



EUROPEAN COMMISSION

***CASE DMA.100038 SAMSUNG – WEB
BROWSERS***

(Only the English text is authentic)

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

Article 3 Regulation (EU) 2022/1925

Date: 05/09/2023

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EUROPEAN COMMISSION

Brussels, 5.9.2023
C(2023) 6103 final

PUBLIC VERSION (*)

Samsung Electronics Co., Ltd
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Chertsey, KT16 0RS
United Kingdom

Subject: Case DMA.100038 – SAMSUNG – WEB BROWSERS
Letter concerning Samsung’s notification under Article 3(3) of
Regulation (EU) 2022/1925
Only the English text is authentic

Dear Sir or Madam,

1. INTRODUCTION

- (1) Pursuant to Article 3(4) of 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 (Digital Markets Act)¹, the Commission shall designate as a gatekeeper an undertaking providing core platform services (“CPSs”) that meets the thresholds set out in Article 3(2) of that Regulation.
- (2) On 3 July 2023, Samsung Electronics (UK) Limited notified the Commission, pursuant to Article 3(3), first subparagraph, of Regulation (EU) 2022/1925, that Samsung Electronics Co., Ltd., together with all legal entities directly or indirectly controlled by Samsung Electronics Co., Ltd. (“Samsung” or the “Undertaking”)² meets the thresholds laid down in Article 3(2) of that Regulation in relation to Samsung’s web browser CPS Samsung Internet Browser (“SIB”).³
- (3) Together with its notification, Samsung presented arguments aimed at demonstrating that, although it meets all the thresholds laid down in Article 3(2)

¹ OJ L 265, 12.10.2022, p. 1-66.

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

³ The notification was submitted by Europe Office, a business division of Samsung Electronics (UK) Limited, on behalf of Samsung Electronics Co., Ltd.

of Regulation (EU) 2022/1925 in relation to SIB, it exceptionally does not satisfy the requirements listed in Article 3(1) of that Regulation due to the circumstances in which SIB operates.

2. THE UNDERTAKING

- (4) Samsung is a multinational group of companies headquartered in the Republic of Korea. It consists of more than 200 subsidiaries across the world which are active in the development, sale and production of a range of finished products and components in the area of electronics and information technology. Samsung operates a number of subsidiaries, including Samsung Electronics (UK) Limited, which contribute to Samsung's product development, regional sales and marketing, as well as regional logistics and management of operations in Europe.

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

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

3.1. The delineation of CPSs

- (6) 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 services, (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).
- (7) 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.
- (8) 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 CPS 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;⁴

- undertakings shall consider as distinct those CPSs that either (i) do not belong to the same category of CPS pursuant to Article 2, point (2), of Regulation (EU) 2022/1925, even if they are offered in an integrated way;⁵ 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.⁶
- (9) In light of the foregoing, CPSs may be considered distinct even if they fall within the same category of CPS. In such cases, a relevant criterion for identifying distinct CPSs within the same category of CPS is the purpose for which the service is used by either end users or business users, or both.⁷ 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.
- (10) 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.
- (11) 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.

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

- (12) 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

⁴ Annex to Regulation (EU) 2022/1925, Section D, point 2(a).

⁵ Annex to Regulation (EU) 2022/1925, Section D, point 2(c)(i).

⁶ Annex to Regulation (EU) 2022/1925, Section D, points 2(b) and (c)(ii).

⁷ The same applies when the undertaking provides CPSs in an integrated way.

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.

- (13) 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.
- (14) 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.
- (15) 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.

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

- (16) 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 CPS operates.

- (17) 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.
- (18) 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.
- (19) 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.

4. THE NOTIFIED CPS: SAMSUNG INTERNET BROWSER (SIB)

- (20) Samsung notified SIB as a web browser CPS within the meaning of Article 2, point (2), subpoint (g), of Regulation 2022/1925 that meets the thresholds laid down in Article 3(2)(b) and (c) of that Regulation.

4.1. CPS qualification and delineation

- (21) Samsung describes SIB as a Samsung-branded Internet surfing user interface based on Alphabet's Blink browser engine and designed for Samsung devices.⁸ According to Samsung, SIB is used by both business users and end users to offer, access, and interact with web content.⁹ Samsung proposes to delineate SIB regardless of the means or device through which the user engagement takes place.¹⁰
- (22) Article 2, point (2), subpoint (g), of Regulation (EU) 2022/1925 lists web browsers as one of the categories of CPS within the meaning of that Regulation. Article 2, point (11), of Regulation (EU) 2022/1925 defines web browsers as software applications that *'allow end users to access and interact with web content hosted on servers that are connected to networks such as the Internet,*

⁸ Form GD, Table 1.

⁹ Form GD, Table 1.

¹⁰ Form GD, Table 1.

including standalone web browsers as well as web browsers integrated or embedded in software or similar. SIB fulfils this definition, since it allows its users to offer, access and interact with web pages, in particular content and other functionalities offered by such web pages.

- (23) The Commission therefore considers SIB, 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, to constitute a web browser within the meaning of Article 2, point (11), of Regulation (EU) 2022/1925 and, thus, a CPS within the meaning of Article 2, point (2), subpoint (g), of that Regulation.

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

- (24) Samsung submits that it meets the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to SIB.¹¹
- (25) As regards the threshold laid down in Article 3(2)(a) of Regulation (EU) 2022/1925, Samsung submits that it (i) had an average market capitalisation in the last financial year of above EUR 75 billion (i.e. EUR 316.7 billion)¹² and (ii) provided SIB in at least three Member States.¹³
- (26) As regards the thresholds laid down in Article 3(2)(b) and (c) of Regulation (EU) 2022/1925, Samsung submits that SIB had in each of the last three financial years at least 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.¹⁴
- (27) More specifically, in respect of SIB’s monthly active end users established or located in the Union, Samsung submits the best estimate figures shown in Table 1 below.

Table 1: Monthly active end users of SIB in the Union in the last three financial years

Year	MAEU
2020	[>45] million
2021	[>45] million
2022	[>45] million

Source: Form GD, Annex 4.

- (28) As regards SIB’s yearly active business users, Samsung submits that it could not provide accurate information on yearly active business users established in the Union in the last three financial years, due to the fact that SIB does not record individual business users seeking to upload web content on an end user URL request.¹⁵ Nevertheless, Samsung submits that across all Samsung devices, the

¹¹ Form GD, Sections 3 and 4, and paragraphs 26-34.

¹² Form GD, Section 3, paragraph 28 and Table 3.

¹³ Form GD, Section 3, paragraph 29.

¹⁴ Form GD, Section 4, paragraphs 31 et seq., Table 4, and Annex 1, paragraph 6.

¹⁵ Form GD, paragraphs 66-69.

number of SIB's yearly active business users established in the Union is likely to exceed 10 000 for the last three financial years.¹⁶

- (29) The Commission therefore considers Samsung to meet the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to SIB.¹⁷

4.3. Conclusion

- (30) Based on the information provided by Samsung, the Commission concludes that SIB constitutes a web browser CPS within the meaning of Article 2, point (2), subpoint (g) of Regulation 2022/1925 that meets the thresholds laid down in Article 3(2)(b) and (c) of that Regulation and that Samsung meets the thresholds laid down in Article 3(2)(a) of Regulation (EU) 2022/1925.

5. ASSESSMENT PURSUANT TO ARTICLE 3(5) OF REGULATION (EU) 2022/1925

- (31) In line with Article 3(5) of Regulation (EU) 2022/1925, together with its notification, Samsung put forward a number of arguments that, in its view, demonstrate that the requirements laid down in Article 3(1) of Regulation (EU) 2022/1925 are not satisfied in case of SIB, even though the thresholds laid down in Article 3(2) of that Regulation are met by Samsung in relation to its SIB CPS.¹⁸

5.1. The Undertaking's view

- (32) Samsung's main arguments for showing that SIB exceptionally does not satisfy the requirement laid down in Article 3(1)(b) of Regulation (EU) 2022/1925 can be summarised as follows:
- (33) First, Samsung puts forward that the overall lack of scale and importance of SIB as a gateway is evidenced by the limited scale of usage of SIB when compared to the use of web browsers overall, as well as when compared to other services in the web browser CPS category.¹⁹ Samsung claims that SIB's share of use in the web browser CPS category is 3.67% of webpage views in Europe between 2020 and 2022 across all types of devices, which is very small and considerably smaller than that of the other players, in particular Alphabet's Google Chrome and Apple's Safari, which accounted for about 60% and 20% respectively.²⁰
- (34) Second, Samsung argues that SIB's size has been declining since 2016. This declining trend in relation to SIB's position in the Union in terms of web browser usage can among others be observed in terms of web browser page views. From 2020 to 2022, SIB's share of page views in Europe has declined across all

¹⁶ Form GD, Section 4, Table 4.

¹⁷ It is not necessary to determine whether Samsung's approach to identifying and estimating monthly active end users and yearly business users of the CPS covered by this letter is sufficiently inclusive in line with the relevant definition in Section E of the Annex to Regulation (EU) 2022/1925, as the relevant thresholds are met based on the information provided by Samsung.

¹⁸ Form GD, paragraphs 12 to 14; Form GD, Annex 1, paragraphs 6 to 58.

¹⁹ Form GD, Annex 1, paragraphs 9-10.

²⁰ Form GD, Annex 1, paragraph 11 et seq.; Form GD, Annex 6, page 1.

platforms (3.86% in 2020 to 3.37% in 2022);²¹ on smart mobile devices (8.11% in 2020 to 6.47% in 2022);²² on smart mobile phones (8.74% in 2020 to 6.81% in 2022);²³ and on Android smart mobile phones (estimated share of 12.19% in 2020 to 10.22% in 2022).²⁴

- (35) Third, Samsung argues that SIB is not characterised by strong lock-in effects.²⁵ Samsung maintains that, as it ships its smart mobile devices with Google Chrome pre-installed, and does not otherwise restrict the download or operation of other web browsers on its devices, multiple web browsers are available for use on Samsung's smart mobile devices, including Google Chrome.²⁶ Samsung also argues that it does not have a vertically integrated digital ecosystem and therefore cannot leverage its position in web browsers to entrench its position in relation to other digital services.²⁷ In this context, Samsung submits that it is neither commercially able nor incentivised to reduce contestability in relation to the web browser CPS category or neighbouring services.²⁸
- (36) Fourth, Samsung also contends that, from a technological standpoint, it is precluded from acting as a gatekeeper due to its dependence on Alphabet's Blink browser engine, which determines how third-party web content is displayed to SIB end users.²⁹ Samsung argues that it is Alphabet's Blink browser engine that is intermediating between SIB business users and end users.³⁰ In this context, Samsung notes that SIB has no ability to direct users to engage with SIB when browsing in-app, as in-app web content display is dictated by Alphabet's underlying browser engine.³¹ By the same token, Samsung points out that its devices run on the Google Android operating system and, as a consequence, it is Alphabet and not Samsung that essentially determines the relevant web browser choice architecture.³²
- (37) Finally, Samsung submits that the fact that SIB exceeds the relevant user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 does not mean that it has an entrenched or durable position within the meaning of Article 3(1)(c) of that Regulation. Samsung maintains that SIB's usage share has been limited and consistently declined since its launch,³³ the business user threshold is meaningless with regard to web browsers and, in contrast to the web browsers provided by Apple (i.e. Safari) and Alphabet (i.e. Google Chrome), SIB is reliant on third-party digital infrastructure which materially influences the way in which Samsung can engage business users and present content to end users.

²¹ Form GD, Annex 6, page 7, Table 1. 'All platforms' means 'Desktop', 'Mobile', 'Tablet', 'Console'.

²² Form GD, Annex 6, page 8, Table 2. 'Smart mobile devices' means 'Smart mobile and tablet'.

²³ Form GD, Annex 6, page 9, Table 3.

²⁴ Form GD, Annex 6, page 10, Table 4. Estimated based on: (i) StatCounter data for Android share of smart mobile phones (71.67% in 2020; 67.89% in 2021; 66.65% in 2022); (ii) StatCounter web browser SIB share of page views for smart mobile phones (8.74% in 2020; 8.14% in 2021; 6.81% in 2022); and (iii) the (conservative) assumption that SIB has a 0% share of page views on iOS smart mobile phones.

²⁵ Form GD, Annex 1, paragraphs 39-47.

²⁶ Form GD, Annex 1, paragraph 43.

²⁷ Form GD, Annex 1, paragraphs 32-35.

²⁸ Form GD, Annex 1, paragraph 55-58.

²⁹ Form GD, Annex 1, paragraphs 36-38.

³⁰ Form GD, Annex 1, paragraph 38.

³¹ Form GD, Annex 1, paragraph 46-47.

³² Form GD, Annex 1, paragraphs 3(d) and 39-47.

³³ Form GD, Annex 1, paragraphs 27-28.

5.2. The Commission's assessment

- (38) The Commission considers, in line with Article 3(5), third subparagraph, of Regulation (EU) 2022/1925, that Samsung has provided sufficiently substantiated arguments demonstrating that, exceptionally, even though the presumptions laid down in Article 3(2) are met, the requirement laid down in Article 3(1)(b) of Regulation (EU) 2022/1925 is not satisfied, due to the circumstances in which SIB operates. As a consequence, the Commission considers that there is no need for it to open a market investigation pursuant to Article 3(5), third sub-paragraph, in combination with Article 17(3) of Regulation (EU) 2022/1925.
- (39) The Commission bases its conclusion on the following reasons.
- (40) First, based on the information available to the Commission concerning the overall scale of SIB, the Commission considers that SIB's scale of use in the web browser CPS category, both in absolute terms as well as in relative terms when compared to other web browsers, demonstrates that SIB is not a significant web browser in the Union and, therefore, not an important gateway for business users to reach end users.
- (41) In the first place, the Commission notes that SIB's share of webpage views in Europe between 2020 and 2022 accounts for a mere 3.67% of webpage views across all types of devices, as summarised above in paragraph (33).³⁴ This indicates SIB's overall lack of importance as a web browser in the Union and, thus, its lack of importance as a gateway for business users to reach end users.
- (42) In the second place, the lack of SIB's scale of usage in the relevant web browser CPS category is further confirmed when compared to other web browsers, in particular the ones with the highest scale of webpage views across all devices. Chrome provided by Alphabet and Safari provided by Apple both substantially exceed Samsung's scale of webpage views across all devices (Chrome 60%, Safari 20%).³⁵
- (43) In the third place, SIB's reduced overall scale as a web browser is further underlined by the fact that its share of webpage views in the Union has been declining consistently across all devices over the last three years, from 3.86% in 2020 to 3.37% in 2022. This declining trend shows SIB's decreasing importance for its monthly active end users to access websites and, therefore, also its decreasing importance as a gateway for business users to reach end users.
- (44) In the fourth place, Recital (23) of Regulation (EU) 2022/1925 explains that, under Article 3(5) of that Regulation, due consideration must be given to "*by how much the actual business user and end user numbers exceed the thresholds*", which further supports the lack of SIB's importance as a gateway. In this regard, the Commission notes that SIB exceeds the end user related thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 only by a relatively limited margin (i.e. by [confidential] million end users in 2022) when taking into account the high overall scale of use of web browsers in the Union.

³⁴ Form GD, Annex 6, page 1.

³⁵ Form GD, Annex 6, page 1.

- (45) Second, the Commission notes that [confidential], in particular because SIB does not have its own browser engine but is instead dependent on Alphabet’s Blink browser engine. As pointed out by Samsung,³⁶ browser engines determine how third-party web content is displayed to SIB end users. Consequently, the way in which content is presented on SIB by business users to end users is predicated on conforming with the Blink engine, rather than an autonomous choice by Samsung as device Original Equipment Manufacturer (“OEM”). For the same reason, SIB is also not characterised by strong lock-in effects and it neither has the ability, nor an incentive, to leverage its position in web browsers to the advantage of its other digital services.
- (46) Third, while Samsung provides several services, including CPSs, in the Union, as set out in its notification,³⁷ and is one of the leading OEMs with regard to mobile devices on which these CPSs can be accessed by end users, the Commission considers that the specific circumstances of Samsung’s ecosystem of services do not indicate that SIB would constitute an important gateway for business users to reach end users.³⁸
- (47) In the first place, none of the other CPSs provided by Samsung currently meets the thresholds in Article 3(2) of Regulation (EU) 2022/1925, nor is there any indication that they meet the requirements of Article 3(1) of that Regulation. They therefore do not in any way reinforce the importance of SIB as a gateway for business users to reach end users.
- (48) In the second place, Samsung does not provide nor control Google Android, the underlying operating system on Samsung devices. There are several reasons why the underlying operating system is of importance for software applications that are enabled by it. First, the underlying operating system enables the functioning of the software applications, such as SIB, that run on it. Second, it influences browser choice by end users. While SIB, as noted by Samsung, comes pre-installed on Samsung devices, due to its lack of control over the underlying operating system, Samsung [confidential] display a browser choice screen on Samsung devices running on Google Android. Furthermore, [confidential]. Taken together, this shows that it is [confidential] not Samsung that controls browser choice and experience on Samsung devices.
- (49) The arguments presented by Samsung directly relate to the thresholds laid down in Articles 3(2)(b) and (c) of Regulation (EU) 2022/1925 and, considered together, they demonstrate that, exceptionally, despite meeting those thresholds, due to the circumstances in which SIB operates, the requirements laid down in Article 3(1)(b) and (c) of that Regulation are not satisfied. Consequently, and taking account of the fact that the criteria in Article 3(1) of Regulation (EU)

³⁶ Form GD, Annex 1, paragraphs 36-38.

³⁷ Form GD, Section 2.1. However, SIB is the only CPS that meets the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925.

³⁸ The presence of an ecosystem of different services is only one of several elements to be taken into account by the Commission when assessing whether the CPS in question constitutes an important gateway for business users to reach end users within the meaning of Article 3(1)(b) of Regulation (EU) 2022/1925. In the context of this assessment, the Commission takes into account the specific circumstances in which the ecosystem in question operates.

2022/1925 are cumulative, the Commission considers that a detailed assessment of the remaining arguments in relation to SIB under Article 3(5) of that Regulation is not necessary, since the grounds assessed above in paragraphs (40) to (48) of this letter, considered together, already demonstrate that SIB, exceptionally, even though it meets the presumptions laid down in Article 3(2), does not satisfy the requirements laid down in Article 3(1)(b) and, consequently, also Article 3(1)(c) of Regulation (EU) 2022/1925, due to the specific circumstances in which it operates.

5.3. Conclusion

- (50) Given that the arguments presented by Samsung pursuant to Article 3(5) of Regulation (EU) 2022/1925 not only manifestly call into question but, considered together, clearly and comprehensively demonstrate that the requirements laid down in Article 3(1)(b), and consequently also the requirements in Article 3(1)(c) of Regulation (EU) 2022/1925, are not satisfied, it is not necessary for the Commission to open a market investigation pursuant to the procedure laid down in Article 17(3) of Regulation (EU) 2022/1925.
- (51) Accordingly, Samsung shall not be designated as a gatekeeper in relation to SIB pursuant to Article 3(4) of Regulation (EU) 2022/1925.

6. CONCLUSION

- (52) The Commission concludes that Samsung is not to be designated as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925 in relation to its web browser SIB.

Done at Brussels,

For the Commission
Margrethe Vestager
Executive Vice-President

