation.

- (23) Pursuant to Article 3(8), first subparagraph, of Regulation (EU) 2022/1925, an undertaking that does not satisfy each of the thresholds laid down in Article 3(2) but meets each of the requirements of Article 3(1) of that regulation is to be designated as a gatekeeper in accordance with the procedure laid down in Article 17.

4.3. The rebuttal of the presumptions of Article 3(2) pursuant to Article 3(5) of Regulation (EU) 2022/1925

- (24) Once the conditions for the applicability of the presumptions laid down in Article 3(2) of Regulation (EU) 2022/1925 are met in relation to a CPS, the undertaking concerned is deemed to be a gatekeeper in relation to that CPS, unless the undertaking concerned rebuts these presumptions pursuant to Article 3(5), first subparagraph, of Regulation (EU) 2022/1925. Pursuant to the latter provision, an undertaking that meets all the thresholds laid down in Article 3(2) of that regulation may present, with its notification, arguments to demonstrate that, although it meets all those thresholds, it exceptionally does not satisfy the requirements laid down in Article 3(1) of that regulation due to the circumstances in which the relevant core platform service operates.

- (25) As explained in recital (23) of the preamble to Regulation (EU) 2022/1925, the undertaking concerned bears the burden of adducing the evidence rebutting the presumptions. Moreover, as recital (23) further explains, the arguments taken into account by the Commission in that regard should relate directly to the quantitative criteria laid down in Article 3(2). Accordingly, any justification on economic grounds such as those related to market definition or to efficiencies should be discarded, because it is not relevant to the designation as a gatekeeper.

- (26) Article 3(5), second subparagraph, of Regulation (EU) 2022/1925 provides that if the arguments submitted are not sufficiently substantiated because they do not manifestly call into question the presumptions set out in Article 3(2) of that regulation, the Commission may reject the arguments within 45 working days after receiving the complete information referred to in Article 3(3). By contrast, pursuant to Article 3(5), third subparagraph, of Regulation (EU) 2022/1925, if the undertaking presents sufficiently substantiated arguments manifestly calling into question the above-mentioned presumptions, the Commission may open a market investigation pursuant to Article 17(3) of that regulation.

- (27) In situations in which the Commission considers that the submitted evidence is sufficient to demonstrate that the requirements laid down in Article 3(1) of Regulation (EU) 2022/1925 are not fulfilled, it may accept the rebuttal without opening a market investigation.

5. THE CORE PLATFORM SERVICES

- (28) As set out in recital (1) above, Alphabet's Form GD refers to nine CPSs provided by Alphabet that meet the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925: (i) its online intermediation service Google Shopping (Section 5.1); (ii) its online intermediation service Google Play (Section 5.2); (iii) its online intermediation service Google Maps (Section 5.3); (iv) its online search engine Google Search (Section 5.4); (v) its video-sharing platform service YouTube (Section 5.5); (vi) its NIICS Gmail (Section 5.6); (vii) its operating system Google Android (Section 5.7); (viii) its web

browser Google Chrome (Section 5.8); and (ix) its online advertising services (Section 5.9).

5.1. Alphabet’s online intermediation service Google Shopping

5.1.1. CPS qualification and delineation

5.1.1.1. The Undertaking’s view

- (29) Alphabet notified Google Shopping as an online intermediation service CPS. According to Alphabet, its online intermediation service Google Shopping (“Google Shopping”) is a comparison-shopping service.¹² In the Union, Google Shopping is active as Google Shopping Europe, provided by Google Ireland Ltd.¹³
- (30) Alphabet submits, as a general argument applicable to all its online intermediation services, that the boundaries of each online intermediation service are set by the purpose and functionality that that CPS provides. According to Alphabet, elements which serve the purpose of the online intermediation service are part of that CPS, while elements on the same platform serving a different purpose are not part of the respective online intermediation service CPS.¹⁴
- (31) According to Alphabet, the boundaries of online intermediation services are surface, technology, and form-factor agnostic, in line with the principle of technological neutrality reflected in recital (14) of the preamble to Regulation (EU) 2022/1925. Alphabet submits that online intermediation services operate as a single service, regardless of the surfaces, form factors, or access points that a user uses to access the services.¹⁵
- (32) Alphabet argues that the display of an advertisement on a given Google online intermediation service is part of that online intermediation service, while the sale of proprietary advertising space on that online intermediation service is part of Google’s online advertising CPS.¹⁶
- (33) In relation to Google Shopping in particular, Alphabet explains that that online intermediation service enables merchants, based on a contractual relationship, to list product offers.¹⁷ End users can then search, click, and find those product offers on Google Shopping. Therefore, Google Shopping facilitates the initiation of direct transactions between business users and consumers, thus qualifying as an online intermediation service.

5.1.1.2. The Commission’s assessment

- (34) Article 2, point (2), subpoint (a), of Regulation (EU) 2022/1925 lists online intermediation services as one of the categories of CPSs within the meaning of that Regulation. Article 2, point (5), of Regulation (EU) 2022/1925 defines ‘online intermediation services’ by cross-referring to Article 2, point (2), of Regulation

¹² Form GD, paragraph 56.

¹³ Form GD, paragraphs 2 and 57.

¹⁴ Form GD, paragraph 25.

¹⁵ Form GD, paragraph 26.

¹⁶ Form GD, paragraph 27.

¹⁷ Form GD, paragraph 17.

2019/1150.¹⁸ According to Article 2, point (2), of Regulation 2019/1150, online intermediation services are services that meet all of the following requirements:

- (a) they constitute an information society service within the meaning of Article 1(1) point (b) of Directive (EU) 2015/1535;¹⁹
 - (b) they allow business users to offer goods or services to consumers, with a view to facilitating the initiating of direct transactions between those business users and consumers, irrespective of where those transactions are ultimately concluded;
 - (c) they are provided to business users on the basis of contractual relationships between the provider of those services and business users which offer goods or services to consumers.
- (35) In line with the information provided by Alphabet, the Commission considers that Google Shopping fulfils each of these three requirements. First, Google Shopping constitutes an information society service within the meaning of Article 1(1), point (b), of Directive (EU) 2015/1535. Second, Google Shopping allows business users to offer goods or services to consumers, with a view to facilitating the initiating of direct transactions between those business users and consumers, irrespective of where those transactions are ultimately concluded. Third, Google Shopping is provided to business users on the basis of contractual relationships between the provider of the intermediation service, i.e. Alphabet, and business users which offer goods or services to consumers through that service. Consequently, Google Shopping constitutes an online intermediation service within the meaning of Article 2, point (5), of Regulation (EU) 2022/1925 and a CPS within the meaning of Article 2, point (2), subpoint (a), of that Regulation.
- (36) The Commission further considers that the Google Shopping CPS operates as a single online intermediation service, irrespective of the underlying technology used to access that service and the form in which it is presented.²⁰ Google Shopping's purpose is to allow end users to engage with the product offers of business users as displayed on the service. End users can visit, compare, and eventually transact on the offers of the business users of Google Shopping.
- (37) The Commission considers that the Google Shopping CPS constitutes a distinct service from the other services provided by Alphabet, such as the online search engine Google Search and Alphabet's online advertising services.
- (38) As regards the boundaries between Google Shopping and Alphabet's online advertising service, for the reasons set out in Section 5.9.1.2.3, the Commission considers the display of an advertisement to be the culmination of Alphabet's online advertising service and therefore to form a part of that service, while also forming part of the online intermediation service CPS Google Shopping. For paid results on Google Shopping,

¹⁸ Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services, OJ L 186/57, 11.7.2019, p. 57.

¹⁹ Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification), OJ L 241, 17.9.2015, p. 1.

²⁰ Recital (14) of the preamble to Regulation (EU) 2022/1925 explains that *'the definition of core platform services should be technology neutral and should be understood to encompass those provided on or through various means or devices.'*

such a finding is in line with the definition of ‘*search results*’ laid down in Article 2, point (23), of Regulation (EU) 2022/1925, which explains that search results include paid and unpaid results.

5.1.2. Thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925

5.1.2.1. The Undertaking’s view

- (39) Alphabet indicates that it meets the thresholds laid down in Article 3(2), point (a), of Regulation (EU) 2022/1925. As summarised in Table 1 below, Alphabet indicates that it generated an annual Union turnover in excess of EUR 7.5 billion in each of the last three financial years and that its average market capitalisation in the last financial year was above EUR 75 billion.²¹

Table 1: Annual Union turnover (in EUR millions) and average market capitalisation submitted by Alphabet (in EUR billion)

Undertaking	2020 Union turnover	2021 Union turnover	2022 Union turnover	2022 Average market capitalisation ²²
Alphabet	[>7.5 billion EUR]	[>7.5 billion EUR]	[>7.5 billion] EUR	1 087

Source: Form GD, Sections 3.1 and 3.2

- (40) In addition, Alphabet indicates that its online intermediation CPS Google Shopping is available in all Member States.²³
- (41) Alphabet further indicates that its online intermediation CPS Google Shopping meets the monthly active end user and annual active business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925.²⁴ Alphabet explains that it calculated monthly active end users as users in the Union that visited Google Shopping at least once each month, counting signed-in accounts, as well as signed-out cookie accounts.²⁵ Alphabet counted unique URL domains that had at least one product listing advertisement impression on Google Shopping in the year in the Union as annual business users of Google Shopping.²⁶
- (42) Finally, in relation to Article 3(2)(c) of Regulation (EU) 2022/1925, Alphabet indicates that its online intermediation CPS Google Shopping has met the thresholds laid down in Article 3(2)(b) of that Regulation in each of the last three financial years.²⁷

Table 2: Monthly active end users and yearly active business users of Google Shopping established or located in the Union in each of the last three financial years

²¹ Form GD, paragraph 278.

²² Form GD, paragraph 279. 1.145 USD trillion equivalent to EUR 1.087 trillion, using the ECB average exchange rate for 2022 of EUR 1 = USD 1.0530.

²³ Form GD, paragraph 280.

²⁴ Form GD, paragraph 293.

²⁵ Form GD, paragraphs 294 and 295.

²⁶ Form GD, paragraph 296.

²⁷ Form GD, paragraph 293 and 294

Financial year	Monthly active end users ²⁸	Yearly active business users
2020	[>45 million]	[> 10 000]
2021	[>45 million]	[> 10 000]
2022	[>45 million]	[> 10 000]

Source: Form GD, paragraphs 293 and 294.

5.1.2.2. The Commission's assessment

- (43) Based on the information provided by Alphabet²⁹, the Commission considers that Alphabet meets both the turnover and market capitalisation thresholds laid down in Article 3(2) (a) of Regulation (EU) 2022/1925, as well as the requirement laid down in that provision that the CPS at issue, i.e. Google Shopping, is offered in at least three Member States.
- (44) Moreover, based on the information provided by Alphabet³⁰, the Commission considers that Alphabet's online intermediation CPS Google Shopping meets the monthly active end users and the yearly active business user thresholds laid down in Article 3(2) (b) of Regulation (EU) 2022/1925.
- (45) Finally, based on the information provided by Alphabet³¹, the Commission considers that Alphabet's online intermediation CPS Google Shopping meets the requirement laid down in Article 3(2)(c) of Regulation (EU) 2022/1925 that the monthly active end user and the yearly active business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 were met in each of the last three financial years.
- (46) As regards the thresholds laid down in Article 3(2)(b) and (c) of Regulation (EU) 2022/1925, it is not necessary to determine whether Alphabet's approach to identifying and estimating monthly active end users and yearly business users of its online intermediation CPS Google Shopping is sufficiently inclusive in line with the relevant definition in Section E of the Annex to Regulation (EU) 2022/1925, given that the aforementioned thresholds are met based on the information provided by Alphabet.

5.1.3. Conclusion for the online intermediation service Google Shopping

- (47) For the reasons set out in recitals (34) to (38) and (43) to (46) above, the Commission concludes that Google Shopping constitutes an online intermediation CPS within the meaning of Article 2, point (2), subpoint (a), of Regulation (EU) 2022/1925 and that Alphabet meets the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to that CPS. Consequently, Alphabet is to be designated as a gatekeeper pursuant to Article 3(4) of Regulation (EU) 2022/1925 in relation to its online intermediation CPS Google Shopping.

²⁸ Figures for active end users include signed-in accounts as well as signed-out users. Figures correspond to the annual average monthly active users, see Form GD, paragraph 295.

²⁹ Form GD, paragraphs 278 and 279.

³⁰ Form GD, paragraphs 293 and 294.

³¹ Form GD, paragraphs 293 and 294.

5.2. Alphabet’s online intermediation service Google Play

5.2.1. CPS qualification and delineation

5.2.1.1. The Undertaking’s view

- (48) Alphabet notified Google Play as an online intermediation service and, more precisely, as a software application store CPS.³² Alphabet describes Google Play as ‘*a digital distribution platform that allows business users to distribute and end users to find, install, and manage apps and other digital content.*’³³
- (49) Alphabet considers that Google Play serves the same purpose from both a business user and an end user perspective, regardless of the device through which that service can be accessed (e.g., mobile devices, smart TVs, or laptops). Google Play offers the same service of enabling business users to distribute and end users to find, install, and manage apps and other digital content across devices.³⁴ Therefore, Alphabet considers that Google Play constitutes a single online intermediation CPS that should not be segmented based on the different devices via which it can be accessed.
- (50) Furthermore, Alphabet submits that dividing its online intermediation CPS Google Play by content type would fail to reflect that an important element of Google Play’s value to business users and end users lies in the range of different content that it hosts. Therefore, according to Alphabet, its online intermediation CPS Google Play should not be segmented based on different types of content available through Google Play.³⁵
- (51) Finally, Alphabet’s general argument regarding its online intermediation services, as well as its explanation regarding the boundaries between its online intermediation services and its other services, summarised in recitals (30) to (32) above, equally applies to its online intermediation CPS Google Play.³⁶

5.2.1.2. The Commission’s assessment

- (52) Article 2, point (2), subpoint (a), of Regulation (EU) 2022/1925 lists online intermediation services as one of the categories of CPSs within the meaning of that Regulation.
- (53) Article 2, point (5), of Regulation (EU) 2022/1925 defines ‘online intermediation services’ by cross-referring to Article 2, point (2), of Regulation 2019/1150. According to the latter provision, online intermediation services are services that meet all of the following requirements:
- (a) they constitute an information society service within the meaning of Article 1(1), point (b) of Directive (EU) 2015/1535;
 - (b) they allow business users to offer goods or services to consumers, with a view to facilitating the initiating of direct transactions between those business users and consumers, irrespective of where those transactions are ultimately concluded;

³² Form GD, paragraph 15.

³³ Form GD, paragraph 15.

³⁴ Form GD, paragraph 44a.

³⁵ Form GD, paragraph 44b.

³⁶ Form GD, paragraphs 12 to 14 and 25 to 27.

- (c) they are provided to business users on the basis of contractual relationships between the provider of those services and business users which offer goods or services to consumers.
- (54) Article 2, point (14), of Regulation (EU) 2022/1925 defines software application stores (“app stores”) as a ‘type of online intermediation services, which is focused on software applications as the intermediated product or service’.
- (55) In line with the information provided by Alphabet, the Commission considers that Google Play fulfils the definition of online intermediation services laid down in Article 2, point (2), of Regulation (EU) 2019/1150, to which Article 2, point (5), of Regulation (EU) 2022/1925 refers. First, Google Play satisfies the definition of an information society service within the meaning of Article 1(1), point (b), of Directive (EU) 2015/1535. Second, Google Play allows business users to offer goods or services to consumers by facilitating the initiating of direct transactions between those business users and consumers. Third, Google Play involves contractual relationships between the undertaking providing the intermediation service, i.e. Alphabet, and the business users offering goods or services to consumers through that service. Consequently, Google Play constitutes an online intermediation service within the meaning of Article 2, point (5), of Regulation (EU) 2022/1925 and a CPS within the meaning of Article 2, point (2), subpoint (a), of that Regulation.
- (56) The Commission also considers that Google Play constitutes a single online intermediation CPS, irrespective of the device through which that service can be accessed (e.g., smartphones, tablets, laptops, smart TVs) and of the different types of digital content available through that service (e.g., software applications and other types of digital content, or different categories thereof). Indeed, Google Play is used for the same purpose from both an end user and a business user perspective, irrespective of the device and of the type of content, namely to intermediate the distribution of digital content available through Google Play. As confirmed by Alphabet,³⁷ business users (e.g., developers of software applications within the meaning of Article 2, point (15), of Regulation (EU) 2022/1925) use Google Play to offer end users different types of digital content available through that service, including to list, distribute and update software applications. End users use Google Play to easily access content in one single location, where they can search, download, or update different types of digital content, including software applications. Furthermore, end users can use the same account (the ‘Google Account’³⁸) to access Google Play-related services irrespective of the device and of the type of content.
- (57) In addition, the Commission considers that, to the extent that Google Play intermediates software applications, Google Play also fulfils the definition of software application store laid down in Article 2, point (14), of Regulation (EU) 2022/1925.
- (58) Finally, the Commission considers the online intermediation CPS Google Play to constitute a distinct service from the other services provided by Alphabet, such as the online search engine Google Search (see in this regard Recital (96) below) and Alphabet’s online advertising service.

³⁷ Form GD, paragraph 44.

³⁸ See <https://support.google.com/googleplay/answer/2521798?hl=en> and <https://www.google.com/account/about/> (last accessed on 27 August 2023).

and

- (59) As regards the boundaries between the online intermediation CPS Google Play and Alphabet’s online advertising services, for the reasons set out in Section 5.9.1.2.3 below, the Commission considers the display of an advertisement to be the culmination of Alphabet’s online advertising service and therefore to form a part of that service, while also forming part of the online intermediation service CPS Google Play. For paid results on Google Play, such a finding is in line with the definition of ‘search results’ laid down in Article 2, point (23), of Regulation (EU) 2022/1925, which explains that search results include paid and unpaid results.
- (60) For the reasons set out above, the Commission concludes that Google Play constitutes an online intermediation service within the meaning Article 2, point (5), of Regulation (EU) 2022/1925 as well as a software application store within the meaning of Article 2, point (14), of that Regulation. Therefore, Google Play constitutes a CPS within the meaning of Article 2, point (2), subpoint (a), of that Regulation.

5.2.2. *Thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925*

5.2.2.1. The Undertaking’s view

- (61) Alphabet indicates that it meets the thresholds laid down in Article 3(2)(a) of Regulation (EU) 2022/1925. As summarised in Table 1 above, Alphabet submits that it generated an annual Union turnover in excess of EUR 7.5 billion in each of the last three financial years, and that its average market capitalisation in the last financial year was above EUR 75 billion.³⁹
- (62) In addition, Alphabet indicates that it provides the online intermediation CPS Google Play in all Member States.⁴⁰
- (63) Alphabet further indicates that its online intermediation CPS Google Play meets the monthly active end user and annual active business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925. Alphabet submits that Google Play had [over 45] million monthly active end users established or located in the Union and over [10 000] yearly active business users established in the Union in the last financial year.⁴¹
- (64) Finally, in relation to Article 3(2)(c) of Regulation (EU) 2022/1925, Alphabet indicates that its online intermediation CPS Google Play has met the thresholds laid down in Article 3(2)(b) of that Regulation in each of the last three financial years.

Table 3: Monthly active end users and yearly active business users of Google Play established or located in the Union in each of the last three financial years

³⁹ Form GD, paragraphs 278 and 279.

⁴⁰ Form GD, paragraph 280.

⁴¹ Form GD, paragraphs 288 and 289.

Financial year	Monthly active end users	Yearly active business users
2020	[> 45 million]	[> 10 000]
2021	[> 45 million]	[> 10 000]
2022	[> 45 million]	[> 10 000]

Source: Form GD, paragraphs 288 and 289.

5.2.2.2. The Commission's assessment

- (65) Based on the information provided by Alphabet,⁴² the Commission considers that Alphabet meets both the turnover and market capitalisation thresholds laid down in Article 3(2)(a) of Regulation (EU) 2022/1925, as well as the requirement laid down in that provision that the CPS at issue, i.e. Google Play, is offered in at least three Member States.
- (66) Based on the information provided by Alphabet,⁴³ the Commission considers that Alphabet's online intermediation CPS Google Play meets the monthly active end user and the yearly active business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925.
- (67) Finally, based on the information provided by Alphabet,⁴⁴ the Commission considers that Alphabet's online intermediation CPS Google Play meets the requirement laid down in Article 3(2)(c) of Regulation (EU) 2022/1925 that the monthly active end user and the yearly active business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 were met in each of the last three financial years.
- (68) As regards the thresholds laid down in Article 3(2)(b) and (c) of Regulation (EU) 2022/1925, it is not necessary to determine whether Alphabet's approach to identifying and estimating monthly active end users and yearly business users of the online intermediation CPS Google Play is sufficiently inclusive in line with the relevant definition in Section E of the Annex to Regulation (EU) 2022/1925, given that the aforementioned thresholds are met based on the information provided by Alphabet.

5.2.3. Conclusion for the online intermediation service Google Play

- (69) For the reasons set out in recitals (52) to (60) and (65) to (68) above, the Commission concludes that Google Play constitutes an online intermediation CPS within the meaning of Article 2, point (2), subpoint (a), of Regulation (EU) 2022/1925 and that Alphabet meets the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to that CPS. Consequently, Alphabet is to be designated as a gatekeeper pursuant to Article 3(4) of Regulation (EU) 2022/1925 in relation to its online intermediation CPS Google Play.

5.3. Alphabet's online intermediation service Google Maps

⁴² Form GD, paragraphs 278 to 280.

⁴³ Form GD, paragraphs 288 and 289.

⁴⁴ Form GD, paragraphs 288 and 289.

5.3.1. CPS qualification and delineation

5.3.1.1. The Undertaking's view

- (70) Alphabet notified Google Maps as an online intermediation CPS as defined in Article 2, point (5) of Regulation (EU) 2022/1925.⁴⁵ Alphabet submits that Google Maps is an online-based consumer map and navigation service which enables end users to search for and navigate to local entities, including local businesses.⁴⁶
- (71) Local entities can provide information to appear on Google Maps (or Google Search), and therefore to reach end users, via Google's Business Profile interface tool.⁴⁷
- (72) Alphabet submits that a subdivision of Google Maps into distinct services for the provision of online intermediation services and other kinds of services, depending on the local entity on which information is provided, would be inappropriate and artificial.⁴⁸ Alphabet explains that Google Maps operates in the same way and serves the same purpose – enabling the search for and navigation to local entities – regardless of the type of local entity for which the information is provided.⁴⁹
- (73) Finally, Alphabet's general argument regarding its online intermediation services, as well as its explanation regarding the boundaries between its online intermediation services and its other services, summarised in recitals (30) to (32) above, equally apply to Google Maps.⁵⁰

5.3.1.2. The Commission's assessment

- (74) Article 2, point (2), subpoint (a), of Regulation (EU) 2022/1925 lists online intermediation services as one of the categories of CPSs within the meaning of that regulation. Article 2, point (5), of Regulation (EU) 2022/1925 defines 'online intermediation services' by cross-referring to Article 2, point (2), of Regulation 2019/1150. According to Article 2, point (2), of Regulation 2019/1150, online intermediation services are services that meet all of the following requirements:
- (a) they constitute an information society service within the meaning of Article 1(1), point (b) of Directive (EU) 2015/1535;
 - (b) they allow business users to offer goods or services to consumers, with a view to facilitating the initiating of direct transactions between those business users and consumers, irrespective of where those transactions are ultimately concluded;
 - (c) they are provided to business users on the basis of contractual relationships between the provider of those services and business users which offer goods or services to consumers.
- (75) In line with the information provided by Alphabet, the Commission considers that the online intermediation service Google Maps fulfils the definition of online intermediation

⁴⁵ Form GD, paragraph 18.

⁴⁶ Form GD, paragraph 58.

⁴⁷ Alphabet explains that *'in which case the entity has a "claimed Business Profile" and a contract with Google'*, see Form GD, paragraph 18.

⁴⁸ Form GD, paragraph 45.

⁴⁹ Form GD, paragraph 45.

⁵⁰ Form GD, paragraphs 12 to 14 and 25 to 27.

services laid down in Article 2, point (2) of Regulation (EU) 2019/1150, to which Article 2, point (5), of Regulation (EU) 2022/1925 refers. First, that service constitutes an information society service within the meaning of Article 1(1), point (b) of Directive (EU) 2015/1535. Second, that service allows business users to offer goods or services to consumers, with a view to facilitating the initiating of direct transactions between those business users and consumers,⁵¹ irrespective of where those transactions are ultimately concluded. Third, that service is provided to business users on the basis of contractual relationships between the provider of the intermediation service, i.e. Alphabet, and business users which offer goods or services to consumers through that service. Consequently, Google Maps constitutes an online intermediation service within the meaning of Article 2, point (5), of Regulation (EU) 2022/1925 and a CPS within the meaning of Article 2, point (2), subpoint (a), of that Regulation.

- (76) The Commission further considers that Google Maps operates as a single online intermediation CPS, irrespective of the underlying technology used to access it or the form in which it is presented.
- (77) The Commission considers the online intermediation CPS Google Maps to constitute a distinct service from the other services provided by Alphabet, such as the online search engine Google Search and Alphabet's online advertising service.
- (78) As regards the boundaries between the online intermediation CPS Google Maps and Alphabet's online advertising services, for the reasons set out in Section 5.9.1.2.3 below, the Commission considers the display of an advertisement to be the culmination of Alphabet's online advertising service and therefore to form a part of that service, while also forming part of the online intermediation CPS Google Maps. For paid results on Google Maps, such a finding is in line with the definition of '*search results*' laid down in Article 2, point (23), of Regulation (EU) 2022/1925, which explains that search results include paid and unpaid results.
- (79) For the reasons set out above, the Commission concludes that Google Maps constitutes an online intermediation service within the meaning Article 2, point (5), of Regulation (EU) 2022/1925 and therefore a CPS within the meaning of Article 2, point (2), subpoint (a), of that Regulation.

5.3.2. *Thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925*

5.3.2.1. The Undertaking's view

- (80) Alphabet indicates that it meets the thresholds laid down in Article 3(2)(a) of Regulation (EU) 2022/1925. As summarised in Table 1 above, Alphabet indicates that it generated an annual Union turnover in excess of EUR 7.5 billion in each of the last three financial years and that its average market capitalisation in the last financial year was above EUR 75 billion.⁵² In addition, Alphabet indicates that its online intermediation CPS Google Maps is available in all Union Member States.⁵³

⁵¹ Local business can include a description of the business activity, opening hours, contact details, photos, replies to reviews and questions of end users. In addition, end users can add photos, reviews, questions and answers to questions of other end users.

⁵² Form GD, paragraphs 278 and 279.

⁵³ Form GD, paragraph 280.

- (81) Alphabet further indicates that its online intermediation CPS Google Maps meets the monthly active end users and annual active business users thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925.⁵⁴ Alphabet explains that it calculated monthly active end users as unique signed-in and signed-out users in the Union that visited Google Maps at least once in each month.⁵⁵ As regards active business users, Alphabet took into account businesses established in the Union that provided information to Google in the year relating to a physical location of their business via Business Profile.⁵⁶ Alphabet adds that the end user and business user data provided likely severely overstate the true number of users of its online intermediation CPS Google Maps. Nonetheless, Alphabet considers that Google Maps’ user figures are above the thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925.⁵⁷
- (82) Finally, in relation to Article 3(2)(c) of Regulation (EU) 2022/1925, Alphabet indicates that its online intermediation CPS Google Maps has met the thresholds laid down in Article 3(2)(b) of that Regulation in each of the last three financial years.⁵⁸

Table 4: Monthly active end users and yearly active business users of Google Maps established or located in the Union in each of the last three financial years

Financial year	Monthly active end users ⁵⁹	Yearly active business users
2020	[> 45 million]	[> 10 000]
2021	[> 45 million]	[> 10 000]
2022	[> 45 million]	[> 10 000]

Source: Form GD, paragraphs 298 and 299.

5.3.2.2. The Commission’s assessment

- (83) Based on the information provided by Alphabet,⁶⁰ the Commission considers that Alphabet meets both the turnover and market capitalisation thresholds laid down in Article 3(2)(a) of Regulation (EU) 2022/1925, as well as the requirement laid down in that provision that the CPS at issue, i.e. Google Maps, is offered in at least three Member States.
- (84) Based on the information provided by Alphabet,⁶¹ the Commission considers that Alphabet’s online intermediation CPS Google Maps meets the monthly active end users and business users’ thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925.

⁵⁴ Form GD, paragraphs 298 and 299.

⁵⁵ Form GD, paragraph 300.

⁵⁶ Form GD, paragraph 301.

⁵⁷ Form GD, paragraph 283.

⁵⁸ Form GD, paragraphs 298 and 299.

⁵⁹ Monthly active end users include signed-in accounts as well as signed-out cookie counts, see Form GD, paragraph 298.

⁶⁰ Form GD, paragraphs 278 to 280.

⁶¹ Form GD, paragraphs 298 and 299.

- (85) Finally, the Commission considers, based on the information provided by Alphabet,⁶² that Alphabet's online intermediation CPS Google Maps meets the requirement laid down in Article 3(2)(c) of Regulation (EU) 2022/1925 that the monthly active end user and the yearly active business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 were met in each of the last three financial years.
- (86) As regards the thresholds laid down in Article 3(2)(b) and (c) of Regulation (EU) 2022/1925, it is not necessary to determine whether Alphabet's approach to identifying and estimating monthly active end users and yearly business users of its online intermediation CPS Google Maps is sufficiently inclusive in line with the relevant definition in Section E of the Annex to Regulation (EU) 2022/1925, given that the aforementioned thresholds are met based on the information provided by Alphabet.

5.3.3. *Conclusion for the online intermediation CPS Google Maps*

- (87) For the reasons set out in recitals (74) to (79) and (83) to (86) above, the Commission concludes that Google Maps constitutes an online intermediation CPS within the meaning of Article 2, point (2), subpoint (a), of Regulation (EU) 2022/1925 and that Alphabet meets the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to that CPS. Consequently, Alphabet is to be designated as a gatekeeper pursuant to Article 3(4) of Regulation (EU) 2022/1925 in relation to the online intermediation CPS Google Maps.

5.4. **Alphabet's online search engine Google Search**

5.4.1. *CPS qualification and delineation*

5.4.1.1. The Undertaking's view

- (88) Alphabet notified Google Search as an online search engine CPS.⁶³ According to Alphabet, Google Search is an online service that enables users to enter queries on any subject, and that in response returns ranked search results.⁶⁴
- (89) According to Alphabet, the boundaries of Google Search are surface, technology, and form-factor agnostic. Google Search operates as a single service, regardless of the surfaces, form factors, or access points that a user uses to access the service. Access points for the Google Search online search engine include the Google Search website (google.com or its localised versions), the Google Search mobile app, the Google Search widget on Android mobile devices, syndicated Google Search input boxes on third-party websites, Google Lens, and the Discover feed (which shows search results that are based on an implicit query).⁶⁵
- (90) Alphabet explains, by referring to recital 51 of the preamble to Regulation (EU) 2022/1925, that an online search engine might, in principle, provide access to a separate first party⁶⁶ service on its result pages by either linking to it, showing groups of

⁶² Form GD, paragraphs 298 and 299.

⁶³ Form GD, paragraphs 2(b) and 61.

⁶⁴ Form GD, paragraph 66. This includes the Google Search website (google.com or its localised versions), the Google Search mobile app, the Google Search widget on Android mobile devices, Google Search syndications on third-party websites, Google Lens and the Discover feed, see Form GD, paragraph 69.

⁶⁵ Form GD, paragraph 69.

⁶⁶ First party service refers in this context to a distinct service of the same company which is presented, ranked, listed in the results of its online search engine.

specialised results that are considered ‘*distinct or additional*’ by end users, or by embedding such a service or parts thereof. Alphabet submits that whether any of the current elements of the results page of Google Search fall under one of these scenarios is a question of compliance with the behavioural rules of Regulation (EU) 2022/1925.⁶⁷

- (91) Alphabet further argues that the output of Google Search covers search results, regardless of their format and technology, and includes both free and paid search results, in line with the definition of search results in Article 2, point (23), of Regulation (EU) 2022/1925. According to Alphabet, the display of advertisements on Google Search is part of the Google Search CPS, while the sale of proprietary advertising space on Google Search is part of Alphabet’s online advertising services CPS. Alphabet explains that its online advertising services CPS operate together with its Google Search CPS to support the display of advertisements by enabling the proprietary sale of advertising space on that service.

5.4.1.2. The Commission’s assessment

- (92) Article 2, point (2), subpoint (b), of Regulation (EU) 2022/1925 lists online search engines as one of the categories of CPSs within the meaning of that Regulation. Article 2, point (6) of Regulation (EU) 2022/1925 defines online search engines by reference to Article 2, point (5), of Regulation (EU) 2019/1150. The latter provision defines online search engines as a ‘*a digital service that allows users to input queries in order to perform searches of, in principle, all websites, or all websites in a particular language, on the basis of a query on any subject in the form of a keyword, voice request, phrase or other input, and returns results in any format in which information related to the requested content can be found.*’⁶⁸
- (93) In line with the information provided by Alphabet, the Commission considers that Google Search meets this definition, since it allows users to enter queries on any subject on its online interfaces, which returns ranked search results in response to those queries. Consequently, Google Search constitutes an online search engine within the meaning of Article 2, point (6), of Regulation (EU) 2022/1925 and a CPS within the meaning of Article 2, point (2), subpoint (b), of that Regulation.
- (94) The Commission further considers that all results or outputs that the Google Search CPS shows on its result pages, regardless of their format or type (thus including both organic results and the display of ads) and irrespective of the means through which users access such results (e.g. Google Search’s website, app or other) or the type of device they use, constitute search results within the meaning of Regulation (EU) 2022/1925. This finding is supported by the definition of ‘search results’ in Article 2, point (23), of Regulation (EU) 2022/1925, according to which such results consist of ‘*any information in any format, including textual, graphic, vocal or other outputs, returned in response to, and related to, a search query, irrespective of whether the information returned is a paid or an unpaid result, a direct answer or any product, service or information offered in connection with the organic results, or displayed along with or partly or entirely embedded in them.*’
- (95) In addition, the Commission considers that the Google Search CPS covers search results, regardless of the input mechanism or format used, i.e. whether voice, text, or images. Such a finding does not preclude that search results contain and rank services which are

⁶⁷ Form GD, paragraph 68.

⁶⁸ Article 2(5) of Regulation (EU) 2019/1150.

distinct or additional to an online search engine. Recital (51) of the preamble to Regulation (EU) 2022/1925 explains that services distinct or additional to an online search engine may be displayed along with, ranked in, or embedded in the results of that search engine. In light of that explanation, the Commission considers that services that either fall in a different category of CPS or that are used for different purposes by either end users or business users or both, and which are considered or used by certain end users as a distinct or additional services, are distinct services to the online search engine CPS Google Search for the purposes of Regulation (EU) 2022/1925.

- (96) In particular, as regards the boundaries between Google Search and the online intermediation services that Alphabet provides through Google Search, the Commission notes that recital (51) of the preamble to Regulation (EU) 2022/1925 specifically refers to a situation in which a *'gatekeeper provides its own online intermediation services through an online search engine'*. It follows from that recital that products or services (including other CPSs) that are (i) *'ranked in the results communicated by online search engines'*, (ii) *'partly or entirely embedded in online search engine results'*, or (iii) *'displayed along with the results of an online search engine'* can qualify as distinct or additional services to the online search engine. Consequently, the Commission finds that results from the online intermediation services that Alphabet provides through Google Search, which are ranked in the results of Google Search, embedded in those results or displayed alongside those results constitute a distinct or additional online intermediation service from Google Search. Those results, even if provided through Google Search, form part of the respective online intermediation service of Alphabet.
- (97) For the reasons set out above, the Commission concludes that Google Search constitutes an online search engine within the meaning of Article 2, point (6), of Regulation (EU) 2022/1925 and therefore a CPS within the meaning of Article 2, point (2), subpoint (b), of that Regulation.

5.4.2. Thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925

5.4.2.1. The Undertaking's view

- (98) Alphabet indicates that it meets the thresholds laid down in Article 3(2) (a) of Regulation (EU) 2022/1925. As summarised in Table 1 above, Alphabet indicates that it generated an annual Union turnover in excess of EUR 7.5 billion in each of the last three financial years and that its average market capitalisation in the last financial year was above EUR 75 billion.⁶⁹ In addition, Alphabet indicates that its online search engine CPS Google Search is provided in all Member States.⁷⁰
- (99) Alphabet further indicates that its online search engine CPS Google Search meets the monthly active end users and annual active business users thresholds of Article 3(2) of Regulation (EU) 2022/1925. In particular, Alphabet considers that its Google Search CPS had over [45] million monthly active end users established or located in the Union and over [10 000] yearly active business users established in the Union in the last financial year.⁷¹

⁶⁹ Form GD, paragraphs 278 and 279.

⁷⁰ Form GD, paragraph 280.

⁷¹ Form GD, paragraphs 303 and 304.

(100) Finally, in relation to Article 3(2)(c) of Regulation (EU) 2022/1925, Alphabet indicates that its online search engine CPS Google Search has met the threshold laid down in Article 3(2)(b) of that Regulation in each of the last three financial years in the EU.⁷²

Table 5: Monthly active end users and yearly active business users of Google Search established or located in the Union in each of the last three financial years

Financial year	Monthly active end users	Yearly active business users
2020	[> 45] million	[> 10 000]
2021	[> 45] million	[> 10 000]
2022	[> 45] million	[> 10 000]

Source: Form GD, paragraph 303 and 304.

5.4.2.2. The Commission's assessment

(101) Based on the information provided by Alphabet,⁷³ the Commission considers that Alphabet meets the turnover threshold laid down in Article 3(2)(a) of Regulation (EU) 2022/1925, as well as the requirement laid out in that provision that the CPS at issue, i.e. Google Search, is offered in at least three Member States.

(102) Based on the information provided by Alphabet,⁷⁴ the Commission considers that the online search engine CPS Google Search meets the monthly active end user and the yearly active business user threshold laid down in Article 3(2) (b) of Regulation (EU) 2022/1925.

(103) Finally, based on the information provided by Alphabet, the Commission considers that the online search engine CPS Google Search meets the requirement laid down in Article 3(2)(c) of Regulation (EU) 2022/1925 that the monthly active end user and the yearly active business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 were met in each of the last three financial years.

(104) As regards the thresholds laid down in Article 3(2)(b) and (c) of Regulation (EU) 2022/1925, it is not necessary to determine whether Alphabet's approach to identifying and estimating monthly active end users and yearly business users of its online search engine CPS Google Search is sufficiently inclusive in line with the relevant definition in Section E of the Annex to Regulation (EU) 2022/1925, given that the aforementioned thresholds are met based on the information provided by Alphabet.

5.4.3. Conclusion for the online search engine Google Search

(105) or the reasons set out in recitals (92) to (97) and (101) to (104) above, the Commission concludes that Google Search constitutes an online search engine CPS within the meaning of Article 2, point (2), subpoint (b), of Regulation (EU) 2022/1925 and that Alphabet meets the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to that CPS. Consequently, Alphabet is to be designated as a gatekeeper

⁷² Form GD, paragraphs 303 and 304.

⁷³ Form GD, paragraphs 278 and 280.

⁷⁴ Form GD, paragraphs 303 and 304

pursuant to Article 3(4) of Regulation (EU) 2022/1925 in relation to its online search engine CPS Google Search.

5.5. Alphabet’s video-sharing platform service YouTube

5.5.1. CPS qualification and delineation

5.5.1.1. The Undertaking’s view

- (106) Alphabet notified YouTube as video-sharing platform CPS.⁷⁵ According to Alphabet, YouTube enables content providers to make audio-visual content available to its end users in order to inform, entertain or educate and for end users to explore, watch, listen to and share this content⁷⁶, or in other words: ‘*disseminating audio-visual content to the general public.*’⁷⁷
- (107) Alphabet submits that its video-sharing platform CPS YouTube should be delineated in line with the principle of technological neutrality and encompass ‘*all features and functionalities made available as part of the service, and all of the access points that allow users to make available or consume content on YouTube*’⁷⁸, including ‘*interfaces and tools that enable users to upload and manage their content [...] as well as mechanisms through which YouTube pays business users.*’⁷⁹
- (108) Alphabet further submits that its video-sharing platform CPS YouTube should be delineated in a ‘*content agnostic*’ way and cover ‘*all of the formats and genres of audio-visual content provided on the platform.*’⁸⁰
- (109) Finally, Alphabet submits that its video-sharing platform CPS YouTube should include advertisements displayed on YouTube’s online interface, whereas advertiser-facing functionalities used to sell those advertisements (namely Google’s buy-side tools) should not be part of the video-sharing platform CPS.⁸¹

5.5.1.2. The Commission’s assessment

- (110) Article 2, point (2), subpoint (d), of Regulation (EU) 2022/1925 lists video-sharing platform services as one of the categories of CPSs within the meaning of that Regulation. Article 2, point (8), of Regulation (EU) 2022/1925 defines video-sharing platform services by referring to the definition laid down in Article 1(1), point (aa), of Directive 2010/13/EU⁸², as amended by Directive (EU) 2018/1808. That latter provision defines a video-sharing platform service as “*a service as defined by Articles 56 and 57 [TFEU], where the principal purpose of the service or of a dissociable section thereof or an essential functionality of the service is devoted to providing programmes, user-generated videos, or both, to the general public, for which the video-sharing platform*

⁷⁵ Form GD, paragraph 2(c).

⁷⁶ Form GD, paragraph 80; Alphabet’s reply of 4 August 2023 to the Commission’s letter of 27 July 2023 concerning Alphabet’s notification under Article 3(3) of Regulation (EU) 2022/1925, paragraph 13(iii).

⁷⁷ Form GD, paragraph 88.

⁷⁸ Form GD, paragraphs 79 and 80.

⁷⁹ Form GD, paragraph 84.

⁸⁰ Form GD, paragraph 83.

⁸¹ Form GD, paragraph 85.

⁸² Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), OJ L 095 15.4.2010, p. 1.

provider does not have editorial responsibility, in order to inform, entertain or educate, by means of electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC and the organisation of which is determined by the video-sharing platform provider, including by automatic means or algorithms in particular by displaying, tagging and sequencing.”

- (111) In line with Alphabet’s view, the Commission considers that YouTube meets this definition, since that service enables users to make audio-visual content available to end users in order to inform, entertain or educate and for end users to explore, watch, listen to and share that content. Consequently, YouTube constitutes a video-sharing platform service within the meaning of Article 2, point (8), of Regulation (EU) 2022/1925 and a CPS within the meaning of Article 2, point (2), subpoint (d), of that Regulation.
- (112) The Commission further considers, in line with Alphabet’s view, that the tools and interfaces of YouTube that are not used for a self-standing purpose other than to allow business users to manage their content on YouTube and to assess the performance thereof form part of YouTube’s video-sharing platform CPS.
- (113) In addition, the Commission considers, in line with Alphabet’s view, that the videosharing platform CPS YouTube comprises all types of audio-visual content displayed on YouTube. The Commission observes, in this regard, that different formats and genres of content are provided to end users on the video-sharing platform CPS YouTube, for example shows for children, sports, music video clips, or live streams.
- (114) Moreover, in line with the principle of technological neutrality as reflected in recital (14) of the preamble to Regulation (EU) 2022/1925, the Commission considers that the video-sharing platform CPS YouTube encompasses all the technological means of accessing it, such as through a desktop, a mobile app, or a third-party website.
- (115) Finally, for the reasons given in Section 5.9.1.2.3 below, the Commission considers the display of an advertisement to be the culmination of Alphabet’s online advertising service and therefore to form a part of that service, while also forming part of the video-sharing platform CPS YouTube.
- (116) For the reasons set out above, the Commission concludes that YouTube constitutes a video-sharing platform service within the meaning of Article 2, point (8) of Regulation (EU) 2022/1925 and therefore a CPS within the meaning of Article 2, point (2), subpoint (d) of that regulation.

5.5.2. *Thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925*

5.5.2.1. *The Undertaking’s view*

- (117) Alphabet indicates that it meets the thresholds laid down in Article 3(2)(a) of Regulation (EU) 2022/1925. As summarised in Table 1 above, Alphabet indicates that it generated an annual Union turnover in excess of EUR 7.5 billion in each of the last three financial years and that its average market capitalisation in the last financial year was above EUR 75 billion.⁸³ In addition, Alphabet indicates that all CPSs covered in their Form GD, including YouTube, are available in all EU Member States.⁸⁴

⁸³ Form GD, paragraphs 278 and 279.

⁸⁴ Form GD, paragraph 280.

- (118) Alphabet further indicates that its video-sharing platform CPS YouTube meets the monthly active end users and annual active business users thresholds laid down Article 3(2)(b) of Regulation (EU) 2022/1925. Particularly, Alphabet submits that YouTube had over 45 million monthly active end users established or located in the Union and over 10 000 yearly active business users established in the Union in the last financial year.⁸⁵
- (119) Finally, in relation to Article 3(2)(c) of Regulation (EU) 2022/1925, Alphabet indicates that its video-sharing platform CPS YouTube has met the thresholds laid down in Article 3(2)(b) of that Regulation in each of the last three financial years.⁸⁶

Table 6: Monthly active end users and yearly active business users of YouTube established or located in the Union in each of the last three financial years

Financial year	Monthly active end users	Yearly active business users
2020	[> 45] million	[> 10 000]
2021	[> 45] million	[> 10 000]
2022	[> 45] million	[> 10 000]

Source: Form GD, paragraphs 310 and 311.

5.5.2.2. The Commission's assessment

- (120) Based on the information provided by Alphabet,⁸⁷ the Commission considers that Alphabet meets the turnover threshold laid down in Article 3(2)(a) of Regulation (EU) 2022/1925, as well as the requirement laid down in that provision that the CPS at issue, i.e. YouTube, is offered in at least three Member States.
- (121) Moreover, based on the information provided by Alphabet,⁸⁸ the Commission considers that the video-sharing platform CPS YouTube meets the monthly active end user and the yearly active business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925.
- (122) Finally, based on the information provided by Alphabet,⁸⁹ the Commission considers that the video-sharing platform CPS YouTube meets the requirement laid down in Article 3(2)(c) of Regulation (EU) 2022/1925 that the monthly active end user and the yearly active business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 were met in each of the last three financial years.
- (123) As regards the thresholds laid down in Article 3(2)(b) and (c) of Regulation (EU) 2022/1925, it is not necessary to determine whether Alphabet's approach to identifying and estimating monthly active end users and yearly business users of the video-sharing platform CPS YouTube is sufficiently inclusive in line with the relevant definition in

⁸⁵ Form GD, paragraphs 310 and 311.

⁸⁶ Form GD, paragraphs 310 and 311.

⁸⁷ Form GD, paragraphs 278 to 280.

⁸⁸ Form GD, paragraphs 310 and 311.

⁸⁹ Form GD, paragraphs 310 and 311.

Section E of the Annex to Regulation (EU) 2022/1925, given that the aforementioned thresholds are met based on the information provided by Alphabet.

5.5.3. *Conclusion for the video-sharing platform service YouTube*

(124) For the reasons set out in recitals (110) to (116) and (120) to (123) above, the Commission concludes that YouTube constitutes a video-sharing platform CPS within the meaning of Article 2, point (8), of Regulation (EU) 2022/1925 and that Alphabet meets the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to that service. Consequently, Alphabet is to be designated as a gatekeeper pursuant to Article 3(4) of Regulation (EU) 2022/1925 in relation to the video-sharing platform CPS YouTube.

5.6. **Alphabet’s number-independent interpersonal communication service Gmail**

5.6.1. *CPS qualification and delineation*

5.6.1.1. The Undertaking’s view

(125) Alphabet describes Gmail as its web-based, multi-device email service, that qualifies as a NIICS CPS.⁹⁰

5.6.1.2. The Commission’s assessment

(126) Article 2, point (2), subpoint (e), of Regulation (EU) 2022/1925 lists NIICS as one of the categories of CPSs within the meaning of that Regulation. Article 2, point (9) of Regulation (EU) 2022/1925 defines NIICS by cross-referring to Article 2, point (7), of Directive (EU) 2018/1972.⁹¹ According to the latter provision, a NIICS is ‘*an interpersonal communications service which does not connect with publicly assigned numbering resources, namely, a number or numbers in national or international numbering plans, or which does not enable communication with a number or numbers in national or international numbering plans*’. Recital (10) of the preamble to Directive (EU) 2018/1972 explicitly mentions email as one example of a NIICS.

(127) In line with Alphabet’s view, the Commission considers that Gmail constitutes a NIICS within the meaning of Article 2, point (7), of Directive (EU) 2018/1972, to which Article 2, point (9), of Regulation (EU) 2022/1925 cross-refers, and therefore a CPS within the meaning of Article 2, point (2), subpoint (e), of Regulation (EU) 2022/1925.

5.6.2. *Thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925*

5.6.2.1. The Undertaking’s view

(128) Alphabet indicates that it meets the thresholds laid down in Article 3(2)(a) of Regulation (EU) 2022/1925. As summarised in Table 1 above, Alphabet indicates that it generated an annual Union turnover in excess of EUR 7.5 billion in each of the last three financial years and that its average market capitalisation in the last financial year was above EUR

⁹⁰ Form GD, paragraph 97.

⁹¹ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ L 321, 17.12.2018, p. 36).

75 billion.⁹² In addition, Alphabet indicates that its Gmail CPS is available in all Member States.⁹³

- (129) Alphabet further indicates that its NIICS CPS Gmail meets the monthly active end user and annual active business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925. More specifically, Alphabet submits that Gmail had over 45 million monthly active end users established or located in the Union and over 10 000 yearly active business users established in the Union in the last financial year.⁹⁴
- (130) Finally, in relation to Article 3(2)(c) of Regulation (EU) 2022/1925, Alphabet indicates that its NIICS CPS Gmail has met the thresholds laid down in Article 3(2)(b) of that regulation in each of the last three financial years.⁹⁵

Table 7: Monthly active end users and yearly active business users of Gmail established or located in the Union in each of the last three financial years

Financial year	Monthly active end users	Yearly active business users
2020	[> 45] million	[> 10 000]
2021	[> 45] million	[> 10 000]
2022	[> 45] million	[> 10 000]

Source: Form GD, paragraphs 316 and 317.

5.6.2.2. The Commission's assessment

- (131) Based on the information provided by Alphabet,⁹⁶ the Commission considers that Alphabet meets the turnover threshold laid down in Article 3(2)(a) of Regulation (EU) 2022/1925, as well as the requirement laid down in that provision that the CPS at issue, i.e. Gmail, is offered in at least three Member States.
- (132) Moreover, based on the information provided by Alphabet,⁹⁷ the Commission considers that the NIICS CPS Gmail meets the monthly active end user and the yearly active business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925.
- (133) Finally, based on the information provided by Alphabet,⁹⁸ the Commission considers that the NIICS CPS Gmail meets the requirement laid down in Article 3(2)(c) of Regulation (EU) 2022/1925 that the monthly active end user and the yearly active business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 were met in each of the last three financial years.
- (134) As regards the thresholds laid down in Article 3(2)(b) and (c) of Regulation (EU) 2022/1925, it is not necessary to determine whether Alphabet's approach to identifying

⁹² Form GD, paragraphs 278 and 279.

⁹³ Form GD, paragraph 280.

⁹⁴ Form GD, paragraphs 316 and 317.

⁹⁵ Form GD, paragraphs 316 and 317.

⁹⁶ Form GD, paragraphs 278 to 280.

⁹⁷ Form GD, paragraph 112.

⁹⁸ GD, paragraph 112.

and estimating monthly active end users and yearly business users of its NIICS CPS Gmail is sufficiently inclusive, in line with the relevant definition in Section E of the Annex to Regulation (EU) 2022/1925, given that the aforementioned thresholds are easily met, based on the information provided by Alphabet.

5.6.3. Arguments pursuant to Article 3(5) of Regulation (EU) 2022/1925

5.6.3.1. The Undertaking's view

- (135) Alphabet has presented arguments, pursuant to Article 3(5) of Regulation (EU) 2022/1925, aimed at demonstrating that, although it meets the thresholds laid down in Article 3(2) of that Regulation in relation to its NIICS CPS Gmail, it exceptionally does not satisfy the requirements listed in Article 3(1) in relation to that CPS and, in particular, the requirement listed in Article 3(1)(b) due to the circumstances in which CPS operates.⁹⁹
- (136) First, Alphabet submits that Gmail is entirely configured and provided based on open standards, such as IMAP, POP, or SMTP,¹⁰⁰ and that it allows Gmail users to exchange messages in a reader-friendly format with recipients from any other email service. According to Alphabet, this excludes the ability of Gmail to act as an important gateway for business users to reach end users.¹⁰¹ In particular, Alphabet submits that the provision of the Gmail service is governed by SMTP, an open standard similar to others used in the Internet, and that plain text and HTML messages are standardised and can be imported and exported across other providers.¹⁰² On this basis, Alphabet submits that the way in which Gmail is configured does not allow Alphabet to control, constrain, or influence the operation or the communication of any Gmail end users or business users.¹⁰³ In that respect, Alphabet submits that Gmail is different from other NIICS and, in particular, from closed messaging systems where end users of a particular messaging service can only be reached by business users of that same messaging service and where the provider of the service has control over the ability to exchange and access messages.
- (137) Second, Alphabet provides data supporting its claim that Gmail is configured and provided based on open standards that allow seamless communication with any Gmail and non-Gmail email account and that it is not an important gateway for business users to reach end users. For example, Alphabet explains that, over a [figure]-day period, [90-100]% of emails received by Gmail end users come from a non-Gmail address and that, consequently, only [0-5]% of emails received by Gmail end users come from a Gmail account. Moreover, Alphabet estimates that only [0-5]% of emails received by Gmail business users come from end users, the rest of emails volume ([90-100]%) being business-to-business (including intracompany) exchanges.¹⁰⁴ Conversely, only [10-20]% of emails sent from Gmail business users are sent to end customers. In the same vein,

⁹⁹ Alphabet does not present any arguments concerning points (a) and (c) of Article 3(1) of Regulation (EU) 2022/1925 in its submission pursuant to Article 3(5) of that Regulation.

¹⁰⁰ Respectively, Internet Message Access Protocol (IMAP), Post Office Protocol (POP), and Simple Mail Transfer Protocol (SMTP).

¹⁰¹ Form GD, Annex 1, paragraphs 18, 45 and 50; Reply to Commission Letter of 27 July 2023, paragraphs 257 and 258.

¹⁰² Reply to Commission Letter of 27 July 2023, paragraph 264.

¹⁰³ Reply to Commission Letter of 27 July 2023, paragraphs 270 and 272.

¹⁰⁴ Note for the European Commission of Alphabet Supporting Quantitative Evidence on Gmail of 13 July 2023, page 2. The data was collected over a [figure]-day period ([dates] June, 2023).

Alphabet also provided data over a [figure]-day period, estimating that only [5-10]% of Gmail end user accounts received an email from a Gmail business user.¹⁰⁵

- (138) Finally, Alphabet presents additional arguments relating to the existence of multihoming and the lack of network effects,¹⁰⁶ to the methodology for the identification and recalculation of email user numbers in the Annex to Regulation (EU) 2022/1925,¹⁰⁷ and to its compliance with the interoperability obligation laid down in Article 7 of that Regulation.¹⁰⁸

5.6.3.2. The Commission's assessment

- (139) The Commission recalls, at the outset, that email services are included within the scope of NIICS, which is listed as a CPS in Article 2, point (2), subpoint (e), of Regulation (EU) 2022/1925.¹⁰⁹
- (140) The Commission observes, next, that any CPS that individually meets the thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 is presumed to constitute an important gateway for business users to reach end users within the meaning of Article 3(1)(b) of that Regulation.
- (141) The Commission further observes that the mere fact that an undertaking complies with one or more of the obligations laid down in Regulation (EU) 2022/1925 in relation to a particular CPS that meets the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 cannot mean that that undertaking does not satisfy the conditions listed in Article 3(1) of that Regulation in relation to that CPS. Consequently, Alphabet's arguments alleging that it already complies with the obligations laid down in Regulation (EU) 2022/1925 in respect to Gmail do not manifestly call into question the presumptions set out in Article 3(2) of that Regulation.
- (142) Similarly, the Commission considers that Alphabet's arguments on the existence of multi-homing or the lack of network effects do not, in themselves, manifestly call into question the presumptions set out in Article 3(2) of Regulation (EU) 2022/1925. While multi-homing or network effects may be relevant to assess the existence of a gateway position, the existence of multi-homing or the lack of network effects are not, in themselves, necessarily an indication that a CPS does not constitute an important gateway for business users to reach end users.
- (143) In contrast, the Commission finds that Alphabet's other arguments that seek to demonstrate that its NIICS CPS Gmail does not constitute an important gateway within the meaning of Article 3(1)(b) of Regulation (EU) 2022/1925 are sufficiently substantiated to demonstrate that, exceptionally, even though the threshold laid down in Article 3(2)(b) of that Regulation is met in relation to that service, the requirement laid down in Article 3(1)(b) is not fulfilled due to the circumstances in which that CPS operates. That finding is based on the following considerations.

¹⁰⁵ Reply to Commission Letter of 27 July 2023, paragraph 294. The [figure] day period covers [dates] July 2023. Alphabet clarifies that, due to the availability of such data for Alphabet because of data retention policies and to how the data is analysed, it could not cover a longer period of email exchanges at the EU level. Reply to Commission Letter of 27 July 2023, footnote 75.

¹⁰⁶ Form GD, Annex 1, paragraphs 23 to 25, 51 and 52.

¹⁰⁷ Reply to Commission Letter of 27 July 2023, paragraphs 307 to 317.

¹⁰⁸ Form GD, Annex 1, paragraph 54.

¹⁰⁹ Recital (126) above.

- (144) First, the way in which Alphabet configures and provides its NIICS CPS Gmail, as an email service based on open standards and provided in a standardised format, means that that service, in its current configuration, enables its users to effectively exchange messages with other users of Gmail, but also, in the same manner, with users of any other email service. Data provided by Alphabet support its argument that Gmail is not an important gateway for business users to reach end users in this respect. For example, as noted in recital (137) above, [90-100]% of emails received by Gmail end users are sent by non-Gmail addresses. This means that only [0-5]% of emails received by Gmail end users comes from Gmail addresses, a figure which encompasses emails coming from both Gmail end users and Gmail business users. In the Commission's view, this data shows that Gmail users [confidential] exchange emails with non-Gmail accounts and that only a [confidential] of emails received by users of Gmail originate from a Gmail account. Moreover, it illustrates that the current configuration of Gmail allows business users and end users of both Gmail and of other third-party email services to effectively communicate with each other in the same manner, irrespective of the email service they use.
- (145) Second, and following on the foregoing recital, Alphabet, in the current configuration of the NIICS CPS Gmail, does not appear to exert any control over the operations of Gmail end users or business users that would enable it to make those end users or business users dependent on Gmail in order to reach each other. As explained by recital (20) of the preamble to Regulation (EU) 2022/1925, a CPS acts as an important gateway if it has '*a very high number of business users that depend on a core platform service to reach a very high number of monthly active users*' and if it '*enables the undertaking providing that service to influence the operations of a substantial part of business users to its advantage*'. Given Alphabet's lack of such influence, Gmail, in its current configuration, is not an important gateway for business users to reach end users.
- (146) The Commission's finding that Alphabet's NIICS CPS Gmail is not an important gateway within the meaning of Article 3(1)(b) of Regulation (EU) 2022/1925 holds true irrespective of the relatively large number of end users and business users of that CPS. Indeed, the considerations set out in the two preceding recitals, which relate to the specific circumstances in which the NIICS CPS Gmail is provided, apply irrespective of the number of end users and business users of that CPS.
- (147) In this regard, the Commission notes that its finding that the NIICS CPS Gmail does not constitute an important gateway is based on the available information on the current configuration of that CPS and that, should there be any substantial changes to the way in which that CPS is provided, the Commission may in the future review its assessment of that service against the conditions laid down in Article 3(1) of Regulation (EU) 2022/1925 pursuant to Article 4(1)(a) of that Regulation.¹¹⁰
- (148) Finally, the Commission considers that Alphabet's understanding of the methodology for identifying and calculating active end users and business users for NIICS, as established in the Annex to Regulation (EU) 2022/1925, is irrelevant for the present assessment and, in any event, is without prejudice to it. As noted in recitals (125) and (129) above, Alphabet has acknowledged that Gmail qualifies as a NIICS CPS and that

¹¹⁰ Such substantial changes could include, but are not limited to, technological and/or commercial changes as a result of which the ability of Gmail end users and business users to communicate with users of third-party email services or vice versa would be degraded, made less effective, or impeded in relation to the service as a whole or to relevant features.

that CPS exceeds the thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925.

- (149) In conclusion, the Commission considers that the arguments submitted by Alphabet are sufficiently substantiated to demonstrate that, exceptionally, even though the thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 are met in relation to the NIICS CPS Gmail, the requirement laid down in Article 3(1)(b) of that Regulation of that CPS constituting an important gateway is not fulfilled, due to the circumstances in which that CPS operates in its current configuration.
- (150) Given that the arguments presented by Alphabet not only manifestly call into question the presumption laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 in relation to the Gmail CPS, but also clearly and comprehensively demonstrate that the requirement of that CPS constituting an important gateway laid down in Article 3(1)(b) of that Regulation is not fulfilled, it is not necessary for the Commission to open a market investigation pursuant to the procedure laid down in Article 17(3) of that Regulation.
- (151) Accordingly, Alphabet shall not be designated as a gatekeeper in relation to its NIICS CPS Gmail and Gmail shall not be listed in this Decision as a CPS that is an important gateway for business users to reach end users.

5.6.4. *Conclusion for the number-independent interpersonal communication service Gmail*

- (152) For the reasons set out in recitals (126) and (127), and (131) to (134) above, the Commission concludes that Gmail constitutes a NIICS CPS within the meaning of Article 2, point (2), subpoint (e) of Regulation (EU) 2022/1925 and that Alphabet meets the thresholds laid down in Article 3(2) of that Regulation in relation to that service.
- (153) However, for the reasons set out in recitals (139) to (151) above, the Commission concludes that Gmail shall not be listed in this Decision as a CPS that is an important gateway for business users to reach end users.

5.7. **Alphabet’s operating system Google Android**

5.7.1. *CPS qualification and delineation*

5.7.1.1. The Undertaking’s view

- (154) Alphabet notified Android OS as operating system CPS.¹¹¹ According to Alphabet, Android OS is Google’s OS for mobile devices (i.e., smartphones and tablets). Android OS is hereinafter referred to as “Google Android”.¹¹²
- (155) Alphabet submits that Google Android qualifies as an operating system within the meaning of Article 2, point (10), of Regulation (EU) 2022/1925, since its purpose is to

¹¹¹ Form GD, paragraphs 121(a) and 179.

¹¹² Alphabet submits that the Android OS CPS consists of the code that performs the purpose of an OS for smart mobile devices, which was referred to as “Google Android” in the Commission decision of 18 July 2018 in Case No. AT.40099 – Google Android. See Form GD, paragraph 125. Alphabet also submits that the Android OS CPS does not include the set of core native Android apps that are made available as part of the ‘Android Open Source Project’ (including apps for email, SMS messaging, calendars, internet browsing, and contacts), because these are not operating system-level components. See Form GD, paragraph 126.

provide system software that controls the basic functions of a mobile device's hardware and software and enables apps for mobile devices to run on the device.¹¹³

- (156) Furthermore, Alphabet submits that Google Android constitutes a CPS distinct from Alphabet's other operating systems, namely Android Automotive OS (for automotive in-vehicle infotainment systems), Android TV (for smart TVs and set-top boxes), Wear OS (for wrist-worn wearable devices), Chrome OS (for laptops and desktops), as well as Cast OS and Fuchsia OS (both for Google's smart-home Nest devices).¹¹⁴ In particular, Alphabet argues that a broader delineation of Google Android that includes some or all of Alphabet's other operating systems would be implausible and would result in artificial delineations. According to Alphabet, the purposes of its operating systems depend on the end use of the specific device for which they are designed. End users utilise mobile devices for activities such as accessing apps, web browsing, messaging, and consuming online content. Devices enabled by Alphabet's other operating systems, such as smartwatches, TVs, and in-vehicle entertainment systems, are used for different activities by end users. Similarly, app developers, i.e. the business users of an operating system, typically design their products to cater for the specific end-uses of the operating system as well as the features of the specific device type on which it runs.¹¹⁵
- (157) In addition, Alphabet submits that a narrower delineation of Google Android under which its implementation on smartphones and tablets would constitute two separate CPSs is not plausible. Indeed, the same version of Google Android is used on both types of devices, and Alphabet has not historically distinguished between the development of Google Android for smartphones and for tablets.¹¹⁶ Alphabet claims that end users consider Google Android to serve a single purpose regardless of whether it is used on a smartphone or tablet. According to Alphabet, there is a substantial overlap in the functionalities and features of smartphones and tablets. Alphabet also submits that app developers (i.e., business users) consider Google Android to have the same purpose regardless of whether their apps will be used on a smartphone or tablet and often develop apps for both devices. Alphabet also has a single app vetting process for apps running on Google Android.¹¹⁷
- (158) Finally, Alphabet takes the view that its middleware¹¹⁸ licensed to original equipment manufacturers ("OEMs") for preinstallation on Android mobile devices is part of the Google Android CPS insofar as it serves the purpose of an operating system as defined in Article 2, point (10), of Regulation (EU) 2022/1925.¹¹⁹ According to Alphabet, one of its main middleware products, Google Play Services,¹²⁰ consists of many different features that have a range of different purposes and the degree to which the substantive obligations of Regulation (EU) 2022/1925 apply to these features can only be determined by applying the definition of an operating system pursuant to Article 2, point (10) of Regulation (EU) 2022/1925.¹²¹

¹¹³ See Form GD, paragraph 122.

¹¹⁴ See Form GD, paragraphs 135 and 136.

¹¹⁵ Form GD, paragraphs 135 to 167.

¹¹⁶ Form GD, paragraph 169.

¹¹⁷ Form GD, paragraphs 168 to 178.

¹¹⁸ Middleware is software that lies between software that is distributed as a core operating system and the applications running on it.

¹¹⁹ Alphabet's reply of 4 August 2023, paragraphs 114 and 148.

¹²⁰ Google Play Services is a proprietary software package produced by Alphabet for installation on Android devices. It consists of services and libraries for use by mobile apps running on the device.

¹²¹ Alphabet's reply of 4 August 2023, paragraph 147.

5.7.1.2. The Commission's assessment

- (159) Operating systems are a category of CPSs pursuant to Article 2, point (2), sub (f) of Regulation (EU) 2022/1925. Article 2, point (10) of Regulation (EU) 2022/1925 defines an operating system as *'a system software that controls the basic functions of the hardware or software and enables software applications to run on it.'*
- (160) The Commission considers, in line with Alphabet's view, that Google Android constitutes an operating system pursuant to Article 2, point (10), of Regulation (EU) 2022/1925 and therefore constitutes a CPS within the meaning of Article 2, point (2), sub (f), of Regulation (EU) 2022/1925.
- (161) Moreover, the Commission considers, in line with Alphabet's view, that Google Android constitutes a separate CPS from Alphabet's operating systems running on devices other than smartphones and tablets. Furthermore, the Commission considers, in line with Alphabet's view, that a narrower delineation of Google Android would not be appropriate.
- (162) As a preliminary remark, it follows from Article 2, point (10), of Regulation (EU) 2022/1925 that the purpose of an operating system should be assessed from a technological perspective, taking into account that the notion of 'operating system' is intrinsically linked to the hardware or software (e.g., the device) whose basic functions the operating system is specifically designed to control and on which that operating system is intended to enable the functioning of applications. Consequently, the delineation of CPSs in relation to operating systems should take into account that the type of device(s) for which the operating system is designed, in principle, affects the purpose of the operating system running that device.
- (163) Alphabet develops and offers various operating systems, each of which is specifically designed to operate one or more specific types of devices and which cannot be deployed on other types of devices. For smartphones and tablets, Alphabet has developed a single version of Google Android which is designed to support the functionalities of both smartphones and tablets and to run on devices of multiple OEMs to whom Alphabet may license Google Android. Those OEMs can then customise and deploy Google Android on specific devices. For devices other than smartphones and tablets, such as PCs, smart TVs, smart watches and automotive in-vehicle infotainment systems, Alphabet has developed distinct operating systems, which it offers as different products from Google Android and which can only be deployed on the specific device type that they have been developed for.¹²²
- (164) Moreover, data submitted by Alphabet indicate that business users develop their apps to fit Google Android as a whole and follow largely the same development process for tablets and smartphones. Apart from minor modifications they do not generally need to tailor their apps for use on either a smartphone or tablet, since both use Google Android. Consistent with that, app developers submit their apps for a single app vetting process for Google Android, which applies in the same way for both smartphone and tablet apps.¹²³ Therefore, on the basis of the information submitted by Alphabet, it appears that it is technically possible to distribute one app for both smartphones and tablets without specific adaptations, and many Google Android developers do so.¹²⁴ In contrast,

¹²² Form GD, paragraphs 121, 162 and 169.

¹²³ Form GD, Annex OS-1, paragraphs 29, 41 and 43.

¹²⁴ Form GD, paragraph 176.

business users who wish to offer apps for Alphabet’s operating systems for devices other than smartphones and tablets, e.g., Android Automotive OS, Android TV, Wear OS, Chrome OS, need to develop specific apps tailored for those operating systems.¹²⁵

- (165) Finally, as regards Alphabet’s middleware, the Commission notes that, based on the information available to it, it cannot be excluded that some of the operating system features of Google Android are included in or require Alphabet’s middleware in order to function, such as certain elements of Google Play Services. With regard to Google Play Services, for example, the Commission notes that virtually all of the devices that implement and are enabled by Google Android in the European Economic Area (“EEA”) also make use of Google Play Services¹²⁶ and Alphabet itself describes Google Play Services as “*a core system software that enables key functionality on every certified Android device*”.¹²⁷ Therefore, Alphabet’s middleware, insofar as it contributes to controlling the basic functions of Google Android tablets and smartphones and to enabling software applications to run on them, thereby ensuring an effective functioning of Google Android, should be considered part of the operating system CPS Google Android. References to ‘Google Android’ should therefore in the remainder of this Decision be understood to also cover Alphabet’s middleware as defined above.
- (166) For the reasons set out above, the Commission concludes that Google Android constitutes an operating system within the meaning of Article 2, point (10), of Regulation (EU) 2022/1925 and therefore a CPS within the meaning of Article 2, point (2), subpoint (f), of that Regulation.

5.7.2. *Thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925*

5.7.2.1. The Undertaking’s view

- (167) Alphabet indicates that it meets the thresholds laid down in Article 3(2), point (a) of Regulation (EU) 2022/1925. As summarised in Table 1 above, Alphabet indicates that it generated an annual Union turnover in excess of EUR 7.5 billion in each of the last three financial years and that its average market capitalisation in the last financial year was above EUR 75 billion.¹²⁸
- (168) In addition, Alphabet indicates that it provides the operating system CPS Google Android in all Member States.¹²⁹
- (169) Alphabet further indicates that its operating system CPS Google Android meets the monthly active end user and annual active business user thresholds laid down Article 3(2), point (b) of Regulation (EU) 2022/1925. Particularly, Alphabet submits that Google Android had over 45 million monthly active end users established or located in the Union and over 10 000 yearly active business users established in the Union in the last financial year.¹³⁰ Finally, in relation to Article 3(2), point (c), of Regulation (EU) 2022/1925, Alphabet indicates that its operating system CPS Google Android has met

¹²⁵ Form GD, paragraphs 146 to 159.

¹²⁶ Commission decision of 18 July 2018 in Case No. AT.40099 – Google Android, footnote 436.

¹²⁷ See Alphabet’s own description of Google Play Services on <https://support.google.com/android/answer/10546414?hl=en>, accessed on 13 July 2023.

¹²⁸ Form GD, paragraphs 278 and 279.

¹²⁹ Form GD, paragraph 280.

¹³⁰ Form GD, paragraphs 323 and 324.

the thresholds laid down in Article 3(2)(b) of that Regulation in each of the last three financial years.¹³¹

Table 8: Monthly active end users and yearly active business users of Google Android established or located in the Union in each of the last three financial years

Financial year	Monthly active end users	Yearly active business users
2020	[> 45] million	[> 10 000]
2021	[> 45] million	[> 10 000]
2022	[> 45] million	[> 10 000]

Source: Form GD, paragraphs 323 and 324.

5.7.2.2. The Commission's assessment

- (170) Based on the information provided by Alphabet,¹³² the Commission considers that Alphabet meets the turnover threshold laid down in Article 3(2), point (a) of Regulation (EU) 2022/1925, as well as the requirement laid down in that provision that the CPS at issue, i.e. Google Android, is offered in at least three Member States.
- (171) Moreover, based on the information provided by Alphabet,¹³³ the Commission considers that Alphabet's operating system CPS Google Android meets the monthly active end user and the yearly active business user thresholds laid down in Article 3(2), point (b), of Regulation (EU) 2022/1925.
- (172) Finally, based on the information provided by Alphabet,¹³⁴ the Commission considers that Alphabet's operating system CPS Google Android meets the requirement laid down in Article 3(2), point (c), of Regulation (EU) 2022/1925 that the monthly active end user and the yearly active business user thresholds laid down in Article 3(2), point (b), of Regulation (EU) 2022/1925 were met in each of the last three financial years.
- (173) As regards the thresholds laid down in Article 3(2)(b) and (c) of Regulation (EU) 2022/1925, it is not necessary to determine whether Alphabet's approach to identifying and estimating monthly active end users and yearly business users of its operating system CPS Google Android is sufficiently inclusive in line with the relevant definition in Section E of the Annex to Regulation (EU) 2022/1925, given that the aforementioned thresholds are met based on the information provided by Alphabet.

5.7.3. Conclusion for the operating system Google Android

- (174) For the reasons set out above in recitals (159) to (166) and (170) to (173) above, the Commission concludes that Google Android constitutes an operating system CPS within the meaning of Article 2, point (2) subpoint (f) of Regulation (EU) 2022/1925 and that Alphabet meets the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925

¹³¹ Form GD, paragraphs 323 and 324.

¹³² Form GD, paragraphs 278 to 280.

¹³³ Form GD, paragraphs 309 and 310.

¹³⁴ Form GD, paragraphs 309 and 310.

in relation to that CPS. Consequently, Alphabet is to be designated as a gatekeeper pursuant to Article 3(4) of Regulation (EU) 2022/1925 in relation to its operating system CPS Google Android.

5.8. Alphabet’s web browser Google Chrome

5.8.1. CPS qualification and delineation

5.8.1.1. The Undertaking’s view

(175) Alphabet notified Google Chrome as a web browser CPS.¹³⁵ Alphabet describes Google Chrome as a free-of-charge web browser, based on the open-source project called Chromium, that allows users to locate, fetch and display web content.¹³⁶ According to Alphabet, Google Chrome is currently available on desktop (Mac OS, Windows OS, Chrome OS and Linux) and on Apple and Android smartphones and tablets.¹³⁷ Alphabet submits that Google Chrome constitutes a single web browser CPS within the meaning of Article 2, points (2), subpoint (g) and Article 2, point (11), of Regulation (EU) 2022/1925, regardless of the means through which it is accessed.¹³⁸

5.8.1.2. The Commission’s assessment

(176) Article 2, point (2), subpoint (g), of Regulation (EU) 2022/1925 lists web browsers as one of the categories of CPSs within the meaning of that Regulation. Article 2, point (11), of Regulation (EU) 2022/1925 defines web browsers as software applications that ‘allow end users to access and interact with web content hosted on servers that are connected to networks such as the Internet, including standalone web browsers as well as web browsers integrated or embedded in software or similar.’ Google Chrome fulfils this definition, since allows its users to offer, access and interact with web pages, in particular content and other functionalities offered by such web pages. The Commission therefore considers Google Chrome to constitute a web browser within the meaning of Article 2, point (11), of Regulation (EU) 2022/1925.

(177) The Commission further considers that Google Chrome, together with all elements that allow for the display of and access to web content, either standalone, integrated or embedded in other software applications or similar, qualifies as a single web browser, irrespective of the device through which that service is accessed. Web browsers, including both standalone web browsers and web browsers that are integrated or embedded in other software applications or similar, serve the common purpose of allowing users to offer, access, and interact with web content, irrespective of the device through which the web browser is accessed. Google Chrome is used by both business users and end users for the same purpose irrespective of the device on which it is provided, namely to offer, access and interact with content displayed on websites. Indeed, Google Chrome is available for use on various devices and it allows users to offer, access and interact with content displayed on websites regardless of the device on which it is used.

(178) For the reasons set out above, the Commission concludes that Google Chrome constitutes a web browser within the meaning of Article 2, point (11), of Regulation

¹³⁵ Form GD, paragraphs 2(c) and 186.

¹³⁶ Form GD, paragraphs 186 to 189.

¹³⁷ Form GD, paragraphs 192 and 193.

¹³⁸ Form GD, paragraphs 186, 190, 191 and 196.

(EU) 2022/1925 and therefore a CPS within the meaning of Article 2, point (2), subpoint (g), of that Regulation.

5.8.2. *Thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925*

5.8.2.1. The Undertaking's view

- (179) Alphabet indicates that it meets the thresholds laid down in Article 3(2)(a) of Regulation (EU) 2022/1925. As summarised in Table 1 above, Alphabet indicates that it generated an annual Union turnover in excess of EUR 7.5 billion in each of the last three financial years and that its average market capitalisation in the last financial year was above EUR 75 billion.¹³⁹
- (180) In addition, Alphabet indicates that its web browser Google Chrome is available in all Member States.¹⁴⁰
- (181) Alphabet further indicates that it meets the monthly active end user and annual active business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925. In particular, Alphabet considers that its web browser Google Chrome had over [45] million monthly active end users established or located in the Union and over 10 000 yearly active business users established in the Union in the last financial year.¹⁴¹
- (182) Finally, in relation to Article 3(2)(c) of Regulation (EU) 2022/1925, Alphabet indicates that its web browser Google Chrome has met the thresholds laid down in Article 3(2)(b) of that Regulation in each of the last three financial years in the Union.¹⁴²

Table 9: Monthly active end users and yearly active business users of Google Chrome established or located in the Union in each of the last three financial years

Financial year	Monthly active end users	Yearly active business users
2020	[> 45] million	at least 10 000
2021	[> 45] million	at least 10 000
2022	[> 45] million	at least 10 000

Source: Form GD, paragraphs 328 and 329.

5.8.2.2. The Commission's assessment

- (183) Based on the information provided by Alphabet, the Commission considers that Alphabet meets the thresholds laid down in Article 3(2)(a) of Regulation (EU)

¹³⁹ Form GD, paragraphs 278 and 279.

¹⁴⁰ Form GD, paragraph 280.

¹⁴¹ Form GD, paragraphs 328 and 329. Alphabet estimates that it had at least 22 million yearly active business users established in the Union as of February 2023 but does not have data available for previous years. However, Alphabet expects Chrome to be well over the business user threshold. See Form GD, paragraph 329.

¹⁴² Form GD, paragraphs 328 and 329.

2022/1925, as well as the requirement laid down in that provision that the CPS at issue, i.e. Google Chrome, is offered in at least three Member States.

- (184) Based on the information provided by Alphabet, the Commission considers that the web browser CPS Google Chrome meets the monthly active end user and the yearly active business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925.
- (185) Finally, based on the information provided by Alphabet, the Commission considers that the web browser CPS Google Chrome meets the requirement laid down in Article 3(2)(c) of Regulation (EU) 2022/1925 that the monthly active end user and the yearly active business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 were met in each of the last three financial years.
- (186) As regards the thresholds laid down in Article 3(2)(b) and (c) of Regulation (EU) 2022/1925, it is not necessary to determine whether Alphabet’s approach to identifying and estimating monthly active end users and yearly business users of its web browser CPS Google Chrome is sufficiently inclusive in line with the relevant definition in Section E of the Annex to Regulation (EU) 2022/1925, given that the aforementioned thresholds are met based on the information provided by Alphabet.

5.8.3. *Conclusion for the web browser Google Chrome*

- (187) For the reasons set out in recitals (176) to (178) and (183) to (186) above, the Commission concludes that Google Chrome, including all the elements that allow for the display of and access to web content, either standalone, integrated or embedded in other software applications or similar, constitutes a web browser CPS within the meaning of Article 2, point (2), subpoint (g), of Regulation (EU) 2022/1925 and that Alphabet meets the thresholds laid down in Article 3(2) of that Regulation in relation to that CPS. Consequently, Alphabet is to be designated as a gatekeeper pursuant to Article 3(4) of Regulation (EU) 2022/1925 in relation to its web browser CPS Google Chrome.

5.9. **Alphabet’s online advertising services**

5.9.1. *CPS qualification and delineation*

5.9.1.1. The Undertaking’s view

- (188) Alphabet provides several online advertising tools or services, comprising buy-side (targeted to advertisers), sell-side (targeted to publishers), and intermediation services (intermediating between advertisers and publishers, as well as other advertising intermediation services providers). Buy-side services such as Google Ads, Display & Video 360 (“DV360”), Search Ads 360, and Campaign Manager 360 enable advertisers to set up ad campaigns to buy ad space on Alphabet’s CPSs, services and products (e.g., Search, Maps, Play), as well as third-party properties, including optimising and measuring the performance of ads. Sell-side services such as Google Ad Manager, AdSense and AdMob enable publishers to sell their ad space to advertisers.¹⁴³ Advertising intermediation services provide services to both advertisers and publishers.
- (189) Alphabet considers that its buy-side, sell-side and advertising intermediation services used by advertisers and publishers form one online advertising CPS¹⁴⁴ (“Alphabet’s

¹⁴³ Form GD, paragraph 271, e)-g).

¹⁴⁴ Form GD, paragraphs 230 to 232.

online advertising CPS”), including its services Google Ads, Display & Video 360 (“DV 360”), Search Ads 360, Campaign Manager 360, Waze Ads, Google Ad Manager, AdSense for display and video ads and AdMob.

- (190) Alphabet submits that Google Analytics is not part of its online advertising CPS.¹⁴⁵ Alphabet argues that Google Analytics does not fall under the definition of ‘*online advertising services*’ in Article 2, point (2), subpoint (j), Regulation (EU) 2022/1925, since it is neither used to buy or sell advertising space nor to intermediate the buying or selling of ad space.¹⁴⁶
- (191) Alphabet submits that Google Analytics is a standalone service that can be used by itself and for purposes completely unrelated to advertising.¹⁴⁷ The purpose of Google Analytics is to provide behavioural measurement and data on website traffic. Alphabet also claims that the tool is often used to measure user activity on websites without using this information for advertising.¹⁴⁸
- (192) Alphabet does not consider including Google Analytics in its online advertising CPS as a plausible alternative delineation, since its purpose is not to commercialise ad space, it has many non-ad related use cases, and is not a must-have service for business users of Alphabet’s online advertising services.¹⁴⁹ Furthermore, Alphabet considers that since Google Analytics does not have the same purpose as Alphabet’s other online advertising services (namely to commercialise ad space), it cannot be considered part of Alphabet’s online advertising services, as this would not be in line with the “purpose test” in Section D, point 2(c) of the Annex to Regulation (EU) 2022/1925.¹⁵⁰
- (193) However, Alphabet submits that if the Commission were to consider such an alternative delineation plausible, Google Analytics should only be treated as falling within Alphabet’s online advertising CPS insofar as it is linked by advertisers to Alphabet’s online advertising services and in that case should be limited to features and functionalities of Google Analytics that rely on personal data of Alphabet’s online advertising CPS.¹⁵¹ Other activities, such as behavioural analytics (i.e. site interaction and event reporting), should not be considered part of Alphabet’s online advertising CPS.¹⁵²
- (194) Alphabet further considers that the broad interpretation of the definition of online advertising services by the Commission, which would include activities of Google Analytics, is not supported by Regulation (EU) 2022/1925.¹⁵³ In addition, Alphabet considers that the Commission errs in stating that Google Analytics provides the functionality of retargeting and remarketing which is used for the purpose of online advertising.¹⁵⁴ According to Alphabet, audience lists are not specific to advertising and have many other use cases.¹⁵⁵ To be used for the purpose of advertising, an audience list has to be provided to one of Alphabet’s online advertising services. However, there are

¹⁴⁵ Form GD, paragraph 253.

¹⁴⁶ Form GD, paragraph 254.

¹⁴⁷ Form GD, paragraph 255.

¹⁴⁸ Form GD, paragraph 255.

¹⁴⁹ Form GD, paragraph 257.

¹⁵⁰ Alphabet’s reply of 4 August 2023, paragraphs 191 and 193.

¹⁵¹ Form GD, paragraphs 258 and 259; Alphabet’s reply of 4 August 2023, paragraph 159.

¹⁵² Form GD, paragraph 259; Alphabet’s reply of 4 August 2023, paragraph 193.

¹⁵³ Alphabet’s reply of 4 August 2023, paragraphs 195 and 196.

¹⁵⁴ Alphabet’s reply of 4 August 2023, paragraphs 197 to 200.

¹⁵⁵ Alphabet’s reply of 4 August 2023, paragraph 198.

many ways of providing audience lists to Alphabet's online advertising CPS. In Alphabet's view, this does not mean that any services that can create an audience list are part of the online advertising CPS, since otherwise emails and spreadsheets would have to be included, as it could be argued that they can be used for the purpose of online advertising.¹⁵⁶

- (195) Alphabet proposes in relation to Google Analytics that any inclusion of Google Analytics in Alphabet's online advertising CPS on the publisher side should be limited to actual ads-related usage.¹⁵⁷ Specifically, Alphabet considers that delineating Google Analytics as part of Alphabet's online advertising services insofar as it may be used for the purpose of online advertising services is too broad to provide a predictable and monitorable boundary.¹⁵⁸
- (196) As regards AdSense, Alphabet submits that one variant of AdSense, namely AdSense for Search, is not part of Alphabet's online advertising CPS because its purpose is to display paid search results in response to search queries that are entered on a third party website.¹⁵⁹ According to Alphabet, AdSense for Search is closely related to the syndicated search functionality and, therefore, forms part of Alphabet's online search engine CPS Google Search.¹⁶⁰
- (197) Alphabet explains that when a user enters a query into the search bar on third-party websites, the query is passed on to Alphabet's online search engine that then provides the results directly back to the user on their browser. Alphabet states that [confidential] publishers opt for the search function to search the entire web to provide free results to users, whilst others alternatively choose the function to help users to search only the publisher's website.¹⁶¹ Alphabet argues that from a technical perspective, Alphabet's online search engine generates these results that are then returned on the third-party website (i.e., a page is displayed in a frame within another page). According to Alphabet, both free and paid search results on third-party websites should, for this reason, form part of the online search engine CPS Google Search, just like on Alphabet-owned and operated properties. In Alphabet's view, AdSense for Search is effectively an extension of its online search engine CPS Google Search.¹⁶²
- (198) If the Commission were to designate AdSense for Search as part of Alphabet's online advertising CPS, Alphabet argues that AdSense for Search should be considered as part of both its online search engine CPS Google Search and its online advertising CPS.¹⁶³ Alphabet submits that such a position is consistent with the Commission's preliminary view regarding paid results provided through its online search engine CPS Google Search.¹⁶⁴ In Alphabet's view, treating AdSense for Search as only part of the online advertising CPS would be inconsistent with the Commission's position with respect to the display of search ads,¹⁶⁵ since an "AdSense for Search ad" is a paid result in direct response to a search query. According to Alphabet, where paid results are displayed as a result of a search query in Google Search, the Commission considers the display of

¹⁵⁶ Alphabet's reply of 4 August 2023, paragraph 199.

¹⁵⁷ Alphabet's reply of 4 August 2023, paragraph 207.

¹⁵⁸ Alphabet's reply of 4 August 2023, paragraph 205.

¹⁵⁹ Form GD, footnote 99.

¹⁶⁰ Form GD, footnote 99.

¹⁶¹ Alphabet's reply of 12 July 2023 to the Commission's questions of 7 July 2023, reply to question 12(a).

¹⁶² Alphabet's reply of 4 August 2023, paragraph 213.

¹⁶³ Alphabet's reply of 4 August 2023, paragraphs 208 and 216.

¹⁶⁴ *Ibid.*

¹⁶⁵ Alphabet's reply of 4 August 2023, paragraph 218.

such ads to be part of both the online advertising CPS and the online search engine CPS.¹⁶⁶

- (199) As regards the boundary between Alphabet’s online advertising services and its end user-facing services, Alphabet submits that Regulation (EU) 2022/1925 distinguishes between: (i) online advertising services that consist of the proprietary sale of ad space and advertising intermediation services, and (ii) end user-facing services that include the display of ads to end users.¹⁶⁷ According to Alphabet, it follows from the definitions of online advertising services, online search engines and search results¹⁶⁸ that the display of a paid result (referred to by Alphabet as ‘search ad’) is part of the online search engine and that the sale of ad space on Google Search is part of the online advertising services.¹⁶⁹
- (200) Alphabet further supports its argument that user-facing services include paid results (i.e. ads) generally by referring to its video-sharing platform service YouTube as an example.¹⁷⁰ Alphabet submits that its end user-facing services provide an integrated offering of free and paid content evidenced by the respective end user-facing service retaining control technically of what to show when and where on its property, and the fact that paid content ‘monetises’ free content, i.e. there is an economic integration between the two types of results.¹⁷¹ As a result, according to Alphabet, the value of free and paid content is inseparably linked and the quality of paid content depends on the accompanying organic content and vice versa.¹⁷² In support of including ads within the respective user-facing service, Alphabet states that Regulation (EU) 2022/1925 defines each CPS type by reference to *all* of the services’ activities without exclusions, and quotes a number of definitions in Regulation (EU) 2022/1925.¹⁷³ Furthermore, Alphabet notes that Regulation (EU) 2022/1925 cross-refers to other legislation for definitions in respect of video-sharing platform services and online intermediation services and these definitions indicate “that the relevant O&O [owned and operated] services include advertising”.¹⁷⁴
- (201) Alphabet agrees with the Commission’s preliminary position that there is an intrinsic link between an end user-facing service and the search ads shown on that service.¹⁷⁵ However, Alphabet disagrees with the effect of this position leading to a differentiation between search and non-search ads, which in some cases are difficult to clearly distinguish, and could have unintended negative consequences (user confusion, implementation/enforcement difficulties).¹⁷⁶ Alphabet argues that both search and non-search ads are presented, organised and communicated by the service where they are shown and that both are triggered by the end users’ interaction with the service.¹⁷⁷ In

¹⁶⁶ Alphabet’s reply of 4 August 2023, paragraph 218.

¹⁶⁷ Form GD, paragraph 260.

¹⁶⁸ Article 2, point (2), subpoint (j), Article 2, point (6) and Article 2, point (23) of Regulation (EU) 2022/1925.

¹⁶⁹ Form GD, paragraph 264. Alphabet makes the same submission in Form GD paragraph 27 (regarding online intermediation services), paragraph 70 (online search engines), paragraph 85 (video-sharing platform services) and paragraph 103 (NIICS).

¹⁷⁰ Alphabet’s reply of 4 August 2023, paragraph 177.

¹⁷¹ Alphabet’s reply of 4 August 2023, paragraphs 165 to 169.

¹⁷² Alphabet’s reply of 4 August 2023, paragraph 169.

¹⁷³ Alphabet’s reply of 4 August 2023, paragraph 174.

¹⁷⁴ Alphabet’s supplementary response of 15 August 2023, paragraph 24.

¹⁷⁵ Alphabet’s reply of 4 August 2023, paragraph 178.

¹⁷⁶ Alphabet’s reply of 4 August 2023, paragraph 183.

¹⁷⁷ Alphabet’s reply of 4 August 2023, paragraph 177.

Alphabet’s view, neither the text of Regulation (EU) 2022/1925 nor the commercial reality of the services showing the ads would justify a distinction between different types of ads.¹⁷⁸

- (202) In conclusion, Alphabet considers that even if the Commission maintains the preliminary view that the display of an ad is also part of Alphabet’s online advertising CPS, it should also recognise that no artificial distinction should be made between search ads and non-search ads on user-facing services.¹⁷⁹

5.9.1.2. The Commission’s assessment

5.9.1.2.1. General remarks

- (203) Article 2, point (2), subpoint (j), of Regulation (EU) 2022/1925 lists online advertising services as one of the categories of CPSs within the meaning of that Regulation. According to that provision, online advertising services include ‘*any advertising networks, advertising exchanges and any other advertising services*’. The Annex to Regulation (EU) 2022/1925, which specifies the methodology for identifying and calculating active end users and active business users of online advertising services, refers to ‘*proprietary sales of advertising space as well as advertising intermediation services*.’¹⁸⁰ To be designated as gatekeeper in relation to an online advertising CPS, Article 2, point (2), subpoint (j) of Regulation 2022/1925 requires the undertaking providing those advertising services to provide at least one other CPS listed in Article 2, point (2), subpoints (a) to (i), of that Regulation.

- (204) In line with the information provided by Alphabet,¹⁸¹ the Commission considers that Alphabet provides online advertising services. Since Alphabet provides the CPSs described in Sections 5.1 to 5.8 in addition to those online advertising services, the Commission considers that Alphabet’s online advertising services constitute one CPS within the meaning of Article 2, point (2), subpoint (j), of Regulation (EU) 2022/1925.

- (205) The Commission’s letter of 27 July 2023 sets out the aspects of Alphabet’s notification on online advertising services with which the Commission disagreed as regards the boundaries of the online advertising CPS in relation to Google Analytics, AdSense for Search, and the display of advertisements. The below sets out the Commission’s final assessment, following Alphabet’s response to the letter.

5.9.1.2.2. Google Analytics

- (206) The Commission considers that Google Analytics,¹⁸² among other activities, facilitates and optimises the use of Alphabet’s online advertising CPS and is therefore part of Alphabet’s online advertising CPS. That finding is based on the following considerations.

- (207) First, including Google Analytics within the scope of Alphabet’s online advertising CPS to the extent that that service may be used for online advertising purposes is in line with the definition of online advertising services laid down in Article 2, point (2), subpoint

¹⁷⁸ Alphabet’s reply of 4 August 2023, paragraph 177.

¹⁷⁹ Alphabet’s reply of 4 August 2023, paragraphs 185 to 187.

¹⁸⁰ Section E of the Annex to Regulation (EU) 2022/1925.

¹⁸¹ Recitals (188) and (189) above.

¹⁸² References to Google Analytics by the Commission include the two services Google Analytics and Google Analytics 360.

- (j), of Regulation (EU) 2022/1925. While that provision does not provide an exhaustive definition of such services, it does include examples including advertising networks, advertising exchanges, and any other advertising intermediation services. That expansive definition supports the inclusion of different services, interfaces, features, functionalities, and tools that may be used for the purpose of online advertising, which is to expose advertisements to end users.
- (208) Similarly, the definitions of active end users and active business users, as well as other references to the term ‘*online advertising services*’ in Regulation (EU) 2022/1925, suggest that the scope of online advertising services in that Regulation is broad. Online advertising services under Regulation (EU) 2022/1925 consist of a set of services, interfaces, features, functionalities and tools that interact with each other with the ultimate purpose of exposing end users to ads. Active business users of online advertising intermediation services include those ‘*who interacted via or were served by the advertising intermediation service*’.¹⁸³ The terms ‘interact’ and ‘served’ are couched broadly. There is no limitation in those definitions to the buying, selling, or intermediation of ad space. The Commission therefore considers that services, interfaces, features, functionalities and tools that may be used for online advertising purposes and which optimise the use of online advertising services also form part of the online advertising CPS.
- (209) Alphabet submits that the terms ‘interact’ and ‘served’ merely reflect inherent differences in the use of online advertising services by different business users, without having the general effect of broadening the definition of online advertising services. That does not detract from the fact that the notion ‘*online advertising services*’ is not defined as such in Regulation (EU) 2022/1925. That Regulation only lists examples of services falling within that notion and does not limit online advertising services to the activities of buying, selling, and intermediating ad space. Contrary to what Alphabet claims in this regard¹⁸⁴, the Commission specifically referred to Article 6(8) of Regulation (EU) 2022/1925 in its letter of 27 July 2023 to Alphabet¹⁸⁵, which suggests that advertising performance measurement tools are part of online advertising services.¹⁸⁶ Alphabet’s reply of 4 August to the Commission’s letter of 27 July 2023 contained no argument or evidence that would put this consideration of the Commission in question.
- (210) Online advertising services may therefore include additional services, interfaces, features, functionalities, and tools that enable their business users (advertisers, publishers and other advertising intermediaries) to optimise their advertising activities by giving them information on the performance of advertisements and content. Those services, interfaces, features, functionalities and tools provide advertisers with information on how the advertising campaign budget was spent, e.g. performance

¹⁸³ Section E of the Annex to Regulation (EU) 2022/1925.

¹⁸⁴ Alphabet’s reply of 4 August 2023, paragraph 196.

¹⁸⁵ Commission’s letter of 27 July 2023 concerning Alphabet’s notification under Article 3(3) of Regulation (EU) 2022/1925, paragraph 28 and footnote 29 specifically.

¹⁸⁶ Article 6(8) of Regulation (EU) 2022/1925 states that ‘*The gatekeeper shall provide advertisers and publishers, as well as third parties authorised by advertisers and publishers, upon their request and free of charge, with access to the performance measuring tools of the gatekeeper and the data necessary for advertisers and publishers to carry out their own independent verification of the advertisements inventory, including aggregated and non-aggregated data. Such data shall be provided in a manner that enables advertisers and publishers to run their own verification and measurement tools to assess the performance of the core platform services provided for by the gatekeepers.*’ (emphasis added).

measurement,¹⁸⁷ including on attribution with the objective to optimise the efficiency of advertising.¹⁸⁸ They provide publishers with information on how their advertising space is being monetised (impressions, clicks, revenue), which also includes and depends on insights gained on how end users engage with the publishers' content. In this regard, Google Analytics enables advertisers and publishers, who, for example, link their Google Analytics accounts with their respective online advertising services accounts, to enrich performance measurement and draw conclusions on the efficiency and effectiveness of their advertising spending.¹⁸⁹

- (211) Second, the Commission considers that performance measurement of advertising campaigns is an integral part of online advertising services. Google Analytics performs part of the performance measurement functions in relation to Alphabet's online advertising services,¹⁹⁰ as evidenced by the large number of business users that have integrated or otherwise linked their Google Analytics accounts with accounts they hold with Alphabet's online advertising services (see recital (214) below)¹⁹¹. The purpose for which business users use Alphabet's online advertising services and Google Analytics, insofar as the respective accounts of the two services are linked and business users may use Google Analytics for online advertising purposes, is materially the same and therefore serves the same purpose within the meaning of Section D, point 2(c) of the Annex to Regulation (EU) 2022/1925.
- (212) Third, as already noted in recitals (210) and (211) above, advertisers and publishers can link their Google Analytics accounts with other services provided by Alphabet, including accounts they hold with Alphabet's online advertising services. This provides advertisers with access to the '*advertising workspace*' in Google Analytics, which contains additional functionalities (e.g., business metrics,¹⁹² performance/conversion channels, attribution model comparison, conversion paths), whilst publishers gain access to additional reporting in existing behavioural reporting segments of Google Analytics (e.g., "engagement" or "monetisation").¹⁹³ The Commission therefore considers that advertising-related functionalities of Google Analytics are, contrary to what Alphabet claims, not limited solely to the '*advertising workspace*' used by advertisers. This is because advertisers are only one of the relevant types of business users of online advertising services (publishers and intermediaries being the other business users mentioned in Regulation (EU) 2022/1925¹⁹⁴) and publishers equally use Google Analytics for the purpose of online advertising.¹⁹⁵

¹⁸⁷ This can take place in real-time or ex-post, i.e. after an ad campaign is finished.

¹⁸⁸ See Article 6(8) of Regulation (EU) 2022/1925.

¹⁸⁹ Alphabet's reply of 21 June 2023 to the Commission's questions of 2 June 2023, reply to question 1.

¹⁹⁰ Alphabet itself stated '*Advertisers can use Analytics data to infer which ad campaigns may lead to more engagement on their site, or use the data to make better decisions about their ad campaigns.*', Alphabet's reply of 21 June 2023 to the Commission's questions of 2 June 2023, paragraph 1.7.

¹⁹¹ Alphabet provides an example of how an advertiser uses performance measurement data of both Alphabet's online advertising services and Google Analytics together to enable robust conclusions about ad performance, see Alphabet's reply of 21 June 2023 to the Commission's questions of 2 June 2023, paragraph 1.7.

¹⁹² Not further specified by Alphabet in response to the Commission's request for information dated 7 July 2023 pursuant to Article 21 of Regulation (EU) 2022/1925, see Alphabet's response dated 12 July 2023 to the Commission's request for information of 7 July 2023, paragraph 10.6.1.

¹⁹³ Alphabet's response dated 12 July 2023 to the Commission's request for information of 7 July 2023, paragraph 10.8.

¹⁹⁴ Section E of the Annex to Regulation (EU) 2022/1925.

¹⁹⁵ Alphabet's response dated 12 July 2023 to the Commission's request for information of 7 July 2023, paragraph 5.1.

- (213) In this regard, Alphabet claims that the Commission erred in stating that “*Google Analytics provides the functionality of retargeting and remarketing*”.¹⁹⁶ However, the Commission rather stated that “*online advertising services also rely on services (...) that enable advertisers to enhance the targeting of their advertising and publishers to increase revenue of their ad space by importing/exporting customer data for “retargeting” or “remarketing” (...). This type of functionality is offered by Google Analytics and is used for the purpose of Alphabet’s online advertising services.*”¹⁹⁷ It is immaterial that audience lists can also be created in other services, interfaces, features, and tools and uploaded onto Alphabet’s online advertising services, as this does not change the fact that business users of Alphabet’s online advertising services and Google Analytics actually use both services together for the purpose of “remarketing”,¹⁹⁸ which is clearly part of the functionality of online advertising services as defined by Regulation (EU) 2022/1925.¹⁹⁹
- (214) Fourth, Google Analytics is not a marginal standalone service that is linked by some business users with Alphabet’s other online advertising services. A majority of Google Analytics users ([50-60]% of accounts in the EEA) have integrated their Google Analytics accounts with accounts they hold with Alphabet’s other online advertising services.²⁰⁰ A significant proportion of EEA-based business users of Google Ads ([40-50]%), DV360 ([20-30]%), AdMob ([20-30]%), and AdSense ([20-30]%) used Google Analytics or Google Analytics 360 in 2023.²⁰¹ Similarly, in terms of revenues, Alphabet derives the large majority of its online advertising revenues ([80-90]% in 2022) from business users using Google Analytics in an integrated way together with Alphabet’s other online advertising services.²⁰²
- (215) Finally, as regards Alphabet’s submission that Google Analytics should be part of Alphabet’s online advertising CPS only to the extent that it relies on the use of personal data from online advertising services,²⁰³ the Commission observes that there is no provision in Regulation (EU) 2022/1925 that would suggest that services covered by an online advertising CPS should be limited only to services and tools that rely on the use of personal data from online advertising services. Alphabet also did not provide any further evidence or arguments supporting this limitation in its reply of 4 August 2023 to the Commission’s letter of 27 July 2023.
- (216) As regards Alphabet’s submission regarding the delineation of Google Analytics as part of the online advertising CPS and its reference to the actual ad-related uses of Google Analytics by the respective business users, the Commission considers that the specific use of individual users or the actual use of specific functions cannot be determinative of whether Google Analytics is part of Alphabet’s online advertising CPS. This limitation to “actual use” would make the delineation unpredictable and unmonitorable, as well as

¹⁹⁶ Alphabet’s reply of 4 August 2023, paragraph 197.

¹⁹⁷ Commission’s letter of 27 July 2023, concerning Alphabet’s notification under Article 3(3) of Regulation (EU) 2022/1925, paragraph 29.

¹⁹⁸ Alphabet’s reply of 21 June 2023 to the Commission’s questions of 2 June 2023, paragraphs 1.10 and 1.19.

¹⁹⁹ Commission’s letter of 27 July 2023, concerning Alphabet’s notification under Article 3(3) of Regulation (EU) 2022/1925, paragraph 29.

²⁰⁰ Concretely with Google Ads and/or DV 360, see Alphabet’s response dated 12 July 2023 to the Commission’s request for information of 7 July 2023, Table 2.2.A.

²⁰¹ Alphabet’s response dated 12 July 2023 to the Commission’s request for information of 7 July 2023, Tables 2.2 B and 5.1.

²⁰² Alphabet’s reply of 21 June 2023 to the Commission’s questions of 2 June 2023, Table 4.1.

²⁰³ Form GD, paragraph 259.

unenforceable. Instead, to ensure a clear boundary between those features of Google Analytics that fall within Alphabet's online advertising CPS and those that do not, the Commission considers that all services, interfaces, features, functionalities, and tools of Google Analytics that can, in principle, be used by business users for the purpose of online advertising must be included in that CPS at the outset.

- (217) In light of the foregoing, the Commission considers advertising services, interfaces, features, functionalities and tools provided by Alphabet through Google Analytics, which may be used for the purpose of online advertising, to be part of Alphabet's online advertising CPS. Consequently, the Commission considers that Google Analytics forms part of Alphabet's online advertising CPS to the extent that business users have integrated their Google Analytics accounts with their Alphabet online advertising services accounts or by way of any form of integration having an equivalent effect, or to the extent that business users may use Google Analytics for online advertising purposes.

5.9.1.2.3. The display of advertisements on other services

- (218) In contrast to Alphabet's view, the Commission considers that the display of an advertisement forms part of the provision of online advertising services. The Commission observes, in this regard, that Alphabet's online advertising CPS includes advertisement buying, selling and intermediation services, services that optimise the use of online advertising services, and advertisement targeting and advertisement efficiency, e.g., performance measurement tools that are offered to advertisers, publishers, and other intermediaries. The advertisement delivery process activates each layer of this online advertising value chain, with the ultimate purpose of exposing end users to advertisements. Consequently, the display of an advertisement on another service is the culmination of the advertisement selection process within the online advertising CPS. It would therefore be contrary both to the wording and the objective of Article 2, point (2), subpoint (j), of Regulation (EU) 2022/1925 to exclude a quintessential part of the online advertising value chain from the definition of online advertising services.
- (219) This is also in line with Section E of the Annex to Regulation (EU) 2022/1925 which, for the purpose of calculating the number of 'active end users', provides that the end users of online advertising services are those 'who were exposed to an ad impression' at least once in the month. Equally, according to Section E of the Annex to Regulation (EU) 2022/1925, business users are, among others, 'advertisers who had at least one ad impression displayed during the year' (emphasis added).²⁰⁴
- (220) In line with Alphabet's view, the Commission further considers that the display of advertisements is also an integral part of the other service on which end users view the advertisement. It is common in the provision of online advertising services that end-users are exposed to advertisements on other services. The fact that the display of an advertisement is part of Alphabet's online advertising CPS therefore does not exclude the fact that the act of displaying an advertisement is also part of Alphabet's other services, including CPSs on which the advertisement is displayed.
- (221) That the display of an advertisement forms an integrated part of the other services on which end users are exposed to it is implicit in the definition of 'search results' in Article 2, point (23), of Regulation (EU) 2022/1925. This definition confirms that paid results returned in response to search queries on the relevant services are part of those services.

²⁰⁴ Section E Annex to Regulation (EU) 2022/1925.

Since Regulation (EU) 2022/1925 does not distinguish between different types of advertisements, and since there are no valid reasons to treat search ads and display ads any differently under that Regulation, the same conclusion holds true in relation to display ads, which are not returned in response to a search query but are displayed in response to other user signals, like contextual data (e.g., language settings, location, user device type, and website which the user is currently on) or profiling.

- (222) The Commission’s finding that the display of an advertisement forms both part of Alphabet’s online advertising CPS and other services on which the advertisement is displayed does not alter the fact that Alphabet’s online advertising CPS and the other services on which the advertisement is displayed remain distinct services. This is in line with the Annex to Regulation (EU) 2022/1925, which establishes that CPSs provided in an integrated way should be considered distinct from the CPS in which they are integrated, when they belong to different CPS categories within the meaning of Article 2, point 2 of that regulation.²⁰⁵ Furthermore, in the Commission’s view, the display of an advertisement on another service is limited to the incident of exposing that advertisement on an online interface, and the notion of display is restricted to that communication act via the other service’s interface (i.e., the service on which the advertisement is displayed).
- (223) The Commission therefore concludes that the display of advertisements to end users forms part of both Alphabet’s online advertising CPS and any other service on which the advertisement is displayed.

5.9.1.2.4. AdSense for Search

- (224) Contrary to Alphabet’s view, the Commission considers that AdSense for Search should be considered to form part of Alphabet’s online advertising CPS. That finding is based on the following considerations.
- (225) First, AdSense for Search is an advertising network, to which the definition of advertising intermediation service in Article 2, point (2), subpoint (j) of Regulation (EU) 2022/1925 explicitly refers. More specifically, AdSense for Search is an advertising intermediation service that allows publishers to outsource to Alphabet the delivery and display of paid search results (e.g., advertisements) on their websites and apps and is therefore directly engaged in the intermediation of advertising space that publishers decide to make available through that service.²⁰⁶ In other words, AdSense for Search effectively allows advertisers to target users beyond Alphabet’s own services and widens the audience reach of Alphabet’s online advertising CPS. This understanding seems to be in line with Alphabet’s earlier position, according to which “*the selection and display of ads on third-party properties belongs in the Online Advertising Services CPS*”.²⁰⁷
- (226) Second, Alphabet’s submission that ‘*paid results*’ are ‘*generated within Alphabet’s online search engine*’ is inaccurate insofar as paid results (i.e. advertisements) are ‘*generated*’ (i.e. selected and displayed) on a publisher’s website as a result of the interplay between a user’s search query on that website and Alphabet’s online advertising CPS, which selects the most relevant advertisement to deliver and display to

²⁰⁵ Section D Annex to Regulation (EU) 2022/1925, point 2(c)(i).

²⁰⁶ Alphabet’s response dated 12 July 2023 to the Commission’s request for information of 7 July 2023, question 5(a): “*Publishers use AdSense or AdMob to monetise their ad space on their websites or apps.*”

²⁰⁷ Alphabet’s reply of 18 April 2023 to the Commission’s questions of 17 March 2023, reply to question 3.

a particular user at a particular point in time. As Alphabet acknowledges, this process must consider essential information in each advertising campaign defined by individual advertisers using Alphabet’s online advertising CPS, such as the relevant budget and target audience, which is required by AdSense for Search to select and display relevant and high-quality advertisements in response to search queries on third-party websites.²⁰⁸

- (227) That AdSense for Search forms part of Alphabet’s online advertising CPS is further corroborated by the manner in which Alphabet presents that service on its website: “*AdSense for Search (AFS) is a Google product that lets you enhance your site with Google Search and Shopping ads and earn additional revenue. AdSense for Search is part of the AdSense family of products. You can use AdSense for Search (...) and monetize both your search results pages and your site’s content*”.²⁰⁹
- (228) Finally, Alphabet acknowledges that publishers can choose to use a third-party syndicated search provider (i.e., different from Alphabet’s online search engine) to provide the free search results on the publisher’s website and combine it with AdSense for Search to provide paid search results from Google Search.²¹⁰ This further corroborates that AdSense for Search is an advertising-related service distinct from Alphabet’s online search engine CPS Google Search.
- (229) In response to Alphabet’s claim that the Commission’s position with respect to AdSense for Search differs from its position on the display of advertisements, the Commission notes the following.
- (230) First, the services that AdSense for Search provides to business users and end users differ from the services Alphabet provides to business users and end users through its online search engine Google Search. An online search engine ‘*allows users to input queries in order to perform searches of, in principle, all websites*’.²¹¹ This is not necessarily the case in relation to the service Alphabet provides to third-party websites by syndicating Google Search’s search functionality, as third-party website publishers have the option to limit the search to only their website, only to paid results/ads, and even to choose to provide syndicated free results of a third-party online search engine alongside paid results of AdSense for Search.²¹² Therefore, AdSense for Search cannot be categorised as an online search engine.
- (231) Second, Alphabet considers that the purpose of results provided by the online search engine CPS on a third-party website is the same as the purpose of search results provided by the online search engine CPS directly.²¹³ The Commission considers that the approach to treating the display of an advertisement on another service should apply in the same way, be it a “first party” service offered by the gatekeeper (see Section 5.9.1.2.3) or a third-party one. Therefore, and to ensure consistency of treatment of the display of advertisements on third-party services compared to first party services, the Commission considers the display of an advertisement delivered by AdSense for Search on a third-

²⁰⁸ Alphabet’s response dated 12 July 2023 to the Commission’s questions of 7 July 2023, reply to question 12(c): “*the campaign settings include the campaign type, the ad creative, keywords, and budget. The source of this data is advertisers, who provide this data to the Ads CPS.*”

²⁰⁹ See <https://support.google.com/adsense/answer/9879?hl=en>, accessed on 10 July 2023.

²¹⁰ Alphabet’s response dated 12 July 2023 to the Commission’s request for information of 7 July 2023, question 12 (a), paragraph 12.4.

²¹¹ Article 2(5) of Regulation (EU) 2019/1150.

²¹² Alphabet’s response dated 12 July 2023 to the Commission’s questions of 7 July 2023, reply to question 12.

²¹³ Alphabet’s reply of 4 August 2023, paragraph 211.

party service to also be part of both services, i.e. Alphabet's online advertising CPS and the respective third-party's service on which the end user is exposed to an advertisement.

- (232) The Commission acknowledges that the display of paid results in response to a search query on a third-party website appears to be substantially based on the same underlying services as when the display happens on the first party service. The difference in case of the display of an AdSense for Search advertisement on the third-party service, is that the online search engine Google Search supports Alphabet's online advertising services by providing the search query as an input to the selection of the advertisement which is carried out by the interaction of several different services within Alphabet's online advertising CPS. However, this does not amount to AdSense for Search becoming part of the online search engine CPS.
- (233) Furthermore, and based on Section D, point (2)(c) of the Annex to Regulation (EU) 2022/1925, AdSense for Search and Google Search are distinct services which belong to different categories of CPSs, and therefore should be considered distinct CPSs.
- (234) The Commission therefore concludes that AdSense for Search is part of Alphabet's online advertising CPS. To the extent that the display of an advertisement is triggered by AdSense for Search on a third-party website, that display is also part of the third-party service on which it is displayed. There is therefore no inconsistency in the Commission's position.

5.9.1.2.5. Conclusion

- (235) For the reasons set out above, the Commission concludes that Alphabet's online advertising services, including Google Analytics to the extent that business users have integrated their Google Analytics accounts with their Alphabet online advertising services accounts, or by way of any form of integration having an equivalent effect, or they may use Google Analytics for online advertising purposes, and AdSense for Search, constitute online advertising services and therefore a single online advertising CPS within the meaning of Article 2, point (2), subpoint (j), of Regulation (EU) 2022/1925.

5.9.2. *Thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925*

5.9.2.1. The Undertaking's view

- (236) Alphabet indicates that it meets the thresholds laid down in Article 3(2)(a) of Regulation (EU) 2022/1925. As summarised in Table 1 above, Alphabet indicates that it generated an annual Union turnover of more than EUR [7.5] billion in each of the last three financial years, and that its average market capitalisation in the last financial year was above EUR 75 billion.²¹⁴
- (237) In addition, Alphabet indicates that it provides its online advertising services in all Member States.
- (238) Alphabet further indicates that it meets the thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925. Alphabet considers that its online advertising services had at least [45] million monthly active end users established or located in the Union and

²¹⁴ Form GD, paragraphs 278 and 279.

[over 10 000] yearly active business users established in the Union in the last financial year.²¹⁵

(239) Finally, Alphabet indicates that it meets the thresholds of Article 3(2)(c) of Regulation (EU) 2022/1925 in relation to its online advertising services.

Table 10: Monthly active end users and yearly active business users of Alphabet’s online advertising services established or located in the Union in each of the last three financial years

Financial year	Monthly active end users ²¹⁶	Yearly active business users ²¹⁷
2020	Not available	[> 10 000]
2021	[> 45] million	[> 10 000]
2022	[> 45] million	[> 10 000]

Source: Form GD, paragraphs 335 and 338.

5.9.2.2. The Commission’s assessment

(240) Based on the information provided by Alphabet,²¹⁸ the Commission considers that Alphabet meets both the turnover and market capitalisation thresholds laid down in Article 3(2), point (a) of Regulation (EU) 2022/1925 as well as the requirement laid down in that provision that the CPS at issue, i.e. Alphabet’s online advertising services, is offered in at least three Member States.

(241) Moreover, based on the information provided by Alphabet,²¹⁹ the Commission considers that Alphabet’s online advertising CPS meets the monthly active end users and the yearly active business user thresholds laid down in Article 3(2), point (b) of Regulation (EU) 2022/1925.

(242) On the basis of the information provided by Alphabet,²²⁰ the Commission considers that Alphabet’s online advertising CPS meets the requirement laid down in Article 3(2)(c) of Regulation (EU) 2022/1925, that the monthly active end user and the yearly active business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 were met in each of the last three financial years, even if accurate figures are unavailable due to Alphabet’s data retention policies.²²¹

(243) As regards the thresholds laid down in Article 3(2)(b) and (c) of Regulation (EU) 2022/1925, it is not necessary to determine whether Alphabet’s approach to identifying and estimating monthly active end users and yearly business users of its online advertising CPS is sufficiently inclusive in line with the relevant definition in Section E

²¹⁵ Form GD, paragraphs 335 and 338.

²¹⁶ Signed-in and signed-out accounts, see Form GD, paragraph 335.

²¹⁷ Yearly active business users of AdMob, see Form GD, paragraph 338.

²¹⁸ Form GD, paragraphs 278 and 279.

²¹⁹ Form GD, paragraphs 335 and 338.

²²⁰ Form GD, paragraphs 335 and 338.

²²¹ Form GD, paragraph 339.

of the Annex to Regulation (EU) 2022/1925, given that the aforementioned thresholds are met based on the information provided by Alphabet.

5.9.3. *Conclusion for Alphabet's online advertising services*

(244) For the reasons set out in recitals (203) to (235) and (240) to (243) above, the Commission concludes that Alphabet's online advertising services constitute an online advertising CPS within the meaning of Article 2, point (2), subpoint (a), of Regulation (EU) 2022/1925 and that Alphabet meets the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to that service. Consequently, Alphabet is to be designated as a gatekeeper pursuant to Article 3(4) of Regulation (EU) 2022/1925 in relation to its online advertising CPS.

6. CONCLUSION

(245) In light of the above, the Commission concludes, pursuant to Article 3 of Regulation (EU) 2022/1925, that Alphabet is to be designated as a gatekeeper and that the following CPSs of Alphabet are individually an important gateway for business users to reach end users: (i) its online intermediation service Google Shopping; (ii) its online intermediation service Google Play; (iii) its online intermediation service Google Maps; (iv) its online search engine Google Search; (v) its video-sharing platform service YouTube; (vi) its operating system Google Android; (vii) its web browser Google Chrome and; (viii) its online advertising service.

(246) The findings in this Decision are based on the information available to the Commission at the time of its adoption. They are without prejudice to the possibility that the Commission may reconsider or amend this Decision, pursuant to Article 4(1) of Regulation (EU) 2022/1925, should there be any substantial change in any of the facts on which this Decision was based, or if this Decision was based on incomplete, incorrect or misleading information,

HAS ADOPTED THIS DECISION:

Article 1

Alphabet is designated as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925.

Article 2

The following core platform services of Alphabet are each an important gateway for business users to reach end users within the meaning of Article 3(1), point (b) of Regulation (EU) 2022/1925:

- (a) Alphabet's online intermediation service Google Shopping;
- (b) Alphabet's online intermediation service Google Play;
- (c) Alphabet's online intermediation service Google Maps;
- (d) Alphabet's online search engine Google Search;
- (e) Alphabet's video-sharing platform service YouTube;
- (f) Alphabet's operating system Google Android;

- (g) Alphabet's web browser Google Chrome;
- (h) Alphabet's online advertising services.

Article 3

This Decision is addressed to Alphabet Inc., 251 Little Falls Drive, Wilmington, DE, 19808 United States of America.

Done at Brussels, 5.9.2023

For the Commission

*Margrethe VESTAGER
Executive Vice-President*