



EUROPEAN COMMISSION

***CASES DMA.100017 Microsoft - online  
social networking services; DMA.100023  
Microsoft - number-independent  
interpersonal communications services;  
DMA.100026 Microsoft - operating  
systems***

(Only the English text is authentic)

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

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Article 3 Regulation (EU) 2022/1925

Date: 05.09.2023

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Brussels, 5.9.2023  
C(2023) 6106 final

**PUBLIC VERSION**

**COMMISSION DECISION**

**of 5.9.2023**

**designating Microsoft 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.100017 Microsoft - online social networking services**  
**DMA.100023 Microsoft - number-independent interpersonal communications services**  
**DMA.100026 Microsoft - operating systems**

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## TABLE OF CONTENTS

1.	Introduction.....	4
2.	The Undertaking.....	4
3.	Procedure.....	5
4.	Legal framework for the designation of gatekeepers pursuant to Regulation (EU) 2022/1925.....	5
4.1.	The delineation of CPSs.....	6
4.2.	The designation of gatekeepers pursuant to Article 3 of Regulation (EU) 2022/1925	7
4.3.	The rebuttal of the presumptions of Article 3(2) pursuant to Article 3(5) of Regulation (EU) 2022/1925	8
5.	The core platform services .....	8
5.1.	Microsoft’s Windows Client Personal Computer Operating System .....	9
5.1.1.	CPS qualification and delineation .....	9
5.1.1.1.	The Undertaking’s view .....	9
5.1.1.2.	The Commission’s assessment.....	9
5.1.2.	Thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 .....	10
5.1.2.1.	The Undertaking’s view .....	10
5.1.2.2.	The Commission’s assessment .....	11
5.1.3.	Conclusion for the operating system Windows PC OS .....	12
5.2.	Microsoft’s online search engine Bing .....	12
5.2.1.	CPS qualification and delineation .....	12
5.2.1.1.	The Undertaking’s view .....	12
5.2.1.2.	The Commission’s assessment .....	12
5.2.2.	Thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 .....	13
5.2.2.1.	The Undertaking’s view .....	13
5.2.2.2.	The Commission’s assessment .....	14
5.2.3.	Arguments pursuant to Article 3(5) of Regulation (EU) 2022/1925 .....	15
5.2.3.1.	The Undertaking’s view .....	15
5.2.3.2.	The Commission’s assessment .....	15
5.2.4.	Conclusion for the online search engine Bing .....	15
5.3.	Microsoft’s web browser Edge .....	15
5.3.1.	CPS qualification and delineation .....	15
5.3.1.1.	The Undertaking’s view .....	15
5.3.1.2.	The Commission’s assessment.....	15
5.3.2.	Thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 .....	16
5.3.2.1.	The Undertaking’s view .....	16

5.3.2.2.	The Commission’s assessment .....	17
5.3.3.	Arguments pursuant to Article 3(5) of Regulation (EU) 2022/1925 .....	18
5.3.3.1.	The Undertaking’s view .....	18
5.3.3.2.	The Commission’s assessment .....	18
5.3.4.	Conclusion for the web browser Microsoft Edge .....	18
5.4.	Microsoft’s online advertising service Microsoft Advertising .....	18
5.4.1.	CPS qualification and delineation.....	18
5.4.1.1.	The Undertaking’s view .....	18
5.4.1.2.	The Commission’s assessment.....	19
5.4.2.	Thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 .....	21
5.4.2.1.	The Undertaking’s view.....	21
5.4.2.2.	The Commission’s assessment .....	22
5.4.3.	Arguments pursuant to Article 3(5) of Regulation (EU) 2022/1925 .....	22
5.4.3.1.	The Undertaking’s view .....	22
5.4.3.2.	The Commission’s assessment .....	22
5.4.4.	Conclusion for the online advertising service Microsoft Advertising.....	23
5.5.	Microsoft’s number-independent interpersonal communication service Outlook.com .....	23
5.5.1.	CPS qualification and delineation.....	23
5.5.1.1.	The Undertaking’s view .....	23
5.5.1.2.	The Commission’s assessment.....	24
5.5.2.	Thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 .....	25
5.5.2.1.	The Undertaking’s view.....	25
5.5.2.2.	The Commission’s assessment .....	25
5.5.3.	Arguments pursuant to Article 3(5) of Regulation (EU) 2022/1925 .....	26
5.5.3.1.	The Undertaking’s view.....	26
5.5.3.2.	The Commission’s assessment .....	27
5.5.4.	Conclusion for the number-independent interpersonal communication service Outlook.com.....	29
5.6.	Microsoft’s online social networking service LinkedIn.....	29
5.6.1.	CPS qualification and delineation.....	29
5.6.1.1.	The Undertaking’s view .....	29
5.6.1.2.	The Commission’s assessment .....	29
5.6.2.	Thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 .....	31
5.6.2.1.	The Undertaking’s view.....	31
5.6.2.2.	The Commission’s assessment .....	32

5.6.3. Conclusion for the online social networking service LinkedIn ..... 33

6. Conclusion..... 33

# COMMISSION DECISION

of 5.9.2023

**designating Microsoft 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.100017 Microsoft - online social networking services  
DMA.100023 Microsoft - number-independent interpersonal communications services  
DMA.100026 Microsoft - operating systems**

(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 thereof,<sup>1</sup>

Whereas:

## 1. INTRODUCTION

- (1) On 3 July 2023, Microsoft Corporation notified the Commission, pursuant to Article 3(3), first subparagraph, of Regulation (EU) 2022/1925, that Microsoft Corporation, together with all the legal entities directly or indirectly controlled by Microsoft Corporation (hereinafter collectively referred to as “Microsoft” or “the Undertaking”),<sup>2</sup> meets the thresholds laid down in Article 3(2) of that Regulation in relation to the following core platform services (“CPS”): (i) its operating system Windows PC; (ii) its online search engine Bing; (iii) its web browser Microsoft Edge; (iv) its online advertising service Microsoft Advertising; (v) its number-independent interpersonal communication service (“NIICS”) Microsoft Outlook.com; and (vi) its online social network service LinkedIn.

## 2. THE UNDERTAKING

- (2) Microsoft offers, among other products and services, operating systems such as Windows PC, the online search engine Bing, the web browser Edge, the online

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<sup>1</sup> OJ L 265, 12.10.2022, p. 1.

<sup>2</sup> See Article 2, point (27), of Regulation (EU) 2022/1925.

advertising service Microsoft Advertising, and the email service Outlook.com. Microsoft also offers Xandr, an online platform for running programmatic advertising campaigns into engaged audiences, and the social networking service LinkedIn.

- (3) Microsoft's parent company is Microsoft Corporation, a publicly traded company founded in 1975, which is headquartered in Redmond, Washington, the United States of America. Microsoft offers a range of software solutions and services in the Union through several corporate entities and subsidiaries. Microsoft's subsidiary Microsoft Ireland Operations Limited, established in Ireland, provides inter alia Microsoft's operating systems for PCs, Bing, Edge, Microsoft Advertising and Outlook.com. LinkedIn Ireland Unlimited Company, which is established in Ireland and currently owned by Microsoft through additional corporate entities,<sup>3</sup> provides LinkedIn.

### **3. PROCEDURE**

- (4) On 3 July 2023, Microsoft submitted a complete notification pursuant to Article 3(3), first subparagraph, of Regulation (EU) 2022/1925 ("Form GD").<sup>4</sup>
- (5) On 26 July 2023, the Commission sent a letter to Microsoft ("the Commission's letter of 26 July 2023")<sup>5</sup> in which it set out its preliminary views on Microsoft's possible designation as a gatekeeper pursuant to Article 3(4) of Regulation (EU) 2022/1925, and on its intention to list in Microsoft's decision the following CPSs that are provided by Microsoft, and which individually appeared to constitute an important gateway for business users to reach end users:
- (a) Microsoft's operating systems for PCs;
  - (b) Microsoft's online social networking service 'LinkedIn'; and
  - (c) Microsoft's NIICS 'Outlook.com'.
- (6) In the Commission's letter of 26 July 2023, the Commission also took the preliminary view that it shall open market investigations, pursuant to Article 17(3) of Regulation (EU) 2022/1925, in relation to Microsoft's online search engine Bing, Microsoft's web browser Edge, and Microsoft's online advertising service Microsoft Ads, in light of the arguments submitted by Microsoft pursuant to Article 3(5) of that Regulation.
- (7) On 2 August 2023, Microsoft submitted written observations in response to the Commission's letter of 26 July 2023 ("Microsoft's reply of 2 August 2023"). In its reply, Microsoft provided a substantiated response only in relation to Outlook.com, while in relation to other CPSs it summarily referred to its previous submissions in the Form GD.

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

- (8) 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

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<sup>3</sup> Form GD, paragraph 2.

<sup>4</sup> OJ L 102, 17.4.2023, p. 6–19.

<sup>5</sup> The letter followed up on exchanges that took place with Microsoft prior to the notification.

undertaking shall be 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

- (9) 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).
- (10) 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.
- (11) 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;<sup>6</sup>
  - 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;<sup>7</sup> 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.<sup>8</sup>
- (12) 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.<sup>9</sup> Furthermore, different services may constitute a single CPS, if they are used for the same purpose from both an end user and a business user perspective, unless they belong to different categories of the CPSs listed in Article 2, point (2), of Regulation (EU) 2022/1925.

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<sup>6</sup> Annex to Regulation (EU) 2022/1925, Section D, point 2(a).

<sup>7</sup> Annex to Regulation (EU) 2022/1925, Section D, point 2(c)(i).

<sup>8</sup> Annex to Regulation (EU) 2022/1925, Section D, points 2(b) and (c)(ii).

<sup>9</sup> The same applies when the undertaking provides CPSs in an integrated way.



- (13) 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.
- (14) 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**

- (15) 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.
- (16) 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.
- (17) 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.

- (18) 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**

- (19) 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.
- (20) 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.
- (21) 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.
- (22) 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**

- (23) As set out in recital (1) above, Microsoft's Form GD refers to six CPSs provided by Microsoft that meet the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925: (i) its operating system Windows OS (Section 5.1); (ii) its online search engine Bing (Section 5.2); (iii) its web browser Microsoft Edge (Section 5.3); (iv) its online advertising service Microsoft Advertising (Section 5.4); (v) its NIICS

Microsoft Outlook.com (Section 5.5); and (vi) its online social network service LinkedIn (Section 5.6).

## **5.1. Microsoft’s Windows Client Personal Computer Operating System**

### *5.1.1. CPS qualification and delineation*

#### 5.1.1.1. The Undertaking’s view

- (24) Microsoft notified its operating system (“OS”) for personal computers (“PCs”) Windows Client Personal Computer Operating System (“Windows PC OS”) as an operating system CPS.
- (25) Microsoft submits that Windows PC OS is an operating system compatible with the x86 and x64 instruction set developed by Intel, which is offered for installation on Intel-compatible personal computers but can also be delivered as a desktop as a service (“DaaS”) solution.<sup>10</sup> Microsoft further specifies that its DaaS offerings are currently made under the Azure Virtual Desktop (“AVD”) and Windows 365 brands.
- (26) According to Microsoft, Windows PC OS qualifies as an operating system within the meaning of Article 2, point (10), of Regulation (EU) 2022/1925 and constitutes a CPS, distinct from Microsoft’s other operating systems.
- (27) Microsoft does not consider as plausible any other alternative delineation of Windows PC OS and its other operating systems.
- (28) In its reply of 2 August 2023 to the Commission’s letter of 26 of July 2023 setting out the Commission’s preliminary views on the delineation of Microsoft’s services, Microsoft summarily referred to its submission in the Form GD, without making any further observations in relation to Windows PC OS.<sup>11</sup>

#### 5.1.1.2. The Commission’s assessment

- (29) Article 2, point (2), subpoint (f), of Regulation (EU) 2022/1925 lists operating systems as one of the categories of CPSs within the meaning of that Regulation. According to Article 2, point (10) of that Regulation, an operating system is “*a system software that controls the basic functions of the hardware or software and enables software applications to run on it.*”
- (30) The Commission considers that Windows PC OS is an operating system within the meaning of Article 2, point (10), of Regulation (EU) 2022/1925 because it constitutes a system software that controls the basic functions of the PCs on which it is installed and enables software applications to run on those devices. Consequently, Windows PC OS constitutes a CPS within the meaning of Article 2, point (2), subpoint (f), of Regulation (EU) 2022/1925.
- (31) The Commission further considers, in line with recital (14) of the preamble to Regulation (EU) 2022/1925, that the delineation of Windows PC OS as an operating system CPS for the purpose of the Regulation (EU) 2022/1925 should be processor-neutral and not be limited to the particular instruction sets x86 and x64 developed by Intel. This is because both processor-specific versions of Windows PC OS currently offered by Microsoft appear to enable the use and the provision of the same bulk of

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<sup>10</sup> Form GD, paragraph 5.

<sup>11</sup> See Microsoft’s reply of 2 August 2023.

software applications<sup>12</sup> and to offer the same or similar technological features and services to end and business users.<sup>13</sup>

(32) Moreover, in line with Microsoft’s views, the Commission considers that the operating system CPS Windows PC OS includes both operating systems installed directly on PCs as well as those delivered as a DaaS solution. Indeed, both AVD and Windows 365 are cloud software services<sup>14</sup> which enable the use of Windows PC OS in the cloud environment. Consequently, and in line with Microsoft’s submission,<sup>15</sup> Windows PC OS delivered through, respectively, AVD and Windows 365 solutions fall within the definition of an ‘operating system’ as laid down in Article 2, point (10), of Regulation (EU) 2022/1925.<sup>16</sup>

(33) For the reasons set out above, the Commission concludes that Windows PC OS 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, irrespective of the type of processors with which it is compatible and irrespective of whether it is installed directly on personal computers or delivered as a DaaS solution.

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

#### 5.1.2.1. The Undertaking’s view

(34) Microsoft indicates that it meets the thresholds laid down in Article 3(2)(a) of Regulation (EU) 2022/1925. As summarised in Table 1, Microsoft 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 capitalization in the last financial year was above EUR 75 billion.<sup>17</sup>

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

Undertaking	2020 Union turnover	2021 Union turnover	2022 Union turnover	2022 Average market capitalisation
Microsoft	[> 7 500]	[> 7 500]	[> 7 500]	>75 000

Source: Form GD, Sections 3.1 and 3.

(35) In addition, Microsoft submits that it offers Windows PC OS in all Member States.<sup>18</sup>

(36) Microsoft further indicates that it meets the average monthly active end user and average yearly active business user thresholds laid down in Article 3(2)(b) of

<sup>12</sup> As evidenced by Microsoft’s own documentation for developers. See <https://learn.microsoft.com/en-gb/windows/arm/overview> (last accessed 24 July 2023).

<sup>13</sup> As also indicated by the Commission in paragraph 7 of Commission’s letter of 26 July 2023

<sup>14</sup> Therefore, it is not possible to use them when the hardware device is not connected to the Internet.

<sup>15</sup> Form GD, paragraph 5 (first bullet point).

<sup>16</sup> Article 2, point (10), of Regulation (EU) 2022/1925 defines an operating system as follows: “a system software that controls the basic functions of the hardware **or software** and enables software applications to run on it” (emphasis added).

<sup>17</sup> Form GD, Section 3.1 and paragraph 125. Microsoft confirms that its market capitalisation or its equivalent fair market value exceeded EUR 75 billion in the last financial year with approximately EUR 1.8 trillion as of 30 June 2022 (Form GD, paragraph 125).

<sup>18</sup> Form GD, paragraph 126.

Regulation (EU) 2022/1925 in relation to the operating system CPS Windows PC OS.

- (37) As regards end users, because most PCs with Windows PC OS are purchased directly from original equipment manufacturers with Windows PC OS preinstalled, Microsoft submits that it is not always possible for it to determine whether the end user is a legal person or a natural person.<sup>19</sup> For this reason, Microsoft has provided the number of monthly active devices as a proxy for monthly active end users. The overall average monthly active device number is estimated at more than [45] million in the Union for the financial year of 2022.<sup>20</sup> Microsoft notes that an end user may have multiple devices and thus the data provided may overstate the number of monthly active end users. Nevertheless, even accounting for this possibility, Microsoft considers that Windows PC OS has had more than 45 million end users established or located in the Union in the last financial year.
- (38) As regards business users, Microsoft submits that it is not in a position to count exactly how many such users may exist for the Windows PC OS in the Union, since developers do not have to distribute their software applications to end users through Microsoft. However, considering that in the financial year of 2022 Microsoft had approximately [20 000-30 000] distinct publishers who distributed a software application in the Windows Store and many more developers offer applications outside of the Windows Store, Microsoft considers that there were more than 10 000 yearly active business users established in the Union in the last financial year.<sup>21</sup>
- (39) Finally, in relation to Article 3(2)(c) of Regulation (EU) 2022/1925, Microsoft indicates that its operating system CPS Windows PC OS has met the thresholds laid down in Article 3(2)(b) of that Regulation in each of the last three financial years.<sup>22</sup> Table 2 summarises the monthly active devices and yearly active business users of Microsoft’s operating system CPS Windows PC OS in the Union.

**Table 2: Monthly active devices/end users and yearly active business users of Microsoft’s Windows PC OS in the Union in the last three financial years**

Financial year	Monthly active end users	Yearly active business users
2020	>45 million active end users <sup>23</sup>	>10 000
2021	[> 45] million active devices	>10 000
2022	[> 45] million active devices	>10 000

Source: Form GD, paragraph 131

#### 5.1.2.2. The Commission’s assessment

- (40) Based on the information provided by Microsoft,<sup>24</sup> the Commission considers that Microsoft meets the turnover threshold laid down in Article 3(2)(a) of Regulation

<sup>19</sup> Form GD, paragraph 129.

<sup>20</sup> Ibid.

<sup>21</sup> Form GD, paragraph 130.

<sup>22</sup> Form GD, paragraph 131.

<sup>23</sup> Microsoft indicated that while data for the financial year of 2020 are unavailable, it is confident that there were over 45 million monthly active devices in the Union and therefore more than 45 million active end users (Form GD, footnote 62).

(EU) 2022/1925, as well as the requirement laid down in that provision that the CPS at issue, i.e., Windows PC OS, is offered in at least three Member States.

- (41) Moreover, based on the information provided by Microsoft,<sup>25</sup> the Commission considers that the operating system CPS Windows PC OS meets the average monthly active end user and the average yearly active business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925.
- (42) Finally, based on the information provided by Microsoft,<sup>26</sup> the Commission considers that the operating system CPS Windows PC OS 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.
- (43) 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 Microsoft's approach to identifying and estimating monthly active end users and yearly business users of its operating system CPS 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 Microsoft.

#### 5.1.3. *Conclusion for the operating system Windows PC OS*

- (44) For the reasons set out above in recitals (29)29) to (33)33) and (40)40) to (43)42) above, the Commission concludes that Windows PC OS constitutes an operating system CPS within the meaning of Article 2, point (2), point (f), of Regulation (EU) 2022/1925 and that Microsoft meets the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to that CPS. Consequently, Microsoft is to be designated as a gatekeeper pursuant to Article 3(4) of Regulation (EU) 2022/1925 in relation to its operating system CPS Windows PC OS.

## 5.2. **Microsoft's online search engine Bing**

### 5.2.1. *CPS qualification and delineation*

#### 5.2.1.1. The Undertaking's view

- (45) Microsoft notified Bing as its only online search engine in the Union. According to Microsoft, Bing falls within the definition of 'search engine' under Article 2, point (6), of Regulation (EU) 2022/1925. Bing is offered, free of charge, to both business users and end users in the Union.<sup>27</sup>

#### 5.2.1.2. The Commission's assessment

- (46) 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,*

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<sup>24</sup> Form GD, Section 3.1 and paragraphs 125 and 126.

<sup>25</sup> Form GD, paragraphs 129 and 130.

<sup>26</sup> Form GD, paragraph 131.

<sup>27</sup> Form GD, paragraphs 19 and 104.

*voice request, phrase or other input, and returns results in any format in which information related to the requested content can be found”.*

- (47) In line with Microsoft’s views, the Commission considers that Bing 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, Bing 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.
- (48) The Commission further considers that all results or outputs that the online search engine CPS Bing 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., Microsoft Bing’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*”.
- (49) In addition, the Commission considers that the online search engine CPS Bing covers search results regardless of the input mechanism or format, whether voice, text, or images. Such a finding does not preclude the finding that search results contain and rank services which are 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 distinct or additional services, are distinct services to the online search engine CPS Bing for the purposes of Regulation (EU) 2022/1925.

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

#### 5.2.2.1. The Undertaking’s view

- (50) Microsoft indicates that it meets the thresholds laid down in Article 3(2)(a) of Regulation (EU) 2022/1925. As summarised in Table 1 above, Microsoft 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 capitalization in the last financial year was above EUR 75 billion.<sup>28</sup>
- (51) In addition, Microsoft indicates that its online search engine Bing CPS is provided in all Member States.<sup>29</sup>
- (52) Microsoft further indicates that its online search engine Bing meets the thresholds of Article 3(2)(b) of Regulation (EU) 2022/1925. In particular, Microsoft considers that

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<sup>28</sup> Form GD, Section 3.1 and paragraph 125.

<sup>29</sup> Form GD, paragraph 126.

Bing had approximately [ $> 45$ ] million monthly active end users established or located in the Union and more than 10 000 yearly active business users established in the Union in the last financial year.<sup>30</sup>

- (53) Finally, in relation to Article 3(2)(c) of Regulation (EU) 2022/1925, Microsoft indicates that online search engine Bing has met the thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 in each of the last three financial years.<sup>31</sup> Table 3 summarises the monthly active end users and yearly active business users of Bing in the Union for the last three financial years.

**Table 3: Monthly active end users and yearly active business users of Microsoft Bing in the Union in the last three financial years**

Financial year	Monthly active end users	Yearly active business users
2020	Unavailable <sup>32</sup>	$>10\ 000$
2021	$[> 45]$ million	$>10\ 000$
2022	$[> 45]$ million	$>10\ 000$

Source: Form GD, paragraph 134

#### 5.2.2.2. The Commission's assessment

- (54) Based on the information provided by Microsoft,<sup>33</sup> the Commission considers that Microsoft 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. the online search engine Bing, is offered in at least three Member States.
- (55) Moreover, based on the information provided by Microsoft,<sup>34</sup> the Commission considers that Microsoft's online search engine CPS Bing meets the average monthly active end user and the average yearly active business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 in relation to Microsoft Bing.
- (56) Finally, based on the information provided by Microsoft,<sup>35</sup> the Commission considers that Microsoft's online search engine CPS Bing 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.
- (57) 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 Microsoft's approach to identifying and estimating monthly active end users and yearly business users of its online search engine CPS Bing is sufficiently inclusive, in line with the relevant definition in Section E of the Annex to Regulation (EU) 2022/1925, given that the

<sup>30</sup> Form GD, paragraphs 132 to 133.

<sup>31</sup> Form GD, paragraph 134.

<sup>32</sup> While data for the financial year of 2020 are unavailable, Microsoft believes there were over 45 million monthly active end users in the Union (Form GD, footnote 63).

<sup>33</sup> Form GD, Section 3.1 and paragraphs 125 and 126.

<sup>34</sup> Form GD, paragraphs 132 and 133.

<sup>35</sup> Form GD, paragraph 134.



aforementioned thresholds are easily met, based on the information provided by Microsoft.

### 5.2.3. *Arguments pursuant to Article 3(5) of Regulation (EU) 2022/1925*

#### 5.2.3.1. The Undertaking's view

(58) As summarised in the decision opening a market investigation referred to in recital (59) below, Microsoft has put forward arguments pursuant to Article 3(5), first subparagraph, of Regulation (EU) 2022/1925 seeking to rebut the presumptions laid down in Article 3(2) of that Regulation.<sup>36</sup>

#### 5.2.3.2. The Commission's assessment

(59) For the reasons set out in the decision opening a market investigation pursuant to Article 17(3) of Regulation 2022/1925, the Commission considers that Microsoft has submitted sufficiently substantiated arguments which manifestly call into question the presumption laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to its online search engine CPS Bing.

### 5.2.4. *Conclusion for the online search engine Bing*

(60) As set out in the recitals (46) to (49) and (54) to (56) above, the Commission concludes that Microsoft Bing constitutes an online search engine CPS within the meaning of Article 2, point (2), subpoint (b), of Regulation (EU) 2022/1925 and that Microsoft meets the thresholds set out in Article 3(2) of that Regulation in relation to that CPS.

(61) Pursuant to Article 3(5), third subparagraph, of Regulation (EU) 2022/1925, the Commission has decided to open a market investigation, pursuant to Article 17(3) of Regulation (EU) 2022/1925, to assess further the arguments presented by Microsoft calling into question the presumptions laid down in Article 3(2) of that Regulation in relation to its online search engine CPS Bing.

## 5.3. **Microsoft's web browser Edge**

### 5.3.1. *CPS qualification and delineation*

#### 5.3.1.1. The Undertaking's view

(62) Microsoft notified Edge as a web browser CPS within the meaning of Article 2, point (2), subpoint (g), of Regulation (EU) 2022/1925.<sup>37</sup>

(63) Microsoft describes Edge as a web browser it provides free of charge to both business users and end users in the Union and that it offers on multiple devices and OS.<sup>38</sup> This includes mainstream general computing devices such as Windows PCs and servers, Apple Macs and iOS, and Android smartphones, as well as specialised computing devices form factors, such as HoloLens, Surface Hub, and Xbox.<sup>39</sup>

#### 5.3.1.2. The Commission's assessment

(64) Article 2, point (2), subpoint (g), of Regulation (EU) 2022/1925 includes 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

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<sup>36</sup> Form GD, Annex A.

<sup>37</sup> Form GD, paragraph 21

<sup>38</sup> Form GD, paragraph 110.

<sup>39</sup> Ibid.

software applications (“apps”) 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”.

- (65) 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. Microsoft Edge 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.
- (66) The Commission considers that Microsoft Edge is one single web browser used by both business users and end users for the same purpose irrespective of the device through which it is accessed. Indeed, Microsoft Edge allows users to offer, access and interact with content displayed on websites regardless of the device on which it is used. This is consistent with Microsoft’s explanation that Microsoft Edge is offered on various devices including Windows PCs and servers, Apple Macs, iOS and Android smartphones, HoloLens, Surface Hub and Xbox.<sup>40</sup>
- (67) The Commission therefore considers that Microsoft Edge, 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, constitutes a web browser within the meaning of Article 2, point (11), of Regulation (EU) 2022/1925, irrespective of the device through which it is accessed. Consequently, the Commission concludes that the web browser Edge constitutes a CPS within the meaning of Article 2, point (2), subpoint (g), 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

- (68) Microsoft indicates that it meets the thresholds laid down in Article 3(2)(a), of Regulation (EU) 2022/1925. As summarised in Table 1 above, Microsoft 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.<sup>41</sup>
- (69) In addition, Microsoft indicates that its web browser Microsoft Edge is provided in all Member States.<sup>42</sup>
- (70) Microsoft further indicates that its web browser Edge meets the average monthly active end user and the average yearly active business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 in relation to Microsoft Edge.
- (71) As regards end users, Microsoft argues that, because end users can access Edge without logging in, Microsoft cannot count unique end users but only monthly active devices. This requires counting based on device IDs, which may overcount the actual number of monthly active end users if the same user can use Edge on multiple devices. However, Microsoft states that it is very unlikely that Edge’s monthly active

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<sup>40</sup> Ibid.

<sup>41</sup> Form GD, Section 3.1 and paragraph 125.

<sup>42</sup> Form GD, paragraph 126.

end users falls below the 45 million threshold laid down in Article 3(2)(b) of regulation (EU) 2022/1925.<sup>43</sup>

- (72) As regards business users, Microsoft argues that it is unable to determine how many websites are used by their providers in a commercial or professional capacity. However, Microsoft states that that number likely exceeds the 10 000 average yearly business user threshold laid down in Article 3(2)(b) of Regulation (EU) 2022/1925.<sup>44</sup>
- (73) Finally, Microsoft indicates that its web browser Edge has met the requirement laid down in Article 3(2)(c) of Regulation which requires that the thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 have been met in each of the last three financial years. Table 4 summarises the monthly active devices and yearly active business users of Microsoft Edge in the Union for the last three financial years.<sup>45</sup>

**Table 4: Monthly active end users and yearly active business users of Microsoft Edge 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	Unavailable <sup>46</sup>	>10 000
2021	[> 45] million active devices <sup>47</sup>	>10 000
2022	[> 45] million active devices	>10 000

Source: Form GD, paragraph 137

#### 5.3.2.2. The Commission’s assessment

- (74) Based on the information provided by Microsoft,<sup>48</sup> the Commission considers that Microsoft 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., the web browser Edge, is offered in at least three Member States.
- (75) Moreover, based on the information provided by Microsoft,<sup>49</sup> the Commission considers that Microsoft’s web browser CPS Edge 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.
- (76) Finally, based on the information provided by Microsoft,<sup>50</sup> the Commission considers that Microsoft’s web browser CPS Edge meets the requirement laid down in Article 3(2)(c) of Regulation (EU) 2022/1925 that the monthly active end user and

<sup>43</sup> Form GD, paragraph 135.

<sup>44</sup> Form GD, paragraph 136.

<sup>45</sup> Form GD, paragraph 137.

<sup>46</sup> While data for the financial year of 2020 are unavailable, Microsoft believes there were over 45 million monthly active devices in the Union and therefore more than 45 million active end users (Form GD, footnote 67).

<sup>47</sup> The average relates to financial year 2021, based on data collected between March and June of that year. Microsoft indicates that data for July 2020 through February 2021 are unavailable (Form GD, footnote 68).

<sup>48</sup> Form GD, Section 3.1 and paragraphs 125 and 126.

<sup>49</sup> Form GD, paragraphs 135 to 136.

<sup>50</sup> Form GD, paragraph 137.

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.

- (77) 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 Microsoft's approach to identifying and estimating monthly active end users and yearly business users of its web browser CPS Edge 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 Microsoft.

### 5.3.3. *Arguments pursuant to Article 3(5) of Regulation (EU) 2022/1925*

#### 5.3.3.1. The Undertaking's view

- (78) As summarised in the decision opening a market investigation referred to in recital (79) below, Microsoft has put forward arguments pursuant to Article 3(5), first subparagraph, of Regulation (EU) 2022/1925 seeking to rebut the presumptions laid down in Article 3(2) of that Regulation.<sup>51</sup>

#### 5.3.3.2. The Commission's assessment

- (79) For the reasons set out in the decision opening a market investigation pursuant to Article 17(3) of Regulation 2022/1925, the Commission considers that Microsoft has submitted sufficiently substantiated arguments which manifestly call into question the presumption laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to its web browser CPS Edge.

### 5.3.4. *Conclusion for the web browser Microsoft Edge*

- (80) As set out in the recitals (64) to (67) and (74) to (76) above, the Commission concludes that Microsoft Edge constitutes a web browser CPS within the meaning of Article 2, point (2), subpoint (g), of Regulation (EU) 2022/1925 and that Microsoft meets the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to that CPS.

- (81) Pursuant to Article 3(5), third subparagraph, of Regulation (EU) 2022/1925, the Commission has decided to open a market investigation, pursuant to Article 17(3) of Regulation (EU) 2022/1925, to assess further the arguments presented by Microsoft calling into question the presumptions laid down in Article 3(2) of that Regulation in relation to its web browser CPS Edge.

## **5.4. Microsoft's online advertising service Microsoft Advertising**

### 5.4.1. *CPS qualification and delineation*

#### 5.4.1.1. The Undertaking's view

- (82) Microsoft notified its online advertising service Microsoft Advertising as a CPS within the meaning of Article 2, point (2), subpoint (j), of Regulation (EU) 2022/1925. Microsoft Advertising allows advertisers to set up and manage advertising campaigns to display ads on Microsoft's proprietary inventory (e.g., Bing) and intermediates between advertisers and publishers to display ads on third-party properties (e.g., Yahoo, AOL).<sup>52</sup> Microsoft Advertising also provides various

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<sup>51</sup> Form GD, Annex B.

<sup>52</sup> Form GD, paragraphs 23, 24 and 118.

tools and assistance to advertisers to manage ad campaigns.<sup>53</sup> In addition, Microsoft also intermediates ads on third-party properties via the recently acquired online advertising service “Xandr”, which Microsoft aims to fully integrate into Microsoft Advertising. Meanwhile, Xandr’s products are already offered as part of Microsoft Advertising.<sup>54</sup> According to Microsoft, its advertising services include all the services required to display ads both on first-party inventory and on third-party inventory of publishers participating in Microsoft Advertising’s advertising networks.<sup>55</sup>

- (83) Microsoft explains that its service LinkedIn offers “LinkedIn Marketing Solutions,” which also meets the definition of online advertising services under Regulation (EU) 2022/1925.<sup>56</sup> However, Microsoft submits that LinkedIn Marketing Solutions is a fully integrated online advertising service within its online social networking service LinkedIn which is commercially and organisationally separate from Microsoft Advertising.<sup>57</sup>
- (84) Microsoft therefore submits that LinkedIn Marketing Solutions should not be considered as part of Microsoft Advertising for the following reasons.<sup>58</sup> First, Microsoft claims that Microsoft Advertising customers cannot access LinkedIn Marketing Solutions’ ad inventory, which focuses on LinkedIn’s inventory and third-party inventory of LinkedIn members via the LinkedIn Audience Network.<sup>59</sup> Second, Microsoft observes that advertisers using LinkedIn Marketing Solutions have separate agreements with LinkedIn and Microsoft.<sup>60</sup> Third, Microsoft states that LinkedIn Marketing Solutions offers only display ads, whereas Microsoft Advertising offers both display and search ads.<sup>61</sup> Fourth, online advertising services provided through LinkedIn Marketing Solutions only target LinkedIn members on the LinkedIn platform while logged-in, or on a set of third-party partner websites or apps as part of the LinkedIn Audience Network.<sup>62</sup> Fifth, Microsoft asserts that advertisers primarily use LinkedIn Marketing Solutions for the purpose of targeting LinkedIn members for business-to-business marketing.<sup>63</sup> Conversely, according to Microsoft, Microsoft Advertising would typically be used to target a broader target audience due to Microsoft Advertising’s broader range and scale of third-party ad inventory.

#### 5.4.1.2. The Commission’s assessment

- (85) 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

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<sup>53</sup> Form GD, paragraph 25 and footnote 12.

<sup>54</sup> Form GD, paragraphs 23 and 119 and footnotes 10 and 51.

<sup>55</sup> Form GD, paragraphs 24 to 26.

<sup>56</sup> Form GD, paragraph 28.

<sup>57</sup> Form GD, paragraph 28 and Annex D, paragraph 40.

<sup>58</sup> Form GD, paragraphs 28 to 31.

<sup>59</sup> Form GD, paragraph 31 and footnote 16.

<sup>60</sup> Form GD, paragraph 28 and footnote 15.

<sup>61</sup> Form GD, paragraph 29.

<sup>62</sup> Form GD, Annex D, paragraph 41.

<sup>63</sup> Form GD, paragraphs 30 to 31.

advertising services, refers to “*proprietary sales of advertising space as well as advertising intermediation services*”.<sup>64</sup> 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 another CPS listed in Article 2, point (2), subpoints (a) to (i), of that Regulation.

- (86) Since Microsoft provides the CPSs described in Sections 5.1 to 5.3, and 5.5 and 5.6 in addition to these online advertising services, the Commission considers that Microsoft’s online advertising service Microsoft Advertising constitutes a CPS within the meaning of Article 2, point (2), subpoint (j), of Regulation (EU) 2022/1925.
- (87) In line with Microsoft’s view,<sup>65</sup> the Commission considers that Microsoft provides through Microsoft Advertising online advertising services fulfilling the aforementioned definitions. In light of those broad definitions, the Commission considers that Microsoft’s online advertising service Microsoft Advertising comprises all the advertising services, tools, features, interfaces, and functionalities that interact with each other, the ultimate purpose of which is exposing end users to advertisements on Microsoft’s own services and third-party advertising inventory.
- (88) The Commission further observes that Microsoft acquired the advertising platform Xandr and is working towards its full integration into the Microsoft Advertising platform.<sup>66</sup> The Commission therefore considers that Xandr, including all advertising services, tools, features, interfaces, and functionalities that interact with each other to provide that service, forms part of Microsoft’s online advertising CPS Microsoft Advertising.
- (89) Based on the information and explanations provided by Microsoft,<sup>67</sup> the Commission does not consider that LinkedIn Marketing Solutions constitutes part of Microsoft’s online advertising CPS Microsoft Advertising. In its current configuration, LinkedIn Marketing Solutions constitutes a commercially and organisationally separate online advertising service that serves a different business user and end user base than Microsoft Advertising, and which is not offered in an integrated way with Microsoft Advertising. In particular, business users of Microsoft Advertising cannot advertise on the ad inventory of LinkedIn Marketing Solutions via Microsoft Advertising and vice versa.<sup>68</sup> This means that business users must use the separate user interfaces provided by LinkedIn Marketing Solutions to advertise on the ad inventory of LinkedIn Marketing Solutions.<sup>69</sup> Similarly, business users must use the (different) Microsoft Advertising interface to advertise on Microsoft Advertising’s ad inventory. In other words, advertisers using Microsoft cannot launch advertising campaigns through a single-entry point that would allow them to explicitly choose to serve ads both across Microsoft Advertising inventory (including third-party publishers that are business users of Microsoft Advertising) and LinkedIn in such campaigns. With

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<sup>64</sup> Section E of the Annex to Regulation (EU) 2022/1925.

<sup>65</sup> Form GD, paragraph 28.

<sup>66</sup> Form GD, footnote 10.

<sup>67</sup> As set out in recital (144) below, the Commission also considers LinkedIn Marketing Solutions to be separate from the online social networking service LinkedIn. The online advertising service LinkedIn Marketing Solutions, according to Microsoft, does not meet the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 (Form GD, paragraph 32 and Annex D, paragraphs 40 to 42).

<sup>68</sup> Form GD, paragraph 28.

<sup>69</sup> Ibid.

respect to end users, LinkedIn Marketing Solutions exclusively targets ads to LinkedIn members on LinkedIn and third-party partner websites or apps that are part of the LinkedIn Audience Network, whereas Microsoft Advertising targets a different audience.<sup>70</sup>

(90) For the reasons set out above, the Commission concludes that Microsoft Advertising, including Xandr, constitutes online advertising CPS within the meaning of Article 2, point (2), subpoint (j), of Regulation (EU) 2022/1925.

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

##### 5.4.2.1. The Undertaking's view

(91) Microsoft indicates that it meets the thresholds laid down in Article 3(2)(a), of Regulation (EU) 2022/1925. As summarised in Table 1 above, Microsoft 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 capitalization in the last financial year was above EUR 75 billion.<sup>71</sup>

(92) In addition, Microsoft submits that its online advertising CPS Microsoft Advertising is provided in all Member States.<sup>72</sup>

(93) Microsoft further indicates that, irrespective of the exact number of monthly active end users and yearly active business users, its online advertising CPS Microsoft Advertising, including Xandr, meets the thresholds in laid down in Article 3(2)(b) of Regulation (EU) 2022/1925.<sup>73</sup> The figures submitted by Microsoft for Microsoft Advertising, including Xandr, for the financial year of 2022 are:

(a) Monthly active end users: > 45 million

(b) Yearly active business users: [> 10 000] (Microsoft Advertising); [< 10 000] (Xandr)

(94) Finally, in relation to Article 3(2)(c) of Regulation (EU) 2022/1925, Microsoft indicates that its online advertising CPS Microsoft Advertising has met the thresholds laid down in Article 3(2)(b) of that Regulation in each of the last three financial years.<sup>74</sup> The user figures for Microsoft Advertising for the past three years are summarised in Table 5.

**Table 5: Monthly active end users and yearly active business users of Microsoft Advertising in the Union in 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]

<sup>70</sup> Form GD, paragraph 31 and Annex D, paragraph 41.

<sup>71</sup> Form GD, Section 3.1 and paragraph 125.

<sup>72</sup> Form GD, paragraphs 26 and 126 and footnote 13.

<sup>73</sup> Form GD, paragraphs 13 and 140 to 143.

<sup>74</sup> Form GD, paragraphs 32 and 144.

2022	> 45 million	[> 10 000] (and [< 10 000] for Xandr) <sup>75</sup>
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Source: Form GD, paragraphs 143 to 144

#### 5.4.2.2. The Commission's assessment

- (95) Based on the information provided by Microsoft,<sup>76</sup> the Commission considers that Microsoft 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. Microsoft Advertising, is offered in at least three Member States.
- (96) Moreover, based on the information provided by Microsoft,<sup>77</sup> the Commission considers that Microsoft's online advertising CPS Microsoft Advertising meets the average monthly end user and the yearly business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925.
- (97) Finally, based on the information provided by Microsoft,<sup>78</sup> the Commission considers that Microsoft's online advertising CPS Microsoft Advertising 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 that Regulation were met in each of the last three financial years.
- (98) 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 Microsoft's approach to identifying and estimating monthly active end users and yearly business users of its online advertising CPS Microsoft Advertising 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 Microsoft.

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

##### 5.4.3.1. The Undertaking's view

- (99) As summarised in the decision opening a market investigation referred to in recital (100) below, Microsoft has put forward arguments pursuant to Article 3(5), first subparagraph, of Regulation (EU) 2022/1925 seeking to rebut the presumptions laid down in Article 3(2) of that Regulation.<sup>79</sup>

##### 5.4.3.2. The Commission's assessment

- (100) For the reasons set out in the decision opening a market investigation pursuant to Article 17(3) of Regulation 2022/1925, the Commission considers that Microsoft has submitted sufficiently substantiated arguments which manifestly call into question the presumption laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to its online advertising CPS Microsoft Advertising.

<sup>75</sup> Microsoft does not provide Xandr-specific business user data prior to the financial year of 2022, as Xandr was purchased by Microsoft in June 2022 (see Form GD, footnote 10).

<sup>76</sup> Form GD, Section 3.1 and paragraphs 125 and 126.

<sup>77</sup> Form GD, paragraphs 13 and 140 to 143.

<sup>78</sup> Form GD, paragraphs 32 and 144.

<sup>79</sup> Form GD, Annex C.



#### 5.4.4. Conclusion for the online advertising service Microsoft Advertising

- (101) As set out above in recitals (85) to (90) and (95) to (97) above, the Commission concludes that Microsoft Advertising constitutes an online advertising CPS within the meaning of Article 2, point (2), subpoint (j), of Regulation (EU) 2022/1925 and that Microsoft meets the thresholds laid down in Article 3(2) of the Regulation in relation to that CPS.
- (102) Pursuant to Article 3(5), third subparagraph, of Regulation (EU) 2022/1925, the Commission has decided to open a market investigation, pursuant to Article 17(3) of Regulation (EU) 2022/1925, to assess further the arguments presented by Microsoft calling into question the presumptions laid down in Article 3(2) of that Regulation in relation to its online advertising CPS Microsoft Advertising.

### 5.5. Microsoft’s number-independent interpersonal communication service Outlook.com

#### 5.5.1. CPS qualification and delineation

##### 5.5.1.1. The Undertaking’s view

- (103) Microsoft notified its NIICS Outlook.com as a CPS within the meaning of Article 2, point (2), subpoint (e), of Regulation (EU) 2022/1925. According to Microsoft, Outlook.com is a personal web-based email service that offers its users the ability to send and receive email messages. It is designed for the use by individuals for their personal use.<sup>80</sup> Microsoft offers Outlook.com as a standalone service for free or as part of a Microsoft 365 Family or Personal paid subscription.<sup>81</sup> In the latter cases, users get the same email service but with the right of having multiple email addresses and/or with the right of using more advanced features, such as grammar and spell check, or higher storage limits.<sup>82</sup>
- (104) Microsoft argues that Outlook.com’s purpose is to serve individuals for personal use.<sup>83</sup> According to Microsoft, its terms and conditions restrict the use of Outlook.com by business users, as these terms and conditions state that “*Office-branded Services are for your personal, non-commercial use, unless you have commercial use rights under a separate agreement with Microsoft*”.<sup>84</sup> Microsoft explains that it offers Exchange Online as an alternative product for business purposes, which is an email service that can be licensed by organisations and that offers other management features.<sup>85</sup>
- (105) Microsoft furthermore submits that there are no business users of Outlook.com within the meaning of Regulation (EU) 2022/1925.<sup>86</sup> In Microsoft’s view, the definition of active business users for NIICS requires that business users initiate or participate in any way in a communication through the service to communicate directly with an end user. However, according to Microsoft, communications between two email users do not happen through the service, nor directly between them, as the email is sent in any case through the open Internet (outside of

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<sup>80</sup> Form GD, paragraph 38.

<sup>81</sup> Ibid.

<sup>82</sup> Form GD, paragraphs 41 and 43.

<sup>83</sup> Form GD, paragraph 39.

<sup>84</sup> Form GD, paragraph 46.

<sup>85</sup> Form GD, paragraphs 37 and 43.

<sup>86</sup> Form GD, paragraph 56.

Outlook.com), before being delivered to any valid email address, including Outlook.com. This means that even if two users are both on Outlook.com the communication is not conducted directly on the service. In Microsoft's view, therefore, Outlook.com does not intermediate between end users and business users.

#### 5.5.1.2. The Commission's assessment

- (106) 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.<sup>87</sup> Pursuant 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.
- (107) The Commission considers that Outlook.com fulfils the definition of NIICS laid down in Article 2, point (7) of Directive (EU) 2018/1972, to which Article 2, point (9), of Regulation (EU) 2022/1925 cross-refers, and therefore is a CPS within the meaning of Article 2, point (2), subpoint (e), of that Regulation.
- (108) Contrary to Microsoft's view, even if Microsoft offers Exchange Online as a parallel and distinct email service for organisations, the Commission considers that Outlook.com has business users and intermediates between end users and business users for the following reasons.
- (109) First, the fact that terms and conditions imposed by the provider of a NIICS ban or limit the use of the service for a certain purpose does not mean that that service cannot constitute a CPS for the purposes of Regulation (EU) 2022/1925. What matters is the actual use of the service by business users. Consequently, so long as certain users actually use Outlook.com in a commercial or professional capacity for the purpose of or in the course of providing a service to end users, as the data provided by Microsoft suggests they do, those users qualify as business users within the meaning of Article 2, point (21), of Regulation (EU) 2022/1925. This is corroborated by the fact that Microsoft does not strictly enforce its terms and conditions in this respect.<sup>88</sup>
- (110) Second, and related to the foregoing recital, as Microsoft acknowledges,<sup>89</sup> it cannot be excluded that some of the more than [45] million monthly active end users of Outlook.com in the Union use the service to send emails to serve their commercial or professional interests. In its reply to the Commission's request for information of 15 May 2023, Microsoft explained that there are indications of a possible professional use of Outlook.com, such as the sending of a significant number of emails during the day from desktop applications or the frequent use of the calendar from desktop applications, which are more likely to happen when users engage in some professional activities. Based on this evidence, Microsoft states that approximately two to four percent of Outlook.com users could be using the service

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<sup>87</sup> 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).

<sup>88</sup> Microsoft's response of 9 March 2023 to the Commission's questions of 23 February 2023, Question 9.

<sup>89</sup> Form GD, paragraph 55.

for professional purposes.<sup>90</sup> On this basis, the Commission considers that Outlook.com has business users within the meaning of Article 2, point (21), of Regulation (EU) 2022/1925, even if that service is marketed for personal use only.

- (111) For the reasons set out above, the Commission concludes that Outlook.com constitutes a NIICS within the meaning of Article 2, point (9), of Regulation (EU) 2022/1925 and therefore a CPS within the meaning of Article 2, point (2), subpoint (e), 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

- (112) Microsoft indicates that it meets the thresholds laid down in Article 3(2)(a) of Regulation (EU) 2022/1925. As summarised in Table 1 above, Microsoft 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.<sup>91</sup>

- (113) In addition, Microsoft indicates that its NIICS CPS Outlook.com is provided in all Member States.<sup>92</sup>

- (114) Microsoft further indicates that its NIICS CPS Outlook.com meets the monthly active end user and yearly active business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925. In particular, Microsoft submits that Outlook.com has more than [45] million monthly active users in the Union and acknowledges that it is likely that at least 10 000 of those Outlook.com users have used the service within a period of one year for business purposes.<sup>93</sup>

- (115) Finally, with respect to Article 3(2)(c) of Regulation (EU) 2022/1925, Microsoft indicates that its NIICS CPS Outlook.com met the thresholds laid down in Article 3(2)(b) of that Regulation in relation to Outlook.com in each of the last three financial years.<sup>94</sup>

##### 5.5.2.2. The Commission's assessment

- (116) Based on the information provided by Microsoft,<sup>95</sup> the Commission considers that Microsoft 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. the NIICS Outlook.com, is offered in at least three Member States.

- (117) Moreover, based on the information provided by Microsoft,<sup>96</sup> the Commission considers that Microsoft's NIICS CPS Outlook.com 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.

- (118) Finally, based on the information provided by Microsoft,<sup>97</sup> the Commission considers that Microsoft's NIICS CPS Outlook.com meets the requirement laid down

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<sup>90</sup> Microsoft's response of 15 May 2023 to the Commission's questions of 5 April 2023, Question 3.

<sup>91</sup> Form GD, Section 3.1 and paragraph 125.

<sup>92</sup> Form GD, paragraphs 55 and 126.

<sup>93</sup> Form GD, paragraph 55.

<sup>94</sup> Ibid.

<sup>95</sup> Form GD, Section 3.1 and paragraphs 125 and 126.

<sup>96</sup> Form GD, paragraph 55.

<sup>97</sup> Ibid.

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.

- (119) 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 Microsoft's approach to identifying and estimating monthly active end users and yearly business users of its NIICS CPS Outlook.com 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 Microsoft.

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

#### 5.5.3.1. The Undertaking's view

- (120) Microsoft presented arguments aimed at demonstrating that although it meets all the thresholds in Article 3(2) of Regulation (EU) 2022/1925 in relation to the NIICS CPS Outlook.com, it exceptionally does not satisfy the requirements listed in Article 3(1) of that Regulation due to the circumstances in which that CPS operates.
- (121) First, Microsoft submits that Outlook.com is an email service that does not act as a gateway for business users to reach end users, regardless of how many users it has. According to Microsoft, any user of Outlook.com can contact another user of Outlook.com via and on any other email service. Outlook.com is entirely configured and provided in such a way that it allows any business user to reach any end user using any email service of their preference.<sup>98</sup> Microsoft further explains that Microsoft does not control the email exchange between an Outlook.com user and a user of a third-party email service.<sup>99</sup>
- (122) Second, Microsoft provides data supporting its claim that Outlook.com is configured and provided in such a way that it allows seamless communication with any Outlook.com and non-Outlook.com email account and, therefore, that it is not an important gateway for business users to reach end users. For example, Microsoft explains that the number of Outlook.com business users communicating with Outlook.com end users is very small. Based on the analysis of Outlook.com email traffic on 19 July 2023, Microsoft established that the total number of unique messages received by Outlook.com users was approximately [5-10] billion globally.<sup>100</sup> Of those unique messages, only approximately [40-50] million globally were sent from an Outlook.com account to another Outlook.com account (this includes all Outlook domains, such as Hotmail.com or Live.com).<sup>101</sup> This means that only [0-5] % of messages relate to communications where both the sender and the recipient were end users or business users of Outlook.com.<sup>102</sup>
- (123) Finally, Microsoft presents additional arguments relating to the fact that Outlook.com lacks the features that the vast majority of business users require<sup>103</sup> and that it does not benefit from any network effects or data driven advantages.<sup>104</sup> In

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<sup>98</sup> Form GD, Annex E, paragraphs 9, 10 and 23; Microsoft's reply of 2 August 2023, page 3.

<sup>99</sup> Microsoft's reply of 2 August 2023, page 3.

<sup>100</sup> Excluding China.

<sup>101</sup> Microsoft's reply of 2 August 2023, page 3.

<sup>102</sup> Microsoft's reply of 2 August 2023, pages 3 and 4.

<sup>103</sup> Microsoft's reply of 2 August 2023, page 2.

<sup>104</sup> Form GD, Annex E, paragraphs 18 to 21.

addition, Microsoft also argues that there is a high degree of multi-homing, as well as easy switching between different undertakings providing similar NIICS.<sup>105</sup>

#### 5.5.3.2. The Commission's assessment

- (124) The Commission recalls, at the outset, that email services are included within the scope of NIICS, which are listed as a category of CPSs in Article 2, point (2), subpoint (e), of Regulation (EU) 2022/1925.<sup>106</sup>
- (125) 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.
- (126) Regarding Microsoft's arguments concerning the existence of multi-homing, the lack of network effects, or the ease of switching, the Commission considers that they do not, in themselves, manifestly call into question the presumptions laid down in Article 3(2) of Regulation (EU) 2022/1925. While multi-homing, network effects or lock-in effects regarding users' ability to switch may be relevant to assess the existence of a gateway position, the existence of multi-homing or the lack of network effects or lock-in effects are not, in themselves, necessarily an indication that a CPS does not constitute an important gateway for business users to reach end users.
- (127) In contrast, the Commission finds that Microsoft's other arguments that seek to demonstrate that its NIICS CPS Outlook.com 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.
- (128) First, the way in which Microsoft configures and provides its NIICS CPS Outlook.com means that that service, in its current configuration, enables its business users and end users to effectively exchange messages with other users of Outlook.com, but also, in the same manner, with users of any other email service. Data provided by Microsoft support its argument that Outlook.com is not an important gateway for business users to reach end users in this respect. For example, as noted in recital (122) above, only [0-5] % of messages exchanged on Outlook.com relate to communications where both the sender and the recipient were end users or business users of Outlook.com. This would suggest that [90-100] % of communication exchange concerning either business user or end user on Outlook.com is initiated or terminated outside Outlook.com.
- (129) Second, and following on the foregoing recital, Microsoft, in the current configuration of its NIICS CPS Outlook.com, does not appear to exert any control over the operations of end users or business users of Outlook.com that would enable it to make those end users or business users dependent on Outlook.com 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*

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<sup>105</sup> Form GD, Annex E, paragraph 16; Microsoft's reply of 2 August 2023, pages 4 and 5.

<sup>106</sup> Recital (106) above.

*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 Microsoft’s lack of such influence, its NIICS CPS Outlook.com, in its current configuration, is not an important gateway for business users to reach end users.

- (130) The Commission’s finding that Microsoft’s NIICS CPS Outlook.com 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 that use that CPS. Indeed, the considerations set out in the two preceding recitals, which relate to the specific circumstances in which the NIICS CPS Outlook.com is provided, apply irrespective of the number of end users and business users of that CPS.
- (131) In this regard, the Commission reiterates that its finding that the NIICS CPS Outlook.com does not constitute an important gateway is based on the available information on the current configuration 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.<sup>107</sup>
- (132) Finally, the Commission considers that Microsoft’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 recital (116) above, Microsoft has acknowledged that Outlook.com qualifies as a NIICS CPS and that that CPS exceeds the thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925.
- (133) In conclusion, the Commission considers that the arguments submitted by Microsoft 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 Outlook.com, the requirement laid down in Article 3(1)(b) of that Regulation of that CPS constituting an important gateway is not met due to the circumstances in which that CPS operates in its current configuration.
- (134) Given that the arguments presented by Microsoft not only manifestly call into question the presumption laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 in relation to the Outlook.com 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.
- (135) Accordingly, Microsoft shall not be designated as a gatekeeper in relation to its NIICS CPS Outlook.com and Outlook.com shall not be listed in this Decision as a CPS that is an important gateway for business users to reach end users.

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<sup>107</sup> Such substantial changes include, but are not limited to, technological and/or commercial changes as a result of which the ability of Outlook.com 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.

#### 5.5.4. *Conclusion for the number-independent interpersonal communication service Outlook.com*

- (136) As set out in recitals (106) to (111) and (116) to (118) above, the Commission concludes that Outlook.com constitutes a NIICS CPS within the meaning of Article 2, point (2), subpoint (e) and that Microsoft meets the thresholds set out in Article 3(2) of Regulation (EU) 2022/1925 in relation to that service.
- (137) However, for the reasons set out in the recitals (124) to (135) above, the Commission concludes that Outlook.com shall not be listed in this Decision as a CPS that is an important gateway for business users to reach end users.

### 5.6. **Microsoft’s online social networking service LinkedIn**

#### 5.6.1. *CPS qualification and delineation*

##### 5.6.1.1. The Undertaking’s view

- (138) Microsoft notified LinkedIn as an online social networking service as defined in Article 2, point (7), of Regulation (EU) 2022/1925. According to the information presented by Microsoft, LinkedIn is an online social networking service for professionals.<sup>108</sup> LinkedIn provides free and paid features to both business users and end users in the Union.<sup>109</sup> LinkedIn members engage on LinkedIn to search, discover, connect and communicate with other professionals, together with advanced opportunities for employment and exploring content for career and business development opportunities via the social feed, recommendations (for potential connections and content), Company Pages, and messages/chats.
- (139) Microsoft submits that certain features of LinkedIn form part of the same online social networking CPS, namely LinkedIn Sales Navigator<sup>110</sup> and the messaging feature of LinkedIn.<sup>111</sup> Microsoft also considers that its online advertising service LinkedIn Marketing Solutions should be integrated in the online social networking service CPS LinkedIn.<sup>112</sup> However, Microsoft considers that LinkedIn’s Jobs features<sup>113</sup> and LinkedIn Learning features<sup>114</sup> are distinct from the LinkedIn online social networking CPS, and do not qualify themselves as CPSs.
- (140) In its reply of 2 August 2023 to the Commission’s letter of 26 of July 2023 setting out the Commission’s preliminary views on the delineation of Microsoft’s services, Microsoft summarily referred to its submission in the Form GD, without making any further observations in relation to LinkedIn.<sup>115</sup>

##### 5.6.1.2. The Commission’s assessment

- (141) Article 2, point (2), subpoint (c), of Regulation (EU) 2022/1925 lists online social networking services as one of the categories of CPSs within the meaning of that

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<sup>108</sup> Form GD, paragraph 82.

<sup>109</sup> Ibid.

<sup>110</sup> Form GD, paragraph 83.

<sup>111</sup> Form GD, paragraph 84. Microsoft indicates that LinkedIn’s messaging feature does not constitute a NIICS within the meaning of Article 2, point (9), of Regulation (EU) 2022/1925, given that messaging on LinkedIn is a minor ancillary feature under the meaning of Article 2, point (5), of Directive (EU) 2018/1972, to which Article 2, point (9), of Regulation (EU) 2022/1925 refers.

<sup>112</sup> Form GD, paragraph 28.

<sup>113</sup> Form GD, paragraphs 85 and 86.

<sup>114</sup> Form GD, paragraphs 87.

<sup>115</sup> See Microsoft’s reply of 2 August 2023.

Regulation. Article 2 point (7), of that Regulation defines an online social networking service as “*a platform that enables end users to connect and communicate with each other, share content and discover other users and content across multiple devices and, in particular, via chats, posts, videos and recommendations*”.

- (142) The Commission considers that the service that Microsoft provides through its LinkedIn platform fulfils the definition of online social networking service within the meaning of Article 2, point (7), of Regulation (EU) 2022/1925. Indeed, LinkedIn enables end users to connect and communicate with each other, share content, and discover other users and content across multiple devices in a professional context. Consequently, LinkedIn constitutes a CPS within the meaning of Article 2, point (2), subpoint (c), of Regulation (EU) 2022/1925.
- (143) On the basis of the information provided by Microsoft and in line with Microsoft’s view, the Commission considers that LinkedIn’s Jobs features and LinkedIn Learning features are distinct services from the online social networking CPS LinkedIn.<sup>116</sup>
- (144) Finally, the Commission considers that the LinkedIn Marketing Solutions online advertising service is a distinct service from Microsoft’s online social networking CPS LinkedIn.<sup>117</sup> In this context, the display of an advertisement on the online social networking service LinkedIn is the culmination of the ad selection process within the online advertising service LinkedIn Marketing Solutions,<sup>118</sup> since the ad delivery process activates every layer of the online advertising value chain, with the ultimate purpose of exposing end users to advertisements. The display of an advertisement can therefore be considered to be part of both the online advertising service and the other CPSs on which the advertisement is displayed. However, this does not alter the conclusion that LinkedIn and LinkedIn Marketing Solutions remain distinct services. This is in line with Section D(2)(c)(i) of the Annex to Regulation (EU) 2022/1925, which provides that CPSs offered in an integrated way should be considered as distinct when they belong to different CPS categories within the meaning of Article 2, point (2), of that Regulation.
- (145) For the reasons set out above, the Commission concludes that LinkedIn constitutes an online social networking service within the meaning of Article 2, point (7), of Regulation (EU) 2022/1925 and therefore a CPS within the meaning of Article 2, point (2), subpoint (c), of that Regulation.

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<sup>116</sup> The question whether or not services integrated in Microsoft’s LinkedIn platform that are distinct from its online social networking service LinkedIn should be qualified as services “*provided together with and in support of*” the online social networking service LinkedIn, as argued by Microsoft, is not relevant for the purposes of the delineation of CPSs in the context of Microsoft’s potential designation under Article 3(4) of Regulation (EU) 2022/1925.

<sup>117</sup> As set out in recital (89) above, the Commission also considers LinkedIn Marketing Solutions to be separate from the Microsoft Advertising online advertising service.

<sup>118</sup> As set out in footnote (67) above, the online advertising service LinkedIn Marketing Solutions, according to Microsoft, does not meet the thresholds laid down in Article 3(2) 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

- (146) Microsoft indicates that it meets the thresholds laid down in Article 3(2)(a), of Regulation (EU) 2022/1925. As summarised in Table 1, Microsoft 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 capitalization in the last financial year was above EUR 75 billion.<sup>119</sup>
- (147) In addition, Microsoft indicates that its online social networking CPS LinkedIn is provided in all Member States.<sup>120</sup>
- (148) As regards the number of monthly active end users, Microsoft submits that LinkedIn is provided to registered, logged-in members, whereas logged-out users cannot engage with all the functionalities that make LinkedIn an online social networking service. Microsoft further submits that counting logged-out users would not be consistent with the definition of an online social networking service, because only logged-in members can use core functionalities, such as creating a profile, joining a LinkedIn group, posting, liking and commenting on content, and connecting, communicating, following, and otherwise engaging with other LinkedIn members.<sup>121</sup>
- (149) According to Microsoft, if only logged-in users are counted, LinkedIn does not meet the monthly active end user threshold laid down in Article 3(2)(b) of Regulation (EU) 2022/1925, since LinkedIn had on average [ $< 45$ ] million monthly active logged-in users in the EU in 2022, [ $< 45$ ] million in 2021, and [ $< 45$ ] million in 2020.<sup>122</sup> Microsoft claims that if logged-out users are also taken into account to determine the number of monthly active end users, LinkedIn meets the thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925. However, Microsoft submits that, in that case, the number of unique end users cannot reliably be determined due to double counting and it must instead rely on an approximation of users based on cookies and other identifiers. Nevertheless, Microsoft indicates that, regardless of the degree of double counting, LinkedIn clearly meets the end user threshold laid down in Article 3(2)(b) of Regulation (EU) 2022/1925.<sup>123</sup>
- (150) As regards the number of yearly active business users of LinkedIn, Microsoft determined this number based on the number of third-party organisations that have a Company Page on LinkedIn with their administrator account holders located in the Union and at least one administrator action in a given year. On that basis, LinkedIn had approximately [ $> 10\ 000$ ] business users in 2020, [ $> 10\ 000$ ] in 2021, and [ $> 10\ 000$ ] in 2022.<sup>124</sup>
- (151) Finally, Microsoft indicates that if logged-out users are counted for determining the number of monthly active end users, its online social networking CPS LinkedIn meets the requirement in Article 3(2)(c) of Regulation (EU) 2022/1925 that it has surpassed the end user and business user thresholds laid down in Article 3(2)(b) of that Regulation for each of the last three financial years.<sup>125</sup> Table 6 summarises the

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<sup>119</sup> Form GD, Section 3.1 and paragraph 125.

<sup>120</sup> Form GD, paragraph 126.

<sup>121</sup> Form GD, paragraphs 120 to 122.

<sup>122</sup> Form GD, paragraph 146.

<sup>123</sup> Form GD, paragraphs 145 and 148.

<sup>124</sup> Form GD, paragraph 147.

<sup>125</sup> Form GD, paragraph 148.

monthly active end users and yearly active business users of LinkedIn in the Union for the last three financial years (including logged-out users).

**Table 6: Monthly active end users and yearly active business users of LinkedIn in the Union in 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 148

#### 5.6.2.2. The Commission’s assessment

- (152) Based on the information provided by Microsoft,<sup>126</sup> the Commission considers that Microsoft 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., the online social networking service LinkedIn, is offered in at least three Member States.
- (153) Regarding the thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925, the Commission considers that end users who are not logged in, but who are nevertheless able to and do engage in any way with the online social networking CPS LinkedIn, should be accounted as monthly active end users of that service. That follows from the definition of “active end users” set out in Section E of the Annex to Regulation (EU) 2022/1925, which does not exclude non-logged-in users but, on the contrary, covers any form of end user engagement with an online social networking service, such as opening a page, scrolling, clicking, or making a query. These forms of engagement apply irrespectively of whether an end user is or is not logged in, and even includes “actively logging in” as an example. This clearly indicates that non-logged-in users should be taken into account since they engage with the online social network service in some way. Since LinkedIn can also be accessed also from a browser, without necessarily logging in, such use of LinkedIn constitutes a form of end user engagement with LinkedIn. Therefore, in line with Microsoft’s best estimate as regards logged in as well as non-logged-in users,<sup>127</sup> the Commission considers the online social networking CPS LinkedIn to meet the threshold of monthly active end users laid down in Article 3(2)(b) of Regulation (EU) 2022/1925. It is not necessary to determine whether Microsoft’s approach to identifying and estimating monthly active end users and yearly business users of the CPSs covered by this Decision is underestimating the number of active users to be calculated according to Section E of the Annex to Regulation (EU) 2022/1925, as the relevant thresholds are in any event met already on the basis of the information provided by Microsoft.

<sup>126</sup> Form GD, Section 3.1 and paragraphs 125 and 126.

<sup>127</sup> Form GD, paragraph 148.

- (154) In addition, based on the information provided by Microsoft,<sup>128</sup> the Commission concludes that the online social networking CPS LinkedIn meets the yearly active business user threshold laid down in Article 3(2)(b) of Regulation (EU) 2022/1925.
- (155) Finally, based on the data provided by Microsoft including both logged-in and logged-out end users,<sup>129</sup> the Commission considers that Microsoft's online social networking CPS LinkedIn 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.
- (156) 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 Microsoft's approach to identifying and estimating monthly active end users and yearly business users of its online networking CPS LinkedIn 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 Microsoft.

#### 5.6.3. *Conclusion for the online social networking service LinkedIn*

- (157) As set out in recitals (141) to (145) and (152) to (155) above, the Commission concludes that LinkedIn constitutes an online social networking CPS within the meaning of Article 2, point (2), subpoint (c) and that Microsoft meets the thresholds set out in Article 3(2) of Regulation (EU) 2022/1925 in relation to that CPS. Consequently, Microsoft is to be designated as a gatekeeper pursuant to Article 3(4) of Regulation (EU) 2022/1925 in relation to its online social networking CPS LinkedIn.

## 6. CONCLUSION

- (158) In light of the above, the Commission concludes pursuant to Article 3 of Regulation (EU) 2022/1925, that Microsoft is to be designated as a gatekeeper and that the following CPSs of Microsoft are individually an important gateway for business users to reach end users: (i) its Windows PC OS and (ii) its online social networking service LinkedIn.
- (159) 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*

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

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<sup>128</sup> Form GD, paragraph 148.

<sup>129</sup> Ibid.

*Article 2*

The following CPSs of Microsoft 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) Microsoft's operating system Windows PC OS,
- (b) Microsoft's online social networking service LinkedIn.

*Article 3*

This Decision is addressed to Microsoft Corporation, One Microsoft Way, Redmond, Washington, 98052, United States of America.

Done at Brussels, 5.9.2023

*For the Commission*  
*Thierry BRETON*  
*Member of the Commission*

