



EUROPEAN COMMISSION

***CASE DMA.100042 ByteDance – Online
advertising services***

(Only the English text is authentic)

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

Article 3(3) Regulation (EU) 2022/1925

Date: 13/05/2024

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EUROPEAN COMMISSION

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PUBLIC VERSION

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**Subject: Case DMA.100042 – ByteDance – Online advertising services
Letter concerning ByteDance’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 (“DMA”),¹ the Commission shall designate as a gatekeeper an undertaking providing core platform services (“CPSs”) that meet the thresholds set out in Article 3(2) of that Regulation.
- (2) On 5 September 2023, ByteDance Ltd., together with all legal entities directly or indirectly controlled by ByteDance Ltd. (hereinafter collectively referred to as “ByteDance”), was designated as a gatekeeper in relation to its online social networking service TikTok pursuant to Article 3 of Regulation (EU) 2022/1925.²
- (3) On 1 March 2024, ByteDance notified the Commission,³ pursuant to Article 3(3), first subparagraph, of Regulation (EU) 2022/1925, that it meets all the thresholds

¹ OJ L 265, 12.10.2022, p. 1-66.

² European Commission, Case DMA.100040 ByteDance – Online social networking services, 5 September 2023, Articles 1 and 2.

³ Notification pursuant to Article 3 of Regulation (EU) 2022/1925, Form for Gatekeeper Designation (GD), notified on 1 March 2024 (“Form GD”).

laid down in Article 3(2) of that Regulation in relation to ByteDance's online advertising service TikTok Ads.⁴

- (4) Together with its notification, ByteDance presented 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 TikTok Ads, it exceptionally does not satisfy the requirements listed in Article 3(1) of that Regulation due to the circumstances in which TikTok Ads operates.⁵

2. THE UNDERTAKING

- (5) ByteDance is a global technology group that operates the online social networking platform TikTok.⁶ ByteDance's parent company is ByteDance Ltd., which was founded in 2012, is incorporated in the Cayman Islands [...].⁷ According to ByteDance, the "*TikTok service is an entertainment and content-sharing platform that lets users post, view or search for videos, as well as comment on/like videos and follow chosen creators*" and TikTok is the only service through which ByteDance is meaningfully active in the Union.⁸

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

- (6) 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

- (7) 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).

⁴ Form GD, paragraph 9.

⁵ Form GD, paragraph 10; Form GD, Annex 2.

⁶ Form GD, paragraph 1.

⁷ Form GD, paragraphs 1 and 16.

⁸ Form GD, paragraph 3.

- (8) 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.
- (9) 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:
- a) 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;⁹
 - b) 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;¹⁰ 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.¹¹
- (10) 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.¹² 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
- (11) 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.
- (12) 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

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

¹⁰ Annex to Regulation (EU) 2022/1925, Section D, point 2(c)(i).

¹¹ Annex to Regulation (EU) 2022/1925, Section D, points 2(b) and (c)(ii).

¹² The same applies when the undertaking provides CPSs in an integrated way.

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

- (13) According to Article 3(1) of Regulation (EU) 2022/1925, the Commission is to designate an undertaking as a gatekeeper if it fulfils three cumulative requirements, namely: (a) it has a significant impact on the internal market; (b) it provides a CPS which is an important gateway for business users to reach end users; and (c) it enjoys an entrenched and durable position, in its operations, or it is foreseeable that it will enjoy such a position in the near future.
- (14) 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.
- (15) 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.
- (16) 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

- (17) 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.
- (18) 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) of Regulation (EU) 2022/1925. 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.
- (19) 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.
- (20) 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 CORE PLATFORM SERVICE: TIKTOK ADS

- (21) ByteDance notified TikTok Ads as an online advertising CPS within the meaning of Article 2, point (2), subpoint (j), of Regulation 2022/1925 that meets the thresholds laid down in Article 3(2)(b) and (c) of that Regulation.

4.1. Core platform service qualification and delineation

- (22) According to ByteDance, TikTok Ads offers online advertising services as an integrated part of its TikTok entertainment platform. On TikTok, ads are delivered to users within the user's content feed and in a similar video format to videos

shown in this content feed.¹³ Users can either skip the ad by scrolling past, or engage with the ad by, for example, viewing and possibly clicking through to a website. Other advertising options include ads which are shown upon first opening the app (“TopView”), “Branded Missions” where users create and share content in collaboration with an advertiser, “Branded Effects”, which are custom video effects sponsored by brands, that may incorporate a brand’s IP, and “Spark Ads” enabling advertisers to increase the visibility of various types of organic videos from any TikTok account.¹⁴ All the ads displayed are clearly marked with the “Sponsored” or “Ad” icon.

- (23) Advertisers can buy ad space on TikTok Ads on a reservation or auction basis. Ads space is sold following two propositions. For reservation ads, the advertiser sets a budget to secure the desired number of video views or another metric. For auction ads, advertisers use TikTok’s self-serve tools to bid for and purchase in-feed advertising and manage their own campaign.¹⁵ TikTok Ads serves both “Enterprise customers” which are key accounts and agencies, and Small and Medium Businesses, advertising on a self-serve basis with TikTok Ads Manager.¹⁶ In 2023, TikTok Ads generated EUR [...] in EU revenues from advertisers.¹⁷ This represents [a majority] of TikTok’s EU revenues.

- (24) ByteDance submits that TikTok Ads only sells proprietary advertising space on the TikTok platform.¹⁸ ByteDance does not provide online advertising intermediation services in the Union. ByteDance acknowledges that for notification purposes, services offered in an integrated way may give rise to separate CPSs if they do not form part of the same CPS category pursuant to Article 2(2) of that Regulation, and that this is the case for TikTok Ads.¹⁹

- (25) Article 2, point (2), subpoint (j), of Regulation (EU) 2022/1925 lists online advertising services as one of the categories of CPSs within the meaning of that Regulation. According to that provision, online advertising services include “*any advertising networks, advertising exchanges and any other advertising services*”. The Annex to Regulation (EU) 2022/1925, which specifies the methodology for identifying and calculating active end users and active business users of online advertising services, refers to “*proprietary sales of advertising space as well as advertising intermediation services*”.²⁰ To be designated as gatekeeper in relation to an online advertising CPS, Article 2, point (2), subpoint (j), of Regulation 2022/1925 requires the undertaking providing those advertising services to provide at least one other CPS listed in Article 2, point (2), subpoints (a) to (i), of that Regulation.

¹³ Form GD, paragraph 21.

¹⁴ Form GD, paragraphs 27-28.

¹⁵ Form GD, paragraph 29.

¹⁶ Form GD, paragraph 30.

¹⁷ Form GD, paragraph 33.

¹⁸ Form GD, paragraph 20.

¹⁹ Form GD, paragraph 21. ByteDance’s acknowledgement is based on Section D, paragraph 2(c)(i) of the Annex to the Regulation (EU) 2022/1925.

²⁰ Section E of the Annex to Regulation (EU) 2022/1925.

- (26) The Commission therefore considers that TikTok Ads constitutes an online advertising service within the meaning of Article 2, point (2), subpoint (j), of Regulation (EU) 2022/1925, and fulfilling the aforementioned definition. TikTok Ads comprises all advertising services, tools, features, interfaces and functionalities that interact with each other, the ultimate purpose of which is exposing end users to ads. The Commission further considers that TikTok Ads constitutes an online advertising CPS, distinct from ByteDance’s online social networking CPS TikTok.

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

- (27) ByteDance submits that it meets the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to TikTok Ads.²¹
- (28) As regards the threshold laid down in Article 3(2)(a) of Regulation (EU) 2022/1925, ByteDance submits that it: (i) had a global market capitalisation in the last financial year of above EUR 75 billion (i.e. EUR [...]); and (ii) provided TikTok Ads in at least three Member States.²²
- (29) As regards the thresholds laid down in Article 3(2)(b) and (c) of Regulation (EU) 2022/1925, ByteDance submits that TikTok Ads 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.²³
- (30) More specifically, in respect of TikTok Ads’ monthly active end users established or located in the Union, ByteDance submits the best estimate figures shown in Table 1 below.²⁴

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

Year	MAEU
2021	[> 45 million]
2022	[> 45 million]
2023	[> 45 million]

Source: Form GD, Section 4.1, Table 1

- (31) As regards TikTok Ads’ yearly active business users established in the Union, ByteDance submits the best estimate figures shown in Table 2 below.²⁵

²¹ Form GD, paragraphs 24 and 36-55.

²² Form GD, paragraphs 37-38.

²³ Form GD, paragraphs 40-55.

²⁴ Form GD, paragraph 43.

²⁵ Form GD, paragraph 49.

Table 2: Yearly active business users of TikTok Ads in the Union in the last three financial years

Year	YABU
2021	[> 10.000]
2022	[> 10.000]
2023	[> 10.000]

Source: Form GD, Section 4.2, Table 2

- (32) The Commission therefore considers ByteDance to meet the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to TikTok Ads.
- (33) As regards the thresholds laid down in Article 3(2)(b) and (c) of Regulation (EU) 2022/1925, it is not necessary to determine whether ByteDance’s approach to identifying and estimating monthly active end users and yearly business users of the online advertising CPS TikTok Ads is sufficiently inclusive, in line with the relevant definition in Section E of the Annex to Regulation (EU) 2022/1925, given that the aforementioned thresholds are met, based on the information provided by ByteDance.

4.3. Conclusion

- (34) Based on the information provided by ByteDance, the Commission concludes that TikTok Ads constitutes an online advertising CPS within the meaning of Article 2, point (2), subpoint (j) of Regulation 2022/1925 that meets the thresholds laid down in Article 3(2) of that Regulation.

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

- (35) In line with Article 3(5) of Regulation (EU) 2022/1925, together with its notification, ByteDance 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 the case of TikTok Ads, even though the thresholds laid down in Article 3(2) of that Regulation are met by ByteDance in relation to its TikTok Ads CPS.²⁶

5.1. The Undertaking’s view

- (36) ByteDance’s main arguments put forward to demonstrate that TikTok Ads lacks significant impact on the EU internal market, and therefore does not satisfy the requirement laid down in Article 3(1)(a) of Regulation (EU) 2022/1925, can be summarised as follows.

²⁶ Form GD, paragraph 10; Form GD, Annex 2.

- (37) First, TikTok remains at the early stages of monetising its platform in the EU with revenues [...] below the relevant EUR 7.5 billion threshold.²⁷
- (38) Second, TikTok's EU activities [...] to build its customer base.²⁸
- (39) Third, TikTok only meets the threshold contained in Article 3(2)(a) of Regulation (EU) 2022/1925 on the basis of ByteDance's group global market valuation driven by its successful and mature Asian businesses, which have no connection to the Union and therefore is not indicative of TikTok's current or future ability to monetise users in the Union.²⁹
- (40) ByteDance's main arguments put forward to demonstrate that TikTok Ads exceptionally is not an important gateway for business users to reach end users, and therefore does not satisfy the requirement laid down in Article 3(1)(b) of Regulation (EU) 2022/1925, can be summarised as follows.
- (41) First, TikTok Ads has a [small] presence in the Union compared to the overall size of the online advertising CPS in the Union, and this notably stems from the fact that TikTok Ads has a small scale in terms of share of advertising spend in the Union.³⁰
- (42) ByteDance further submits that TikTok Ads is [comparison of relative scale] in scale than Microsoft's advertising service (which represents less than 3% of the global online advertising revenues), for which the Commission recently decided not to designate Microsoft as a gatekeeper.³¹ ByteDance considers that in addition it has none of the Microsoft's distinctive factors (i.e., a third-party ad exchange, multiple ad properties, including LinkedIn, a broad portfolio of CPS products in powerful positions, including operating systems, cloud, web browser and other strong non-CPS offerings, such as productivity applications).³² ByteDance further contends that the relative scale of TikTok Ads within the online advertising CPS is comparable, in magnitude, to the relative scale of Samsung's Internet Browser in the web browser CPS, for which the Commission accepted the rebuttal within 45 working days.³³
- (43) Second, most of TikTok Ads' advertisers, including TikTok's largest advertisers, only spend [...] amounts on TikTok Ads and use it for [details of commercial

²⁷ Form GD, Annex 2, paragraphs 96-102.

²⁸ Form GD, Annex 2, paragraph 103.

²⁹ Form GD, Annex 2, paragraphs 104-105.

³⁰ Form GD, Annex 2, paragraphs 27-41.

³¹ European Commission, Case DMA.100015 – Microsoft – Online search engines, DMA.100028 – Microsoft – Web browsers, DMA.100034 – Microsoft – Online advertising services, 12 February 2024, whose public versions are available at <https://digital-markets-act-cases.ec.europa.eu/search?caseInstrument=InstrumentDMA&sortField=caseLastDecisionDate&sortOrder=DESC>.

³² Form GD, paragraph 13(iii).

³³ Form GD, paragraph 13(iv); Form GD, Annex 2, paragraph 108.

activities]. Furthermore, according to ByteDance, the average advertising revenue per user is [...] more limited for TikTok Ads than for its competitors.³⁴

- (44) Third, TikTok's ability to drive monetisation [...] is limited by the fact that the main online advertising players had a significant head start compared to TikTok, by the content-driven nature of the platform [...], and by the absence of an ecosystem [analysis of network effects and data access].³⁵
- (45) Fourth, TikTok Ads faces an important [description of advertiser behaviour].³⁶
- (46) Fifth, TikTok Ads, because of the above features, lacks lock-in effects on its end users or business users that frequently multi-home.³⁷
- (47) Finally, ByteDance submits that TikTok Ads does not have an entrenched and durable position, and therefore does not satisfy the requirement laid down in Article 3(1)(c) of Regulation (EU) 2022/1925, for the reasons mentioned above regarding Article 3(1)(b) of that Regulation, as well as because TikTok Ads met the three-year business user threshold for the first time in 2024.³⁸

5.2. The Commission's assessment

- (48) The Commission considers, in line with Article 3(5), third subparagraph, of Regulation (EU) 2022/1925, that ByteDance has clearly and comprehensively demonstrated 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 TikTok Ads operates. In this case, 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.
- (49) The main reason for this finding is that TikTok Ads' scale (between [0-5%] in terms of online advertising revenue in the Union) is limited in light of the overall scale of activities of online advertising services in the Union in 2023.³⁹ As regards its relative scale, the data submitted by ByteDance further shows that Meta and Alphabet captured respectively about [...] to [...] times higher advertising spend than TikTok Ads in the Union in 2023.⁴⁰ Further, the advertising spend on

³⁴ TikTok Internal Data, Statista, Alphabet Form 10-K, Meta Form 10-K, Business of Apps, DataReportal, Wishu Media (Form GD, Annex 2, Exhibit 6, pages 19-20 and Figure 11).

³⁵ Form GD, Annex 2, paragraphs 68-83.

³⁶ Form GD, Annex 2, paragraphs 86-89.

³⁷ Form GD, Annex 2, paragraphs 90-93.

³⁸ Form GD, Annex 2, paragraphs 94-95.

³⁹ Form GD, Annex 2, paragraphs 27-41 and Figures 3 to 6; Form GD, Annex 2, Exhibit 2, page 10, Exhibit 3, page 8 and Exhibit 4, page 28.

⁴⁰ Form GD, Annex 2, paragraph 29 and Figure 3; "Digital Advertising – EU-27", Statista, accessed February 29, 2024, <https://www.statista.com/outlook/dmo/digital-advertising/eu-27?currency=USD> (Form GD, Annex 6, paragraph 9, footnote 7); IAB Europe AdEX Benchmark Report 2022 (Form GD, Annex 6, Figures 3 to 5).

Amazon Advertising in the Union in 2023 was about [...] times larger than the advertising spend on TikTok in the Union in the same period.⁴¹

- (50) Based on the above evidence on the low scale of usage by business users, the Commission considers that TikTok Ads is not an important gateway for business users to reach end users.
- (51) Other factors listed below further support TikTok Ads' lack of gatekeeping position.
- (52) First, TikTok Ads' top 10 highest spending advertisers only allocate a low share of their total spend to TikTok Ads⁴² and a non negligible proportion of advertisers on TikTok Ads use it as an experimental part of their advertising budget.⁴³ A recent survey conducted in the ordinary course of business by TikTok shows that [a meaningful percentage] of TikTok Enterprise advertisers, namely key accounts and agencies, considered that TikTok Ads was part of their "experimental budget", while this number was [...] for Alphabet's and Meta's advertising services.⁴⁴ Moreover, in the same survey, potential future Enterprise and Small and Medium businesses advertisers consistently ranked TikTok Ads [...] compared to Alphabet's and Meta's advertising services in terms of overall consideration and first choice for online advertising.⁴⁵
- (53) In addition, advertisers seem to consider it [...] to verify return on investment on TikTok,⁴⁶ which can be explained by the fact that TikTok Ads only offers first-party advertisement on the TikTok online social network and does not offer advertisement options across multiple first-party and third-party properties (as Alphabet or Amazon do).⁴⁷ Unlike these players, who also offer online advertising intermediation services, TikTok Ads is unable to collect user data for the purpose of verifying advertising effectiveness across several first- and third-party properties.⁴⁸ While integrated advertising platforms may be able to verify a

⁴¹ Form GD, Annex 2, paragraph 29 and Figure 3; "Digital Advertising – EU-27", Statista, accessed February 29, 2024, <https://www.statista.com/outlook/dmo/digital-advertising/eu-27?currency=USD> (Form GD, Annex 6, paragraph 9, footnote 7); IAB Europe AdEX Benchmark Report 2022 (Form GD, Annex 6, Figures 3 to 5).

⁴² Form GD, Annex 2, paragraph 46 and Figures 10 and 11. TikTok has calculated the individual shares of wallet of these highest spending advertisers by dividing their EU advertising spend on TikTok by their total Union advertising spend in 2023, which was derived from their public annual reports (Form GD, Annex 6, paragraphs 22 to 25 and Figure 9 and Table 3).

⁴³ Form GD, Annex 2, paragraphs 43-46 and 63-64.

⁴⁴ Form GD, Annex 2, paragraph 63 and Figure 21; Form GD, Annex 2, Exhibit 9, page. 13 and Exhibit 6, page 24. This online survey was conducted during the second half of 2023 and included both existing and prospective advertisers from 48 geographical markets across 37 different industries. TikTok obtained responses from 972 active enterprise advertisers, 1.173 SMB advertisers, 626 prospect enterprise advertisers and 603 potential SMB advertisers, which demonstrates the credibility of the survey results (Form GD, Annex 2, footnote 93).

⁴⁵ Form GD, Annex 2, paragraph 64 and Figure 22; Form GD, Annex 2, Exhibit 6, page 36 and Exhibit 7, page 41.

⁴⁶ Form GD, Annex 2, paragraphs 44, 59 and 61-63 and Figures 18 and 20; Form GD, Annex 2, Exhibit 6, pages 20 and 31 and Exhibit 7, pages 24 and 36.

⁴⁷ Form GD, Annex 2, paragraphs 61-63 and 78-83 and Figure 23; Form GD, Annex 2, Exhibit 2, page 2, Exhibit 9, page 1 and Exhibit 12.

⁴⁸ Form GD, Annex 2, paragraph 82; Form GD, Annex 2, Exhibit 2, page 2.

user's journey between an ad click and a conversion across their own and third parties' properties, TikTok does not have the same possibility with just one advertising property.⁴⁹

- (54) Second, some advertisers seem to find it [description of comparative behaviour] to advertise on TikTok since it typically involves the creation of custom videos rather than the display of banner ads.⁵⁰ In this regard, the survey mentioned in paragraph (52) revealed that [20-30%] of respondents considered TikTok Ads “[...] *for the platform*”, whereas Alphabet's and Meta's advertising services recorded far lower figures.⁵¹
- (55) Third, TikTok Ads faces [description of advertiser behaviour] with [...] about [...] having been retained from the previous year. The retention rate [...] in 2023.⁵² [...] ⁵³ Therefore, while TikTok attracts new advertisers every year, [description of advertisers' behaviour].⁵⁴
- (56) As a result, this further evidence supports the finding that advertisers in the Union currently do not consider TikTok Ads an important gateway for business users to reach end users.
- (57) ByteDance's arguments assessed above in paragraphs (49) to (56) directly relate to the thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 and, considered together, they demonstrate that, exceptionally, despite meeting those thresholds, due to the circumstances in which TikTok Ads operates, the requirements laid down in Article 3(1)(b) of that Regulation are not satisfied.
- (58) Consequently, and taking account of the fact that the criteria in Article 3(1) of Regulation (EU) 2022/1925 are cumulative, the Commission considers that a detailed assessment of the remaining arguments in relation to TikTok Ads under Article 3(5) of that Regulation, including those pertaining to Article 3(1)(a), is not necessary, since the grounds assessed above in paragraphs (49) to (57) of this letter, considered together, already demonstrate that TikTok Ads, 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 in Article 3(1)(c) of Regulation (EU) 2022/1925, due to the specific circumstances in which it operates.
- (59) The Commission's assessment is based on the current facts and the situation of TikTok Ads at the point in time of this Decision. However, ByteDance's Form GD, notified on 1 March 2024, shows that there may be potential for TikTok Ads to become a more important online advertising service for business users to reach end users, in view of developments such as ByteDance's global advertising

⁴⁹ Form GD, Annex 2, paragraph 62.

⁵⁰ Form GD, Annex 2, paragraphs 44 and 59-60 and Figure 19; Form GD, Annex 2, Exhibit 8, page 4.

⁵¹ Form GD, Annex 2, paragraph 60 and Figure 19; Form GD, Annex 2, Exhibit 8, page 4.

⁵² Form GD, Annex 2, paragraph 88, Table 2.

⁵³ Form GD, Annex 2, paragraphs 86-87 and Figure 24.

⁵⁴ Form GD, Annex 2, paragraph 89.

revenue growth rate,⁵⁵ TikTok Ads' business users growth rate,⁵⁶ or the potential launch in the future by ByteDance of new services in the Union.⁵⁷ The Commission will keep monitoring these developments.

5.3. Conclusion

- (60) Given that the arguments presented by ByteDance 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.
- (61) Accordingly, ByteDance shall not be designated as a gatekeeper in relation to TikTok Ads pursuant to Article 3(4) of Regulation (EU) 2022/1925.

6. CONCLUSION

- (62) The Commission concludes that ByteDance is not to be designated as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925 in relation to its online advertising service TikTok Ads.
- (63) 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.

Done at Brussels,

For the Commission

signed

Margrethe VESTAGER
Executive Vice-President

⁵⁵ Form GD, Annex 2, paragraph 39 and Table 1.

⁵⁶ Form GD, paragraph 49 and Table 2.

⁵⁷ ByteDance's Response of 26 February 2024 to the European Commission's Request for Information of 16 February 2024, points 14.1 and 14.2.