



EUROPEAN COMMISSION

***CASES***

***DMA.100015 Microsoft***

*Online search engines;*

***DMA.100028 Microsoft***

*Web browsers;*

***DMA.100034 Microsoft***

*Online advertising services*

(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 17 Regulation (EU) 2022/1925

Date: 12/02/2024

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Brussels, 12.2.2024  
C(2024) 806 final  
**PUBLIC VERSION**

**COMMISSION IMPLEMENTING DECISION**

**of 12.2.2024**

**closing the market investigation opened by Decision C(2023)6078, pursuant to Article 17 of Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector**

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# COMMISSION IMPLEMENTING DECISION

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## Cases

**DMA.100015 Microsoft - online search engines**

**DMA.100028 Microsoft - web browsers**

**DMA.100034 Microsoft - online advertising services**

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), and in particular Article 17 thereof, <sup>(1)</sup>

After consulting the Digital Markets Advisory Committee,

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 it (hereinafter 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. <sup>(3)</sup>
- (2) Together with its notification, Microsoft presented arguments, pursuant to Article 3(5), first subparagraph, of Regulation (EU) 2022/1925, aimed at demonstrating that, although (i) its online search engine Bing, (ii) its web browser Edge, and (iii) its online advertising services Microsoft Advertising constitute CPSs within the

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<sup>1</sup> OJ L 265, 12 October 2022, p. 1-66.

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

<sup>3</sup> Microsoft Corporation, Notification pursuant to Article 3 of Regulation (EU) 2022/1925, Form for Gatekeeper Designation (GD), notified on 3 July 2023 (“Form GD”).

meaning of Article 2, point (2) of that Regulation and that each meet all the thresholds in Article 3(2) of that Regulation, these services exceptionally do not satisfy the requirements listed in Article 3(1) of that Regulation, due to the circumstances in which they operate.

- (3) On 5 September 2023, the Commission adopted a decision designating Microsoft as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925 in relation to its operating system CPS Windows PC OS and its online social networking CPS LinkedIn.<sup>(4)</sup> In that decision, the Commission concluded that Microsoft Bing, Microsoft Edge and Microsoft Advertising constitute respectively an online search engine CPS, a web browser CPS, and an online advertising CPS, and that Microsoft meets the quantitative thresholds set out in Article 3(2) of Regulation (EU) 2022/1925, in relation to those three CPSs, but that Microsoft presented sufficiently substantiated arguments manifestly calling into question the presumptions laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to each of those three CPSs.
- (4) On 5 September 2023, the Commission adopted a decision opening a market investigation pursuant to Articles 16(1) and 17(3) of Regulation (EU) 2022/1925 to assess whether, following the arguments presented by Microsoft pursuant to Article 3(5) of that Regulation, Microsoft's online search engine CPS Bing, its web browser CPS Edge, and its online advertising CPS Microsoft Advertising should be listed as important gateways for business users to reach end users in the decision designating Microsoft as a gatekeeper.<sup>(5)</sup>

## **2. PROCEDURE**

- (5) In the framework of the market investigation into Microsoft's online search engine CPS Bing, the Commission sent fourteen requests for information ("RFIs") to Microsoft between 11 September 2023 and 24 October 2023, to which Microsoft replied. In addition, the Commission sent two RFIs to Alphabet in September and in October 2023, one RFI to providers of search engines and search syndication partners of Bing in September 2023, and one RFI to business users of Microsoft Advertising and Xandr in September 2023.
- (6) In the framework of the market investigation into Microsoft's web browser CPS Edge, the Commission sent six RFIs to Microsoft between 25 August 2023 and 5 December 2023, to which Microsoft replied. In addition, the Commission sent RFIs in September 2023 to providers of web browsers, to business users of Edge, and to other industry players, such as website developers, web app developers, industry associations and original equipment manufacturers ("OEMs").
- (7) In the framework of the market investigation into Microsoft's online advertising CPS, the Commission sent five RFIs to Microsoft between 24 August and 24 October 2023, to which Microsoft replied. In addition, the Commission sent RFIs in September and October 2023 to providers of online advertising services competing with Microsoft Advertising and to business users of Microsoft Advertising and Xandr.

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<sup>4</sup> Decision C(2023)6106 final of 5 September 2023.

<sup>5</sup> Decision C (2023)6078 final of 5 September 2023.

- (8) In the framework of the three aforementioned market investigations, Microsoft, on 22 November 2023, waived its right to access to the respective case files under Articles 8(2) and 8(3) of Commission Implementing Regulation (EU) 2023/814. <sup>(6)</sup>
- (9) On 29 November 2023 the Commission communicated its preliminary findings to Microsoft according to Article 17(3) of Regulation (EU) 2022/1925. Microsoft replied on 5 December 2023.

### **3. ASSESSMENT PURSUANT TO ARTICLE 17(3) OF REGULATION (EU) 2022/1925**

#### **3.1. Microsoft's online search engine CPS Bing**

##### *3.1.1. The Undertaking's view*

- (10) Together with its notification of 3 July 2023, Microsoft presented three sets of arguments aimed at demonstrating that, although it meets all the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to its online search engine CPS Bing, it exceptionally does not satisfy the requirements listed in Article 3(1) of that Regulation due to the circumstances in which Bing operates. <sup>(7)</sup>
- (11) In the first place, Microsoft submits that Bing does not constitute an important gateway for business users to reach end users due to its low scale as compared to other online search engines. First, Microsoft argues that, based on StatCounter data on online search engines across all platforms, Bing accounts for only 3.6% of the overall scale of online search engine activities in terms of clicks on a search result. <sup>(8)</sup> Based on that metric, Microsoft is 25 times smaller than Google Search, which has a share of 92%. <sup>(9)</sup> Second, Microsoft argues that, based on StatCounter data on online search engines, Bing's scale in terms of clicks is low across all platforms and entry points, including on Windows PC OS, which is listed as a CPS constituting an important gateway for business users to reach end users in the decision designating Microsoft as a gatekeeper. <sup>(10)</sup> Third, Microsoft claims that Bing's scale is very dependent on the usage of Microsoft's web browser Edge <sup>(11)</sup> which is in itself very small in terms of scale and accounts for only 5.8% of the overall scale of activities of web browsers (based on StatCounter data). <sup>(12)</sup> [*Details of commercial activities*]. <sup>(13)</sup>
- (12) In the second place, Microsoft questions the probative value of Bing's user numbers in light of the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925.

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<sup>6</sup> Commission Implementing Regulation (EU) 2023/814 of 14 April 2023 on detailed arrangements for the conduct of certain proceedings by the Commission pursuant to Regulation (EU) 2022/1925 of the European Parliament and of the Council (OJ L 102, 17 April 2023, p. 6–19).

<sup>7</sup> Form GD, Annex A, paragraph 8.

<sup>8</sup> Click/tap on a website from the search engine results page. See Form GD, Annex A, paragraph 12. Microsoft argues that this scale is similar to that of other main players, Google Search excluded. Form GD, Annex A, paragraphs 13-14.

<sup>9</sup> Form GD, Annex A, paragraph 16.

<sup>10</sup> According to Microsoft, Google Search leads on all platforms: 83.5% on desktop, 94% on tablet, and 97% on mobile in terms of clicks as per StatCounter's data. While Microsoft's Windows OS is the largest player on OS for desktop, Bing only accounts for 9.9% of desktop search engine service usage. Form GD, Annex A, paragraphs 17-19.

<sup>11</sup> Microsoft estimates that over [80-90]% of Bing's search volume comes from Microsoft Edge. Microsoft's Form GD, Annex A, paragraph 21.

<sup>12</sup> Form GD, Annex B, paragraph 12.

<sup>13</sup> Form GD, Annex A, paragraphs 25 et seq.

- (13) Microsoft claims that Bing’s number of monthly active end users of about [*> 45 million*] in 2022 <sup>(14)</sup> does not accurately reflect its scale of usage in the overall scale of activity of online search engines, given its low intensity of use by end users. <sup>(15)</sup> Instead, Microsoft contends that the monthly average of Bing’s daily active users of [*< 45 million*] users per day in 2022 provides a more accurate representation of Bing’s actual usage for business users to reach end users. <sup>(16)</sup>
- (14) With respect to the business user threshold, Microsoft claims that, for online search engines, such as Bing, the probative value of the quantitative thresholds in Article 3(2), point (b) of Regulation (EU) 2022/1925 is more limited than in the context of other types of CPSs because the number of business users of an online search engine reflects only the indexation of those business user websites by the search engine provider. It does not reflect whether business users use or view the online search engine as an important gateway to reach end users. <sup>(17)</sup>
- (15) In the third place, Microsoft points to other factors allegedly showing that the requirements laid down in Article 3(1)(b) and (c) of Regulation (EU) 2022/1925 are not met in relation to its online search engine CPS Bing.
- (16) First, Microsoft argues that Bing does not benefit from very strong network effects of a magnitude comparable to Google Search. Because Bing receives fewer search queries than Google Search, its search algorithms cannot learn as much, as a result of which its search results quality suffers. This lower quality in search results in turn keeps search traffic comparably low. <sup>(18)</sup>
- (17) Second, Microsoft argues that Bing would not be seen by business users as an important gateway to reach end users for the following reasons: (i) a significant number of EU domain sites do not allow Bing to crawl their websites as site owners do not consider this worth the consumption of bandwidth and server resources, <sup>(19)</sup> (ii) most EU webmasters do not engage in search engine optimisation for Bing, and accordingly the reach and usage of Bing’s Webmaster tools would be “abysmal” <sup>(20)</sup> compared to the Google Search Console, <sup>(21)</sup> and (iii) the IndexNow initiative, <sup>(22)</sup> which is led by Microsoft, fails to reduce challenges faced with web crawling and sites blocking that smaller rival search engines have because of lack of support from the main search engine Google Search. <sup>(23)</sup>

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<sup>14</sup> Form GD, paragraph 134.

<sup>15</sup> Form GD, Annex A, paragraphs 39-42. That is because a Bing monthly active end user could be someone who used Bing only occasionally in a given month whilst using more intensively another online search engine. Using monthly active end users would imply giving equal weight, despite different usage, to all online search engines concerned in relation to the end user threshold in Regulation (EU) 2022/1925. Microsoft also argues that the monthly active end user metric ignores multi-homing and rather captures a single dimension of end user engagement excluding in particular the same end user’s engagement with other respective CPSs.

<sup>16</sup> Form GD, Annex A, paragraph 42.

<sup>17</sup> Form GD, Annex A, paragraph 43.

<sup>18</sup> Form GD, Annex A, paragraphs 52-54.

<sup>19</sup> Form GD, Annex A, paragraphs 55-56.

<sup>20</sup> Form GD, Annex A, paragraph 57.

<sup>21</sup> Form GD, Annex A, paragraph 57.

<sup>22</sup> Defined by Microsoft as an “open protocol that allows webmasters to guide search engines to their URLs to retrieve the latest content published on websites”. Form GD, Annex A, paragraph 58.

<sup>23</sup> Form GD, Annex A, paragraph 59.

- (18) Third, Microsoft considers that, if Bing were listed along with Edge in the designation decision designating Microsoft as a gatekeeper, Article 6(3) of Regulation (EU) 2022/1925 would require Microsoft to prompt Edge users with a choice screen to select another online search engine by default. That list would include Google Search and would therefore further entrench Google Search’s position. <sup>(24)</sup>
- (19) In the fourth place, Microsoft submitted two observations in its reply of 5 December 2023 to the Commission’s preliminary findings in relation to the Commission’s use of the term “ecosystem” in those findings to refer to Microsoft’s services. Microsoft claimed that it has not referred to its products and services as an “ecosystem” in its notification of 3 July 2023. Furthermore, Microsoft argued that its products and services do not have the features of an “ecosystem”.

### 3.1.2. *The Commission’s assessment*

- (20) The Commission takes the view that, although Microsoft meets all of the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to its online search engine CPS Bing, Microsoft has provided sufficiently substantiated arguments demonstrating that it exceptionally does not satisfy the requirements laid down in Article 3(1)(b) of that Regulation in relation to that CPS, due to the circumstances in which that CPS operates. The Commission bases that view on all of the following considerations.
- (21) In the first place, the Commission examined Bing’s scale of usage by end users.
- (22) Based on the number of search queries <sup>(25)</sup> and clicks, <sup>(26)</sup> the market investigation confirmed Microsoft’s claim that Bing has a very limited scale of activities, both in absolute terms as well as in relative terms. The Commission considers that the number of search queries and clicks provides a reliable basis for assessing the scale of Bing, since those metrics are accurate indicators of the actual usage and relevance of an online search engine for enabling end users to find business users. <sup>(27)</sup>
- (23) The market investigation showed that Bing’s average monthly search queries in the period 2020-2022 accounted for less than [0-5]% of all monthly search queries on all major online search engines operating in the Union. The market investigation also showed that Bing’s share of search queries across all devices would not materially change even if the search query data of companies offering online search engine

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<sup>24</sup> Form GD, Annex A, paragraph 60.

<sup>25</sup> A search query has been defined in the context of this market investigation as a keyword or a string of keywords, voice request, phrase or other input by an end user into an online search engine on any subject, in order to perform searches of, in principle, all websites, or all websites in a particular language (see Article 2, point (5), of Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (OJ L 186, 11 July 2019, p. 57–79) and COMP Case AT.39740 - *Google Shopping*, recital (10)).

<sup>26</sup> A click is defined in the context of this market investigation as a selection, by an end user of the online search engine, of a search result returned by the online search engine following a search query.

<sup>27</sup> Recital (61) of Regulation (EU) 2022/1925 considers that gatekeepers’ access to such data constitutes an important barrier to entry and expansion, which undermines the contestability of online search engines. See also footnote 2 of Microsoft’s Form GD.

services by way of syndicating Bing’s search results (“search syndication partners”) were to be added to Bing’s search query data. <sup>(28)</sup>

- (24) In addition, data from third-party web analytics services <sup>(29)</sup> collected during the market investigation shows that Bing’s share of clicks across all devices in the Union is estimated to amount to approximately 3.3% of all clicks for the period 2020-2022. The market investigation confirmed that Bing’s average number of monthly clicks, in the same period, accounted for a similar share.
- (25) Furthermore, the market investigation confirmed Microsoft’s claim that, due to estimation challenges, <sup>(30)</sup> the monthly active end user metric does not fully reflect Bing’s intensity of use by end users. Despite the [*> 45 million*] monthly active end users on Bing across 2020-2022 in the Union, Bing’s share of search queries and clicks still accounts for less than 5% of all search queries and clicks for the same period. In contrast, Google Search reaches shares exceeding 90% of all search queries and clicks in that period. Bing’s low shares of usage, in terms of search queries and clicks, show that Bing’s intensity of use is relatively low in comparison to the overall scale of the online search engine CPS category as well as in comparison to Google Search.
- (26) The Commission also assessed the relevance of the daily active user metric in light of Microsoft’s arguments on this point. The Commission considers that that metric is not in line with the definition of an end user of an online search engine within the meaning of Section E of the Annex to Regulation (EU) 2022/1925. It also suffers from estimation challenges, for instance it is only based on [*Details of commercial activities*]. That metric therefore does not fully and accurately reflect Bing’s intensity of use by end users. In any event, if the number of daily active users were to be considered relevant for the purposes of the market investigation (*quod non*), Bing’s share of daily active users would be consistent with Bing’s share of usage computed on search queries and clicks shares (less than 5%) as the number of daily active users amounts to [*< 45 million*] on average for 2020-2022 in the Union, which represents [*0-5*]% of the Union’s regular Internet users. <sup>(31)</sup>
- (27) On these bases, the Commission considers that Bing’s low scale of usage by end users indicates that Bing is not an important gateway for business users to reach end users.

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<sup>28</sup> Based on data from the market investigation, adding the query data of search syndication partners to Bing’s query data would increase Bing’s share by around [*0-5*]%.  
<sup>29</sup> See: <https://gs.statcounter.com/search-engine-market-share/all/europe/#monthly-202001-202212-bar> (accessed on 8 November 2023). This includes figures for clicks on Bing, Google Search, DuckDuckGo, Ecosia, Seznam, Qwant, Mail.ru, t-online, StartPage, Petal Search, Yahoo, Yandex, Baidu and others. Statcounter’s data is based on “search engine referrals”. “Search engine referrals” are tracked by Statcounter when a person opens a search engine in its web browser or clicks/taps into a browser search box, it then enters its search and looks at the search engine results page, and it clicks/taps on a website from the search engine results page and loads the desired website (See [FAQ | Statcounter Global Stats](#)). Another source, SimilarWeb, also estimated Bing’s worldwide share of online search engine traffic and engagement based on page views between July 2022 and June 2023 at 3.2%. See <https://www.similarweb.com/engines/> (accessed on 8 November 2023).

<sup>30</sup> [*Details of commercial activities*].

<sup>31</sup> Digital Economy and Society Index 2022 report, p.22, accessible here: <https://digital-strategy.ec.europa.eu/en/policies/desi> (accessed on 8 November 2023). In 2021, regular Internet users stood at 87% (at least weekly usage).



- (28) In the second place, the Commission examined Microsoft’s argument relating to the low advertising spent on the online search engine CPS Bing and whether Bing could be considered an important gateway for search syndication partners.
- (29) Bing’s limited scale of usage by end users indicates not only that Bing is not an important gateway for end users to find business users, but also that it is not an important gateway for business users to reach end users. Online search engines are digital services that allow end users to input queries to perform searches and, among other activities, to find businesses. Consequently, business users of online search engines use those online search engines to reach end users. Limited usage of an online search engine by end users to find businesses therefore necessarily translates into limited reliance by those business users of online search engines to reach end users.
- (30) Microsoft’s argument relating to the low advertising spent on the online search engine CPS Bing is not decisive for the purpose of rebutting the presumption laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 in relation to the qualification of that CPS as an important gateway, since advertisers are not the relevant business users of online search engine services. In any event, while the Commission does not deny that certain advertisers on Bing specifically, and on online search engine services more generally, may also meet the definition of a business user of online search engine services, it is necessary to consider all business users for the purpose of rebutting the presumption in Article 3(2) of Regulation (EU) 2022/1925, and not only those that are paid advertisers, because non-advertising business users may still rely on Bing to gain visibility for their activity.<sup>32</sup>
- (31) The market investigation also considered whether Bing could be considered an important gateway for search syndication partners. (33) The Commission considers that it is not necessary to conclude on this aspect, since it is irrelevant in the context of the legal test set out in Article 3(1)(b) of Regulation (EU) 2022/1925. This is because search syndication partners do not fall within the definition of ‘business users’ of online search engines within the meaning of Regulation (EU) 2022/1925. As defined in Article 2(21) of Regulation (EU) 2022/1925, business users are those “using” the CPS. Search syndication partners are not “using” the CPS as such to reach end users. Rather they syndicate third party search engine results.
- (32) In the third place, the market investigation did not find support for the remaining arguments raised by Microsoft seeking to demonstrate that Bing is not an important gateway for business users to reach end users.
- (33) First, the market investigation has not confirmed Microsoft’s claim that the Bing crawler (Bingbot) would be blocked significantly more often than the one operated by Google Search. In fact, it appears that only a limited share of EU domains ([0-

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<sup>32</sup> In any event, the Commission found that companies that advertise on Bing allocate only a small share of their advertising budget to Bing compared to Google Search. For instance, one respondent to the eRFI questionnaire addressed to business users of Microsoft Advertising and Xandr mentioned that “According to Mediametrie NetRatings August 2023 figures, Bing Search has no exclusive users compare to Google Search so the impact of not using Bing Search is very marginal.”. Another stated that “We do not consider Bing to be relevant for us. Its reach is very limited.”.

<sup>33</sup> Microsoft has several search syndication agreements with companies providing online search engine services to end-users, by which Microsoft allows the latter to use, and present on their websites, search results generated by Bing’s search engine algorithm.

5] %) <sup>(34)</sup> block Bingbot from accessing at least one of their URLs, while allowing at least one other search crawler (Google, Yandex or Baidu). <sup>(35)</sup> This share appears negligible, especially when considering that other search crawlers, first and foremost Google Search, have significantly higher shares of websites blocking them.

- (34) Second, the market investigation also did not enable the Commission to conclude on the extent to which websites engage in search engine optimisation for Bing, and also did not enable to conclude that the reach and usage of Bing's Webmaster tools is small compared to the Google Search Console, as argued by Microsoft.
- (35) Third, the market investigation has not confirmed the argument made by Microsoft on the IndexNow initiative. This argument is linked to Microsoft's claims around the blocking of search crawlers, which is not supported by the market investigation. Furthermore, the results of the market investigation showed that market participants largely either do not consider IndexNow as a promising initiative, or they do not see Google's participation as key to its success.
- (36) In the fourth place, the Commission considers that Microsoft's platform ecosystem does not currently sufficiently contribute to Bing being an important gateway for business users to reach end users. Contrary to Microsoft's view, the Commission considers that Microsoft offers a comprehensive set of digital products and services, some of which are offered in an integrated way, that overall form a platform ecosystem of products and services. While Microsoft provides several CPSs in the Union, as set out in this Decision, it is the Commission's view that the specific circumstances in which Microsoft's platform ecosystem operates currently do not sufficiently contribute to Bing being an important gateway for business users to reach end users.
- (37) First, Bing's average monthly search queries in the period 2020-2022 on Windows OS, the OS where Bing is the strongest ([80-90] % of Bing monthly average search queries on average for 2020-2022), accounted for only [10-20] % of all search queries on Windows OS. A similar conclusion is drawn as concerns Bing's average monthly clicks on Windows OS in the same period. Furthermore, while the market investigation shows that Bing's usage in terms of search queries is the strongest on Edge <sup>(36)</sup>, its average monthly search queries on Edge still account for only a fraction ([0-5] %) of all average monthly search queries on all web browsers considered in the market investigation. This despite Edge on Microsoft Windows OS being also the predominant access point for Bing ([60-70] % of Bing's overall average monthly search queries and clicks respectively across 2020-2022). The market investigation indicated that Google Search is by far the most used online search engine on Windows OS (80-90 % concerning both search queries and clicks respectively). This suggests that Bing does not benefit from any significant advantage due to its vertical integration in Microsoft's platform ecosystem.

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<sup>34</sup> Microsoft classified a domain as an EU domain if the dominant number of clicks for the domain was from on the EU Member States. See response to question 7 of the RFI of 20 September 2023.

<sup>35</sup> Data available for the week of 18 September 2023 only. Microsoft believes this percentage is consistent over time. See response to question 7 of the RFI of 20 September 2023.

<sup>36</sup> Across 2020-2022, Bing's monthly average number of search queries on Edge accounted for [70-80]% of all of Bing's average monthly search queries. Bing's average monthly search queries on Edge accounted for [40-50]% of all average monthly search queries on Edge considered in the market investigation, and its average monthly clicks on Edge accounted for slightly more.

- (38) Second, the Commission considers that neither Edge, nor Microsoft Advertising (see recitals (71) and (109)) constitute important gateways for business users to reach end users. They therefore do not in any way reinforce the importance of Bing as a gateway for business users to reach end users.
- (39) Third, the available evidence assessed in the context of the market investigation on the launch of Bing Chat, in February 2023<sup>(37)</sup>, supports Microsoft’s claim that Bing Chat has not led to a stable and significant increase in the usage of the online search engine Bing, over the period considered in the market investigation. Third-party web analytics data also indicate that Bing’s overall number of clicks on a search result has in fact declined across all devices following the launch of Bing Chat.<sup>(38)</sup> The Commission’s assessment on the launch of Bing Chat is based on the current facts and the situation of Microsoft Bing at the point of this Decision. The launch of Bing Chat took place in 2023 and its long-term impact on the usage of Bing may be different from the initial impact assessed in the context of the market investigation.
- (40) Finally, the Commission, for the purpose of this market investigation, did not assess Microsoft’s claim that a designation of both its Edge web browser CPS and its Bing online search engine CPS, and with this the application of Article 6(3) of Regulation (EU) 2022/1925, would have the unintended consequence of further strengthening Google Search at the expense of Bing. The clearly circumscribed legal test set out in Article 3(1)(b) and (c) of Regulation (EU) 2022/1925 does not allow for any such considerations since they do not concern the characteristics of the service that is the subject of the market investigation.’
- (41) For the reasons set out in recitals (22) to (41) above, the Commission concludes that the online search engine CPS Bing does not constitute an important gateway for business users to reach end users within the meaning of Article 3(1)(b) of Regulation (EU) 2022/1925.

## **3.2. Microsoft’s web browser CPS Edge**

### *3.2.1. The Undertaking’s view*

- (42) Together with its notification of 3 July 2023, Microsoft presented three main sets of arguments aimed at demonstrating that, although it meets all the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925, in relation to the web browser CPS Edge, it exceptionally does not satisfy the requirements listed in Article 3(1) of that Regulation due to the circumstances in which Edge operates.<sup>(39)</sup>
- (43) First, Microsoft argues that Edge does not constitute an important gateway for business users to reach end users in the Union due to its relatively small scale,

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<sup>37</sup> Form GD, Annex A, paragraph 26.

<sup>38</sup> See <https://gs.statcounter.com/search-engine-market-share/all/europe/#monthly-202001-202310> (accessed on 8 November 2023). However, StatCounter explains that it has no way of measuring the number of queries performed in Bing Chat. Rather, it only measures clicks to a website. StatCounter is therefore able to track clicks if the user clicked on the “learn more” websites shown in Bing Chat. If there is no such click, StatCounter is not able to track the activity within Bing Chat. See <https://gs.statcounter.com/faq#bing-chat> (accessed on 8 November 2023). Therefore, click data may not be representative of Bing Chat’s impact on the usage of search, since users typically get the answer they are looking for right away and may thus be less likely to click on a search result. Search queries may be more representative,

<sup>39</sup> Form GD, Annex B.

considering its overall scale of activities within the web browser CPS category, and in comparison with other web browsers offered in the Union.

- (44) Microsoft submitted data indicating that, in December 2022, Edge accounted for only 5.8% of the overall activity of web browsers (based on website visits with a certain web browser) across all devices. Edge's scale of usage is hence comparable to that of the rival web browser Firefox and only slightly larger than that of Samsung Internet Browser and Opera. Meanwhile, the scale of usage of Alphabet's Chrome and Apple's Safari web browsers amounted to 59% and 22% respectively, exceeding that of Edge approximately by ten and four times. <sup>(40)</sup>
- (45) Second, Microsoft argues that given Edge's link to other Microsoft services, the analysis of whether Edge constitutes an important gateway within the meaning of Article 3(1)(b) of Regulation (EU) 2022/1925 requires a holistic assessment of that CPS, taking into account its close connections with Bing and Microsoft Advertising. <sup>(41)</sup> Furthermore, Microsoft submits that Edge is not an important gateway due to the circumstances in which Edge operates, namely its reliance on a third-party browser engine.
- (46) As regards the need for a holistic assessment, Microsoft argues that Edge is strategically important to Microsoft's search business as a critical entry point for search queries, which fuel search engine improvements on its online search engine Bing. [80-90]% of Bing's volume comes from Edge. By extension, Microsoft claims that its search advertising business, Microsoft Advertising, generates the revenues that support Bing's development and scale, and is therefore directly correlated to Bing, and relatedly, Edge. <sup>(42)</sup> Microsoft argues that it underperforms across its web browser, search engine and online advertising CPSs, especially in comparison to the stronger CPSs of other gatekeepers, which further limits the importance of Microsoft's products and services. Microsoft submits that while it has a significant operating system in Windows OS, that operating system has a more open design than Apple's iOS or Alphabet's Android and does not drive the scale of Edge to a magnitude that would make Edge an important gateway. <sup>(43)</sup>
- (47) As regards Edge's reliance on a third-party browser engine, Microsoft points to the fact that it decided to stop offering its own browser rendering engine and to rely instead on a browser engine offered by a competitor. According to Microsoft, the main reason for that decision was that business users of Edge did not ensure operability with Microsoft's own browser rendering engine and software developers did not create extensions for Microsoft's browser rendering engine. <sup>(44)</sup> This means that websites were not supporting Microsoft's own proprietary browser rendering engine and therefore displayed suboptimal performance on Edge, leading users to

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<sup>40</sup> Form GD, Annex B, paragraphs 12 and 16. Microsoft has additionally outlined that Edge's scale is considerably smaller on mobile devices, which are increasingly used for web browsing, compared to larger web browsers. Based on StatCounter data provided by Microsoft, Safari's scale of usage on mobile devices is 33% while Edge's scale is less than 0.18% (Form GD, Annex B, paragraphs 17 to 22). On desktop, where Microsoft's operating system for PC, which includes Windows PC OS, has a scale of usage of approximately 78%, Edge accounted for around 12% whereas Google Chrome accounted for 60.5% (Form GD, Annex B, paragraph 22).

<sup>41</sup> Form GD, Annex B, paragraphs 23 to 25.

<sup>42</sup> Form GD, Annex B, paragraph 24.

<sup>43</sup> Form GD, Annex B, paragraph 25.

<sup>44</sup> Form GD, Annex B, paragraph 45.

switch to its competitors Chrome or Safari for an enhanced experience. <sup>(45)</sup> Microsoft claims that, as a result, it was left with no alternative but to abandon its own browser rendering engine and to use instead Chromium’s Blink engine, the design choices for which are, it argues, controlled by Alphabet. <sup>(46)</sup> As such, Microsoft submits that Edge cannot influence the operations of business users to its advantage because business users do not optimise their websites specifically for Edge. <sup>(47)</sup>

- (48) Third, Microsoft put forward some further arguments to support its claim that Edge does not constitute an important gateway for business users to reach end users. In particular, Microsoft argues that the number of active yearly business users of Edge is not a reliable indicator of the importance of Edge for its business users. In addition, Microsoft claims that the metric of monthly active end users does not reflect properly the actual usage of Edge and fails to take account of multi-homing in the web browser CPS category. Finally, Microsoft argues that listing Edge in the operative part of the decision designating it as a gatekeeper would not facilitate contestability, but rather further entrench the position of gatekeepers providing web browser CPSs and online search engine CPSs.
- (49) In its reply of 5 December 2023 to the Commission’s preliminary findings, Microsoft submitted two observations in relation to the Commission’s use of the term “ecosystem” to refer to Microsoft’s services. Microsoft claimed that it has not referred to its products and services as an “ecosystem” in its Form GD notification. Furthermore, Microsoft argued that its products and services do not have the features of an “ecosystem”.

### 3.2.2. *The Commission’s assessment*

- (50) The Commission takes the view that, although Microsoft meets all of the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to its web browser CPS Edge, Microsoft has provided sufficiently substantiated arguments demonstrating that it exceptionally does not satisfy the requirements laid down in Article 3(1)(b) of that Regulation in relation to that CPS, due to the circumstances in which that CPS operates. The Commission bases that view on all of the following considerations.
- (51) In the first place, Edge’s scale of usage in the web browser CPS category is low.
- (52) Based on the information made available to the Commission during the market investigation concerning the overall scale of usage of Edge, the Commission considers that Edge’s scale of usage in the web browser CPS category demonstrates that Edge is currently not a significant web browser in the Union and, therefore, not an important gateway for business users to reach end users.
- (53) First, in December 2022, Edge accounted only for 5.8% of webpage views across all types of devices in the region “Europe”. <sup>(48)</sup> Based on the same data source, between

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<sup>45</sup> Form GD, Annex B, paragraph 48.

<sup>46</sup> Form GD, Annex B, paragraph 49.

<sup>47</sup> Form GD, Annex B, paragraphs 49 to 51.

<sup>48</sup> Microsoft’s response of 19 September 2023 to the Commission’s questions of 13 September 2023 (RFI 2), Question 7 and Annex RFI2.7. Microsoft provided StatCounter data on web browser market share in Europe, disaggregated across different device types (mobile, tablet, desktop and console). In 2022, in total browser market share in Europe, Chrome leads (58.88%) followed by Safari (20.57%), Edge (5.75%), Firefox (5.74%) and Samsung Internet Browser (3.37%). Mobile and tablet web browser market share is also led by Chrome (57.79%) and Safari (31.02%), with Microsoft Edge only

2020 and 2022 Edge accounted only for 3.9% of webpage views across all types of devices in the region “Europe”.<sup>(49)</sup> This indicates Edge’s current 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.<sup>(50)</sup>

- (54) Second, Edge’s low scale of usage in the relevant web browser CPS category is further confirmed when compared to other web browsers provided by competitors, in particular those with the highest scale of webpage views across all types of devices. Chrome and Safari both substantially exceed Edge’s scale of webpage views across all devices in Europe (in December 2022: Chrome 59%, Safari 22%; from 2020-2022: Chrome 60%, Safari 20%).<sup>(51)</sup> In addition, Firefox’s relative scale (6.4%) is higher than Edge’s (3.9%) in the period 2020-2022.
- (55) Some respondents to the market investigation considered data used by Microsoft to be an inaccurate representation of Edge’s actual importance pointing to the fact that StatCounter web browser usage data submitted by Microsoft is based on a limited number of web domains.<sup>(52)</sup> However, alternative data sources provided by competitors corroborated, or displayed insignificant deviation from, StatCounter usage data. Measuring the scale of webpage views across all devices in the last 12 months in the Union, Cloudflare data shows Chrome to hold 59.2%, Safari 16.0%, Firefox 9.1% and Edge 5.6%.<sup>(53)</sup> According to Similarweb data based on website visits in October 2023, the relative scale of usage of Chrome in the Union based on webpage views is approximately 59.7%, Safari 22.9%, Edge 5.8% and Firefox 5.4%.<sup>(54)</sup>
- (56) Furthermore, some respondents to the market investigation pointed to the fact that Edge has a high number of end users, which exceeds the threshold laid down in Article 3(2)(b) of Regulation (EU) 2022/1925.<sup>(55)</sup> The market investigation however also showed, as explained in recital (54) above, that irrespective of the high number of end users, Edge’s scale of usage compared to other web browsers is significantly lower.
- (57) Third, the available evidence does not show, at this point in time, that the integration of Bing Chat, Windows and Microsoft office applications (M365) has translated into

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registering amongst “Others” at 0.29%. On desktop, Edge is stronger, with 11.82% of web browser market share. Chrome still leads the market at 60.13%, and Edge is followed by Firefox (11.12%) and Safari (9.26%).

<sup>49</sup> StatCounter data for the period November 2020 to October 2023 indicates an Edge scale of usage of 5.4% based on webpage views across all types of devices in the region “Europe”, trailing Chrome (59.6%) and Safari (20.4%).

<sup>50</sup> On Windows PC OS, scale of usage of Edge in the Union is approximately [20-30]% of all browser minutes in the period from September 2022 to August 2023 based on internal Microsoft data submitted as Microsoft’s response of 6 October 2023 to the Commission’s questions of 29 September 2023 (RFI 5), Question 5 and Annex RFI5.Q5. Scale of usage of Chrome is approximately [50-60]%, and of Firefox approximately [10-20]%.  
<sup>51</sup> Form GD, Annex B, paragraph 14.

<sup>52</sup> Mozilla’s and Vivaldi’s responses to the Commission’s questions of 20 September 2023, Questions C.1 and C.2.

<sup>53</sup> See Excel document “Scale data analysis.xlsx”.

<sup>54</sup> See Excel document “Scale data analysis.xlsx”.

<sup>55</sup> Mozilla’s response of 5 October 2023 to the Commission’s questions of 20 September 2023, Question C.2 and Minutes of meeting with Vivaldi of 20 October 2023.

a significant and sustained increase of Edge’s overall scale as a web browser.<sup>(56)</sup> Respondents to the market investigation pointing to the significance of Microsoft’s AI offering for the Edge web browser did not submit information calling this finding into question.<sup>(57)</sup>

- (58) Overall, the Commission considers that the above evidence on Edge’s actual current intensity of usage indicates that Edge is not an important gateway for business users to reach end users today.
- (59) In the second place, the Commission notes that Microsoft does not control the relevant web browser architecture, in particular because Edge does not have its own browser engine but is instead dependent on Chromium’s Blink browser engine. As pointed out by Microsoft,<sup>(58)</sup> browser engines perform a critical role within a web browser in determining how content is loaded and displayed on a web page to end users. Consequently, the way in which content is rendered on Edge by business users to end users is predicated on conforming with the Blink engine, rather than an autonomous choice by Microsoft as a web browser developer and operating system provider.
- (60) In the third place, the Commission considers that Microsoft’s platform ecosystem does not currently sufficiently contribute to Edge being an important gateway for business users to reach end users.
- (61) Contrary to what Microsoft claims, the Commission considers that Microsoft offers a comprehensive set of digital products and services, some of which are offered in an integrated way, that overall form a platform ecosystem of products and services. While Microsoft provides several services, including CPSs, in the Union, as set out in its notification,<sup>(59)</sup> and it is the provider of an operating system CPS on desktop computers listed in the decision designating it as a gatekeeper and on which its other CPSs can be accessed by end users, the Commission considers that the specific circumstances of Microsoft’s platform ecosystem do not indicate that Edge would today constitute an important gateway for business users to reach end users.
- (62) The market investigation confirmed that Edge belongs to Microsoft’s platform ecosystem comprising Windows PC OS, the leading operating system on desktop computers, for which Microsoft has been designated as gatekeeper under Regulation (EU) 2022/1925 as well as a suite of other services, such as its online search engine Bing or online advertising service Microsoft Advertising. Microsoft also offers certain applications under the M365 brand, which include Microsoft Teams and Outlook.
- (63) The market investigation indicated that Microsoft has sought for many years to rely on its platform ecosystem (especially its Windows PC OS) to drive Edge usage. Edge is pre-installed on Windows and OEMs are incentivised to set Edge as the default

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<sup>56</sup> StatCounter data shows an increase of Edge’s scale of usage based on website visits in the region “Europe” Across all devices of approximately 0.5 percentage points (comparing the average scale of usage in months July-October 2022, i.e., 5.9%, to July-October 2023, i.e. 6.4%). See Excel document “Scale data analysis.xlsx”.

<sup>57</sup> Competitors’ responses to the Commission’s questions of 20 September 2023, Question D.12.

<sup>58</sup> Form GD, Annex B, paragraph 49.

<sup>59</sup> Form GD, Section 2.1.

browser.<sup>(60)</sup> It is also pinned to the Windows taskbar by default. Microsoft configures Windows PC OS and certain M365 applications to open websites in Edge and, within the Edge web browser, shows Edge prompts or advertisements to end users seeking to download other web browsers. In addition, Microsoft gave preferential access to Bing Chat to users using the Edge web browser. Several respondents to the market investigation raised one or several of these practices and considered that Microsoft's platform ecosystem constitutes an advantage for the Edge web browser.<sup>(61)</sup>

- (64) For the following reasons, however, the Commission considers that the fact that Edge belongs to a wider platform ecosystem and the practices described in the previous recital do not mean that Edge currently constitutes an important gateway to reach business users.
- (65) First, the current limited role of Microsoft's platform ecosystem in increasing usage of Edge is reflected in Edge's scale today, which remains relatively small (see recitals (52) to (59)). Several respondents to the market investigation pointed to the higher scale of Edge on Windows OS devices, where Edge's position is supported by Microsoft's platform ecosystem. However, these respondents did not bring into question the fact that, despite Edge being pre-installed and set as the default on Windows devices, Chrome's scale of usage on these devices is significantly higher than Edge's, while Edge's scale of usage on these devices is only somewhat higher than that of Firefox.<sup>(62)</sup> Therefore, consideration of all available evidence permits the conclusion that Edge's relatively stronger performance on Windows PC OS enabled devices is not a sufficient indicator that Edge is an important gateway for business users to reach end users with respect to the web browser CPS.
- (66) Second, Microsoft's ability to use Edge as a lever to drive usage of other Microsoft products is at present, limited and insufficient to consider Edge an important gateway. The main example of leveraging Edge into other Microsoft products is by setting its Bing search engine as the default search engine on Edge. The low Union scale of usage of Bing of, depending on the metric, 3-5% on all devices reflects the limited relevance of Edge as a lever today.
- (67) Third, while the practices mentioned in recital (64) have not led to a significant share of usage which could be indicative that Edge is an important gateway for business users to reach end users, the Commission nonetheless notes that, following the designation of Microsoft as gatekeeper for its Windows PC operating system under Regulation (EU) 2022/1925, Article 6(3) of that Regulation obliges Microsoft to enable end users to easily un-install any software application and to easily change defaults settings on the operating system.

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<sup>60</sup> Form GD, Annex B, paragraph 38. OEMs are incentivised by Microsoft's marketing program "Jumpstart" to ship Windows devices with Edge as the pre-installed default web browser. They can pre-install alternative web browsers besides Edge without forgoing their financial benefits provided they set Edge as the default web browser. According to Microsoft's data, submitted as Microsoft's response of 12 December 2023 to the Commission's questions of 5 December 2023 (RFI 6), Question 2, Edge is set as the default browser on approximately [50-60]% of all devices with the Windows OS in the EU in the period November 2022 – December 2023.

<sup>61</sup> Business users' responses to the Commission's questions of 20 September 2023, Question C.14.

<sup>62</sup> In the period September 2022 to July 2023 and based on browser minutes on all devices with Windows operating system, Microsoft's scale of use was approximately [20-30]%, Chrome's [50-60]%, and Firefox's [10-20]%. See Excel document "Scale data analysis.xlsx".



- (68) Finally, the majority of responses of competitors suggested that Edge is an important gateway, arguing in particular that Edge represents an important part of the Microsoft platform ecosystem and referring to some practices that benefit Edge (e.g., pre-installation, default setting).<sup>(63)</sup> However, responses from business users (in particular, website owners, extension providers) and other industry players indicated that Edge is not an important gateway for them to reach end users. Less than one-third of business users and other industry participants considered Edge to be an important or crucial gateway, one-quarter as relevant, and approximately one-third as less or not relevant.<sup>(64)</sup> Only a very small number of business users and other industry participants considered that they cannot reach their end users through other web browsers than Edge.<sup>(65)</sup> Website owners considered Chrome as the most important web browser and Safari as the second most important, followed by Edge and Firefox, which are similarly ranked. Only a very small number of website owners considered Edge as the most or second most important browser.
- (69) The Commission’s assessment is based on the current facts and the situation of Edge at the point of this decision. However, the results of the market investigation showed that there may be potential for Edge becoming a more important web browser for business users to reach end users, in view of developments such as Microsoft’s launch and integration of AI-based services and features. The Commission will keep monitoring these trends.’
- (70) For the reasons set out in recitals (52) to (70) above, the Commission concludes that the web browser CPS Edge does not constitute an important gateway for business users to reach end users within the meaning of Article 3(1)(b) of Regulation (EU) 2022/1925.

### **3.3. Microsoft’s online advertising CPS Microsoft Advertising**

#### *3.3.1. The Undertaking’s view*

- (71) Together with its notification of 3 July 2023, Microsoft presented a set of arguments aimed at demonstrating that, although it meets all the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to its online advertising CPS Microsoft Advertising, it exceptionally does not satisfy the requirements listed in Article 3(1) of that Regulation due to the circumstances in which that CPS operates.<sup>(66)</sup>
- (72) In the first place, Microsoft put forward arguments regarding Microsoft Advertising’s scale of use. Microsoft submits that Microsoft Advertising does not constitute an important gateway for business users to reach end users in the Union within the meaning of Article 3(1)(b) of Regulation (EU) 2022/1925 due to its relatively small scale, considering the overall scale of activities within the online advertising CPS category, and when compared to other online advertising services offered in the Union.

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<sup>63</sup> Competitors’ responses to the Commission’s questions of 20 September 2023, Question F.1.

<sup>64</sup> A similar question was asked to different categories of business user and other industry player, the results of which have been collated. See business users’ responses to the Commission’s questions of 20 September 2023, Questions C.8, D.6, E.6 and other industry players’ responses to the Commission’s questions of 20 September 2023, Questions C.6, D.6.

<sup>65</sup> See business users’ responses to the Commission’s questions of 20 September 2023, Question C.6.

<sup>66</sup> Form GD, Section 2.4 and Annex C.

- (73) In particular, Microsoft claims that Microsoft Advertising accounts for only 3% of the combined revenues of seven of the more significant players worldwide, less than 6% of the overall scale of activities of search advertising worldwide, and less than 1% of the overall scale of activities of non-search advertising worldwide. <sup>(67)</sup> In addition, Microsoft argues that the scale of Microsoft Advertising is very dependent on Edge’s and Bing’s business, which Microsoft claims are of small scale themselves. <sup>(68)</sup>
- (74) In the second place, Microsoft put forward arguments regarding Microsoft’s products and services, referred to in its notification of 3 July 2023, not resulting in scale effects for Microsoft Advertising.
- (75) First, Microsoft argues that the analysis of whether Microsoft Advertising constitutes an important gateway requires a holistic assessment of that online advertising CPS, considering its close connections with Microsoft’s online search engine CPS Bing and its web browser CPS Edge, <sup>(69)</sup> given that over [80-90]% of revenues of Microsoft Advertising is related to ads served by Microsoft Advertising on Bing <sup>(70)</sup> and over [80-90]% of Bing’s volume comes from Edge, which is an important entry point for search queries entered into Bing. <sup>(71)</sup>
- (76) Second, Microsoft argues that Microsoft Advertising is not an important gateway with an entrenched and durable position in the market for online advertising services because it does not enjoy “very strong” data-driven advantages and network effects across Microsoft Advertising’s anchor properties, unlike those enjoyed by other undertakings offering online advertising services with considerable scale effects across their anchor properties. <sup>(72)</sup>
- (77) Third, Microsoft submitted two observations in its reply of 5 December 2023 to the Commission’s preliminary findings in relation to the Commission’s use of the term “ecosystem” in those findings to refer to Microsoft’s services. Microsoft claimed that it has not referred to its products and services as an “ecosystem” in its notification of 3 July 2023. Furthermore, Microsoft argued that its products and services do not have the features of an “ecosystem”.
- (78) In the third place, Microsoft put forward additional arguments demonstrating that Microsoft Advertising does not constitute an important gateway for business users to reach end users.
- (79) First, according to Microsoft, the fact that advertisers multi-home and use Microsoft Advertising as a residual alternative online advertising service, calls into question Microsoft’s gatekeeping role, as does the intensity of use that business users and end users make of Microsoft Advertising in comparison to Google’s and Meta’s online advertising services that are used far more often. <sup>(73)</sup>
- (80) Second, Microsoft submits that Microsoft’s advertising tracking tool, “Universal Event Tracking” is used only by a minority of Microsoft Advertising’s business

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<sup>67</sup> Form GD, Annex C, paragraphs 9 to 16 and 19 to 23.

<sup>68</sup> Form GD, Annex C, paragraphs 13 to 15 and 31.

<sup>69</sup> Form GD, Annex C, paragraphs 24 to 30.

<sup>70</sup> Form GD, Annex C, paragraph 13: Microsoft explains that USD [Revenue details] out of a total of USD 12.02 billion of Microsoft Advertising’s revenue comes from general search advertising.

<sup>71</sup> Form GD, Annex C, paragraph 30.

<sup>72</sup> Form GD, Annex C, paragraphs 42 to 48.

<sup>73</sup> Form GD, Annex C, paragraphs 35 to 41.

users, thereby showing the limited importance of Microsoft Advertising for business users and demonstrating that Microsoft Advertising is not an important gateway. <sup>(74)</sup>

- (81) Third, Microsoft noted that the trend away from desktop online advertising towards mobile online advertising reduces the importance of Microsoft Advertising as an online advertising service. <sup>(75)</sup>

### 3.3.2. *The Commission's assessment*

- (82) The Commission takes the view that, although Microsoft meets all of the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to its online advertising CPS Microsoft Advertising, Microsoft has provided sufficiently substantiated arguments demonstrating that it exceptionally does not satisfy the requirements laid down in Article 3(1)(b) of that Regulation in relation to that CPS, due to the circumstances in which that CPS operates. The Commission bases that view on all of the following considerations.
- (83) In the first place, the market investigation confirmed Microsoft's arguments regarding the limited scale of Microsoft Advertising in light of the overall scale of activities of online advertising services in the Union. In particular, the results of the market investigation indicate that, in 2022, Microsoft Advertising's scale of use represented less than 5% of the overall usage in the Union with respect to the total scale of use among all competitors who responded to the Commission's request for information in the context of this investigation.
- (84) Compared to the largest undertakings providing online advertising services that have been designated as gatekeepers under Regulation (EU) 2022/1925 thus far, the market investigation confirmed that the online advertising-related revenues of Alphabet and Meta were 16 to 40 times higher than Microsoft Advertising's revenue in the Union in 2022. Similarly, regarding the scale in terms of ad impressions displayed to end users, other top providers of online advertising services displayed multiple times more ad impressions than Microsoft Advertising in the Union in 2022.
- (85) The revenues of Amazon derived from Amazon Ads in the Union in 2022, an online advertising CPS listed in Amazon's designation decision, were significantly larger than the revenues Microsoft derived from its online advertising CPS Microsoft Advertising's revenues in the Union in 2022.
- (86) It is also worth highlighting that the number of business users of other top providers of online advertising services were multiple times higher than that of Microsoft Advertising in the Union in 2022.
- (87) The market investigation thus confirmed that Microsoft Advertising has a relatively small scale compared to the overall scale of activities within the online advertising CPS category in the Union, as well as compared to the main providers of online advertising services in the Union.
- (88) In the second place, the market investigation confirmed that Microsoft's platform ecosystem (especially Bing) does not currently result in sufficient scale effects benefitting Microsoft Advertising.
- (89) First, it confirmed Microsoft's arguments about the close connection between Microsoft Advertising and Microsoft's online search engine Bing as a result of

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<sup>74</sup> Form GD, Annex C, paragraphs 49 to 52.

<sup>75</sup> Form GD, Annex C, paragraphs 53 to 56.

Microsoft Advertising's focus on search advertisements displayed on Bing. In particular, search advertising accounted for, on average, [90-100]% of Microsoft Advertising's advertising revenues (including Xandr in 2022) in the Union across the three financial years 2020 and 2022. <sup>(76)</sup>

- (90) Second, Microsoft Advertising's strong focus on search advertising is further supported by the existing syndication agreements between Bing and its syndication partners who are required to primarily use advertising from Bing. <sup>(77)</sup> It follows that search advertising is currently a more significant part of Microsoft Advertising than its non-search advertising business in the Union, thereby demonstrating the current strong ties between Microsoft Advertising and Bing.
- (91) The fact that Microsoft Advertising has partially outsourced, since 2015 [*Details of commercial activities*], the intermediation of its proprietary non-search advertising inventory (e.g., Xbox <sup>(78)</sup>, Windows PC OS) to Yahoo via an Advertising Sales and Services Agreement <sup>(79)</sup> further confirms Microsoft's argument that, for the time being, Microsoft Advertising's business in the Union is focused on and closely linked to its online search engine Bing. This holds true even when considering the partnership Microsoft entered with Netflix to exclusively intermediate, as third-party provider, advertisements on Netflix' inventory, [*Details of commercial activities*]. <sup>(80)</sup>
- (92) The market investigation therefore largely confirmed the current limited impact of Microsoft's platform ecosystem on Microsoft Advertising given its current focus on displaying search advertising on its online search engine Bing and given Bing's overall small scale of activity in the online search engine CPS category itself. <sup>(81)</sup>
- (93) In contrast, the market investigation did not confirm Microsoft's argument on Microsoft Advertising not benefitting from strong data-driven advantages and network effects.
- (94) In particular, the market investigation confirmed that (i) Microsoft has a platform ecosystem allowing it to collect engagement data from different sources, which may benefit its online advertising service in the future and (ii) even if LinkedIn Marketing Solutions is a separate service from Microsoft Advertising as found in this Decision, some data sharing (e.g., [*Details of commercial activities*] <sup>(82)</sup>), although limited to

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<sup>76</sup> Microsoft's response of 20 September 2023 to the Commission's questions of 11 September 2023 (RFI 2), Question 3 and amended version sent on 10 October 2023.

<sup>77</sup> The syndication agreement with DuckDuckGo mandates that DuckDuckGo may [*Details of commercial activities*]. The syndication agreement with Yahoo requires Yahoo to use Microsoft as [*Details of commercial activities*]. The syndication agreement with Ecosia Yahoo states that Ecosia must [*Details of commercial activities*].

<sup>78</sup> Yahoo [*Details of commercial activities*] to intermediate ads on Xbox in [*Details of commercial activities*], see Microsoft's response of 18 October 2023 to the Commission's questions of 13 October (RFI 4), Question 9 and Advertising Sales and Services Agreement between AOL Advertising Inc. (later called Yahoo) and Microsoft of 30 June 2015.

<sup>79</sup> [*Details of commercial activities*].

<sup>80</sup> Microsoft's response of 20 September 2023 to the Commission's questions of 11 September 2023 (RFI 2), Question 25.

<sup>81</sup> See Preliminary findings pursuant to Article 17(3) of Regulation (EU) 2022/1925 on Microsoft's online search engine Bing, paragraph 32, which establishes that Bing's intensity of use is relatively low in comparison to the overall scale of the online search engine CPS category.

<sup>82</sup> Form GD, footnote 15.

specific purposes, takes place between Microsoft's two online advertising services. <sup>(83)</sup>

- (95) Third, contrary to Microsoft, the Commission considers that Microsoft offers a comprehensive set of digital products and services, some of which are offered in an integrated way, that overall form a platform ecosystem of products and services.
- (96) However, as explained above in recitals (84) to (93), as of today, these data-driven advantages and network effects have not resulted in a significant scale of use of Microsoft Advertising via Microsoft's platform ecosystem and therefore do not make that CPS an important gateway for business users to reach end users.
- (97) In the third place, the market investigation results confirmed that the usage of Microsoft Advertising by business users is low.
- (98) First, the market investigation showed that only very few surveyed advertisers and publishers use Microsoft Advertising exclusively and many use Microsoft Advertising only as a secondary provider.
- (99) Second, the market investigation revealed that Microsoft Advertising provides public application programming interfaces ("APIs") (e.g., Bing Ads API) to allow third-party online advertising services to integrate Microsoft Advertising into their online advertising services for free, with the goal of attracting more advertisers towards Microsoft Advertising at least as a secondary provider. <sup>(84)</sup> On that basis, Alphabet's Search Ads 360 tool has integrated Microsoft Advertising and enabled advertisers to monitor and manage their bids and investments across Google Search and Bing. <sup>(85)</sup> This shows that Microsoft Advertising is dependent on third-parties, such as for example Alphabet, to integrate all features and functionalities of Microsoft Advertising, who have the control over the extent of the support and interoperability of Microsoft Advertising features with their own third-party ad services. <sup>(86)</sup>
- (100) While Microsoft Advertising has developed a tool for multi-channel advertising integrated with third-party ad APIs, advertisers' usage of this tool is minimal and Microsoft Advertising has not profited from the integration, even though Microsoft Advertising offered it for free, while for example Alphabet's Search Ads 360 tool charges a usage fee. <sup>(87)</sup>
- (101) This finding further confirmed Microsoft's claim that Microsoft Advertising cannot be considered an important gateway for business users to reach end users, as Microsoft Advertising remains in need to attract business users including via offering convenient integrations with third-party ad services, which are Microsoft Advertising's competitors.
- (102) Third, regarding the argument that advertisers do not primarily consider Microsoft's advertising tracking tool "Universal Event Tracking" as important to measure their

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<sup>83</sup> Data Transfer Agreement between LinkedIn and Microsoft.

<sup>84</sup> Microsoft's response of 18 October 2023 to the Commission's questions of 13 October (RFI 4), Question 8.

<sup>85</sup> Microsoft's response of 18 October 2023 to the Commission's questions of 13 October (RFI 4), Question 8 and Microsoft's response of 31 October 2023 to the Commission's questions of 24 October 2023 (RFI 5), Question 1.

<sup>86</sup> Microsoft's response of 31 October 2023 to the Commission's questions of 24 October 2023 (RFI 5), Question 1.

<sup>87</sup> Microsoft's response of 31 October 2023 to the Commission's questions of 24 October 2023 (RFI 5), Question 1.

advertising campaign across their third-party websites, the market investigation results largely confirmed that Universal Event Tracking is not used by many advertisers who are business users of Microsoft Advertising. In particular, only half of the advertisers who indicated that they use Microsoft's Universal Event Tracking tool in their responses to the Commission's request for information indicated to not use another tracking tool. Given that the results of the market investigation are likely to favour Universal Event Tracking over other tracking tools,<sup>(88)</sup> the market investigation confirmed that Universal Event Tracking is not used as a primary tracking tool by Microsoft Advertising's business users in the online advertising market. This suggests that Microsoft Advertising is not an important gateway for business users to reach end users, because advertisers and publishers are not sharing end user data collected across their websites with Microsoft Advertising to allow Microsoft Advertising to improve its advertising campaign metrics.

- (103) Fourth, regarding the argument on the trend towards mobile advertising reducing the importance of Microsoft Advertising (which is primarily based on advertising on desktop devices), the market investigation largely confirmed the rising trend towards advertising on mobile devices and Microsoft Advertising's currently limited presence on mobile devices.<sup>(89)</sup>
- (104) In the fourth place, and although the Commission's assessment is based on the facts and the situation of Microsoft Advertising at the time of the conclusion of the market investigation, the results of the market investigation revealed a number of factors that point to a potential development of Microsoft Advertising in the future.
- (105) First, the acquisition of Xandr in 2022<sup>(90)</sup> is beginning to positively impact Microsoft Advertising, which is reflected in an increase in the total number of non-search ad impressions in 2022.
- (106) Second, even excluding Xandr, the number of non-search ad impressions of Microsoft Advertising [*grew 0-5 times in size*] between 2021 and 2022 (mainly on proprietary advertising inventory).<sup>(91)</sup> Microsoft has partially outsourced its proprietary non-search advertising inventory through an agreement with Yahoo, [*Details of commercial activities*].<sup>(92)</sup> The [*Details of commercial activities*] agreement with Yahoo comes to an end in [*Details of commercial activities*], creating opportunities for Microsoft Advertising to grow its non-search advertising business.
- (107) Third, Microsoft's acquisition of the gaming publisher Activision, which includes mobile games, creates opportunities for Microsoft Advertising to expand its mobile advertising.
- (108) For the reasons set out in recitals (84) to (108) above, the Commission concludes that the online advertising CPS Microsoft Advertising does not constitute an important

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<sup>88</sup> As the requests for information were specifically addressed to business users of Microsoft Advertising, the proportion of advertisers using Microsoft's Universal Event Tracking tool is not indicative of its usage compared to other tracking tools.

<sup>89</sup> In 2022 only [0-5]% of Bing's advertising revenue came from mobile devices. Microsoft's response of 10 October 2023 to the Commission's questions of 4 October 2023 (RFI 3), Question 7, Tables RFI3.5 and Table RFI3.6.

<sup>90</sup> Form GD, paragraphs 23 and 119.

<sup>91</sup> Microsoft's response of 18 October 2023 to the Commission's questions of 13 October (RFI 4), Question 3.

<sup>92</sup> Microsoft's response of 31 October 2023 to the Commission's questions of 24 October 2023 (RFI 5), Question 6 and [*Details of commercial activities*].

gateway for business users to reach end users within the meaning of Article 3(1)(b) of Regulation (EU) 2022/1925.

#### 4. CONCLUSION

- (109) In light of the foregoing considerations, the Commission closes the market investigations opened pursuant to Article 17(3) of Regulation (EU) 2022/1925 into Microsoft's online search engine CPS Bing, its web browser CPS Edge, and its online advertising CPS Microsoft Advertising by concluding that those CPSs should not be listed as important gateways for business users to reach end users in the decision designating Microsoft as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925.
- (110) That conclusion is 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 it is based, or if this Decision was based on incomplete, incorrect or misleading information.

HAS ADOPTED THIS DECISION:

#### *Article 1*

Microsoft shall not be designated as a gatekeeper pursuant to Article 3(4) of Regulation (EU) 2022/1925 in relation to its online search engine core platform service Bing, its web browser core platform service Edge, and its online advertising core platform service Microsoft Advertising.

#### *Article 2*

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

Done at Brussels, 12.2.2024

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