



EUROPEAN COMMISSION

***CASES DMA.100013 Apple – online
intermediation services – app stores,
DMA.100025 Apple - operating systems
and DMA.100027 Apple – web browsers***

(Only the English text is authentic)

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

Article 3 Regulation (EU) 2022/1925

Date: 05/09/2023

This text is made available for information purposes only. A summary of this decision is published in all EU languages in the Official Journal of the European Union.

Parts of this text have been edited to ensure that confidential information is not disclosed. Those parts are replaced by a non-confidential summary in square brackets or are shown as [...].



Brussels, 5.9.2023
C(2023) 6100 final

PUBLIC VERSION

COMMISSION DECISION

of 5.9.2023

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

DMA.100013 Apple – Online Intermediation Service – app stores, DMA.100025 Apple - operating systems and DMA.100027 Apple – web browsers

(Only the English text is authentic)

TABLE OF CONTENTS

1.	Introduction.....	3
2.	The Undertaking.....	3
3.	Procedure.....	4
4.	Legal framework for the designation of gatekeepers pursuant to Regulation (EU) 2022/1925.....	4
4.1.	The delineation of CPSs.....	4
4.2.	The designation of gatekeepers pursuant to Article 3 of Regulation (EU) 2022/1925	6
4.3.	The rebuttal of the presumptions of Article 3(2) pursuant to Article 3(5) of Regulation (EU) 2022/1925	6
5.	The core platform services	7
5.1.	Apple’s online intermediation service App Store	7
5.1.1.	CPS qualification and delineation	7
5.1.1.1.	The Undertaking’s view.....	7
5.1.1.2.	The Commission’s assessment.....	10
5.1.2.	Thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925	15
5.1.2.1.	The Undertaking’s view.....	15
5.1.2.2.	The Commission’s assessment	16
5.1.3.	Conclusion for the online intermediation service App Store.....	17
5.2.	Apple’s operating system iOS	17
5.2.1.	CPS qualification and delineation	17
5.2.1.1.	The Undertaking’s view	17
5.2.1.2.	The Commission’s assessment.....	19
5.2.2.	Thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925	21
5.2.2.1.	The Undertaking’s view.....	21
5.2.2.2.	The Commission’s assessment.....	22
5.2.3.	Conclusion for the operating system iOS	22
5.3.	Apple’s web browser Safari.....	23
5.3.1.	CPS qualification and delineation	23
5.3.1.1.	The Undertaking’s view.....	23
5.3.1.2.	The Commission’s assessment.....	24
5.3.2.	Thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925	27
5.3.2.1.	The Undertaking’s view.....	27
5.3.2.2.	The Commission’s assessment.....	28
5.3.3.	Conclusion for the web browser Safari.....	28
5.4.	Apple’s number-independent interpersonal communication service iMessage.....	29

5.4.1.	CPS qualification and delineation	29
5.4.1.1.	The Undertaking’s view	29
5.4.1.2.	The Commission’s assessment.....	30
5.4.2.	Thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925	34
5.4.2.1.	The Undertaking’s view.....	34
5.4.2.2.	The Commission’s assessment.....	35
5.4.3.	Arguments pursuant to Article 3(5) of Regulation (EU) 2022/1925	35
5.4.3.1.	The Undertaking’s view	35
5.4.3.2.	The Commission’s assessment.....	36
5.4.4.	Conclusion for the number-independent interpersonal communication service iMessage.....	36
6.	Conclusion.....	36

COMMISSION DECISION

of 5.9.2023

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

DMA.100013 Apple – Online Intermediation Services – app stores, DMA.100025 Apple – operating systems and DMA.100027 Apple – web browsers

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), in particular Article 3 thereof¹,

Whereas:

1. INTRODUCTION

- (1) On 3 July 2023, Apple Inc. and Apple Distribution International Ltd. notified the Commission, pursuant to Article 3(3), first subparagraph, of Regulation (EU) 2022/1925, that Apple Inc., together with all legal entities directly or indirectly controlled by Apple Inc. (hereinafter referred to as “Apple” or the “Undertaking”²) meets the thresholds laid down in Article 3(2) of that Regulation in relation to the following core platform services (“CPSs”): (i) its online intermediation service iOS App Store; (ii) its operating system iOS; (iii) its web browser Safari; and (iv) its number-independent interpersonal communication service (“NIICS”) iMessage. In relation to iMessage, Apple presented, pursuant to Article 3(5) of Regulation (EU) 2022/1925, with its notification, arguments seeking to demonstrate that, exceptionally, although it meets all the thresholds in Article 3(2) of that Regulation, due to the circumstances in which iMessage operates, Apple does not satisfy the requirements listed in Article 3(1) of that Regulation in relation to that CPS.

2. THE UNDERTAKING

- (2) Apple designs, manufactures and markets mobile communication and media devices, personal computers and portable digital music players. It sells a variety of related software, services, peripherals, networking solutions, and third-party digital content and applications. Apple sells its products worldwide through its retail stores, online stores and direct sales force, as well as through third-party cellular network carriers, wholesalers, retailers and value-added resellers.

¹ OJ L 265, 12.10.2022, p. 1.

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

- (3) Apple's parent company is Apple Inc., which is headquartered in Cupertino, California, United States of America.
- (4) Apple Distribution International Ltd. is wholly owned by Apple Inc. and is headquartered in Ireland.
- (5) [...]

3. PROCEDURE

- (6) On 3 July 2023, Apple submitted a complete notification pursuant to Article 3(3), first subparagraph, of Regulation (EU) 2022/1925 ("Form GD").
- (7) On 25 July 2023, the Commission sent a letter to Apple concerning Apple's notification under Article 3(3) of Regulation (EU) 2022/1925 ("the Commission's letter of 25 July 2023").
- (8) In the Commission's letter of 25 July 2023, the Commission set out its preliminary views on Apple's possible designation as a gatekeeper pursuant to Article 3(4) of Regulation (EU) 2022/1925 and on its intention to list in the designation decision the following CPSs that are provided by Apple and which individually appeared to constitute an important gateway for business users to reach end users:
 - (a) Apple's online intermediation service App Store;
 - (b) Apple's operating systems iOS and iPadOS;
 - (c) Apple's web browser Safari.
- (9) In the same letter, the Commission also set out the preliminary view that, in light of the arguments submitted by Apple pursuant to Article 3(5) of Regulation (EU) 2022/1925, opening a market investigation in relation to iMessage pursuant to Article 17(3) of that Regulation was warranted.
- (10) On 1 August 2023, Apple submitted written observations in response to the Commission's letter of 25 July 2023.

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

- (11) 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).

4.1. The delineation of CPSs

- (12) Article 2, point (2) of Regulation (EU) 2022/1925 lists ten CPS categories, namely:
 - (a) online intermediation services,
 - (b) online search engines,
 - (c) online social networking services,
 - (d) video-sharing platform service,
 - (e) number-independent interpersonal communications services,
 - (f) operating systems,
 - (g) web browsers,
 - (h) virtual assistants,
 - (i) cloud computing services,
 - (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).

- (13) 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.
- (14) Section D, paragraph 2, of the Annex to Regulation (EU) 2022/1925 provides that, for the purpose of calculating the number of ‘active end users’ and ‘active business users’ under Article 3(2)(b) of that regulation:
- undertakings shall not identify CPSs that belong to the same category of CPSs pursuant to Article 2, point (2), of Regulation (EU) 2022/1925 as distinct mainly on the basis that they are provided using different domain names, whether country code top-level domains (ccTLDs) or generic top-level domains (gTLDs), or any geographic attributes;³
 - undertakings shall consider as distinct those CPSs that either (i) do not belong to the same category of CPSs pursuant to Article 2, point (2), of Regulation (EU) 2022/1925, even if they are offered in an integrated way;⁴ 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.⁵
- (15) In light of the foregoing, CPSs may be considered distinct even if they fall within the same category of CPSs. In such cases, a relevant criterion for identifying distinct CPSs within the same category of CPSs is the purpose for which the service is used by either end users or business users, or both.⁶ 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.
- (16) 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.
- (17) As recital (11) of the preamble to Regulation (EU) 2022/1925 points out, that regulation pursues an objective that is complementary to, but different from, that of EU competition rules, which is to protect undistorted competition on any given market. Consequently, the application of EU competition rules, including competition law precedents, is without prejudice to the application of Regulation (EU) 2022/1925, and vice versa. Accordingly, the delineation of CPSs under Regulation (EU) 2022/1925 has no bearing on the definition of the relevant market

³ Annex to Regulation (EU) 2022/1925, Section D, point 2(a).

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

⁵ Annex to Regulation (EU) 2022/1925, Section D, points 2(b) and (c)(ii).

⁶ The same applies when the undertaking provides CPSs in an integrated way.

for the purpose of applying EU competition rules (and vice versa) and those two types of analyses may thus lead to different results.

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

- (18) 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.
- (19) 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.
- (20) 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.
- (21) Pursuant to Article 3(8), first subparagraph, of Regulation (EU) 2022/1925, an undertaking that does not satisfy each of the thresholds laid down in Article 3(2) but meets each of the requirements of Article 3(1) of that regulation is to be designated as a gatekeeper in accordance with the procedure laid down in Article 17.

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

- (22) Once the conditions for the applicability of the presumptions laid down in Article 3(2) of Regulation (EU) 2022/1925 are met in relation to a CPS, the undertaking concerned is deemed to be a gatekeeper in relation to that CPS, unless the

undertaking concerned rebuts these presumptions pursuant to Article 3(5), first subparagraph, of Regulation (EU) 2022/1925. Pursuant to the latter provision, an undertaking that meets all the thresholds laid down in Article 3(2) of that regulation may present, with its notification, arguments to demonstrate that, although it meets all those thresholds, it exceptionally does not satisfy the requirements laid down in Article 3(1) of that regulation due to the circumstances in which the relevant core platform service operates.

- (23) As explained in recital (23) of the preamble to Regulation (EU) 2022/1925, the undertaking concerned bears the burden of adducing the evidence rebutting the presumptions. Moreover, as recital (23) further explains, the arguments taken into account by the Commission in that regard should relate directly to the quantitative criteria laid down in Article 3(2). Accordingly, any justification on economic grounds such as those related to market definition or to efficiencies should be discarded, because it is not relevant to the designation as a gatekeeper.
- (24) 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.
- (25) In situations in which the Commission considers that the submitted evidence is sufficient to demonstrate that the requirements laid down in Article 3(1) of Regulation (EU) 2022/1925 are not fulfilled, it may accept the rebuttal without opening a market investigation.

5. THE CORE PLATFORM SERVICES

- (26) As set out in recital (1) above, Apple's Form GD refers to four CPSs provided by Apple that meet the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925: (i) its online intermediation service iOS App Store (Section 5.1); (ii) its operating system iOS (Section 5.2); (iii) its web browser Safari on iOS (Section 5.3); and (iv) its NIICS iMessage (Section 5.4).⁷

5.1. Apple's online intermediation service App Store

5.1.1. CPS qualification and delineation

5.1.1.1. The Undertaking's view

- (27) Apple submits that it operates five software application marketplaces, i.e., app stores,⁸ namely:⁹

⁷ While Apple includes iMessage within the list of CPSs in its Form GD, it argues that iMessage does not constitute a NIICS.

⁸ In addition, Apple submitted that it has announced on 5 June 2023 that it will launch a new device, Vision Pro, at the beginning of 2024 (see Form GD, footnote 11). According to Apple's announcement, Vision Pro will feature an app store (See <https://www.apple.com/newsroom/2023/06/introducing-apple-vision-pro/> last accessed on 18 July 2023).

- (a) App Store on iPhones (“iOS App Store”);
 - (b) App Store on iPads (“iPadOS App Store”);
 - (c) App Store on Mac computers (“macOS App Store”);
 - (d) App Store on Apple TVs (“tvOS App Store”); and
 - (e) App Store on Apple Watches (“watchOS App Store”).
- (28) Apple describes these five app stores as “*two-sided digital transaction platforms which intermediate transactions between (i) developers (i.e., business users) that offer apps and in-app digital content and (ii) end users of Apple devices.*” According to Apple, the five app stores qualify as online intermediation services within the meaning of Article 2, point (5), of Regulation (EU) 2022/1925.¹⁰
- (29) Apple submits that each of its five app stores constitutes a distinct CPS within the meaning of Section D(2)(b) of the Annex to Regulation (EU) 2022/1925.¹¹ Accordingly, Apple disagrees with the preliminary view set out in the Commission’s letter of 25 July 2023 that the App Stores should be considered as one single online intermediation CPS. In its reply to that letter, Apple reiterated its position that each of its app stores constitutes a distinct CPS. Moreover, Apple considers that it meets the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 only in relation to the iOS App Store.¹²
- (30) According to Apple, each of the five app stores has been designed to distribute apps for a specific operating system and Apple device and, therefore, each of the five app stores exhibits significant differences. More specifically, Apple’s claim that its five app stores constitute distinct CPSs within the meaning of Section D(2)(b) of the Annex to Regulation (EU) 2022/1925 is based on the following arguments.
- (31) In the first place, Apple argues that each App Store serves a different purpose from an end user perspective, based on the following reasons. First, the five app stores differ in terms of the relevance they have for end users, as reflected by the different frequency of use and different size of their respective catalogues.¹³ Second, they serve different end user demands in terms of the types and number of apps that are available and downloaded by end users.¹⁴ According to Apple, the differences in devices drive the type of content offered by each app store.¹⁵ Third, the end user’s interfaces and experiences, as well as the way apps are marketed, are different across the five app stores due to the optimization of Apple’s app stores to display the respective catalogues on the different screen sizes and formats of the respective devices.¹⁶ Fourth, searches in the five app stores yield different results, e.g., based on the differing degrees of popularity of the respective apps in the different app stores.¹⁷

⁹ Form GD, paragraph 187.

¹⁰ Form GD, paragraph 188. For the purposes of the present decision, “developers” refer to “app developers” or “application developers”; “applications” and “apps” refer to “software applications”.

¹¹ Form GD, paragraph 190.

¹² Form GD, paragraph 264.

¹³ Form GD, paragraphs 24 and 218-225.

¹⁴ Form GD, paragraphs 29 and 226-228.

¹⁵ Form GD, paragraph 29.

¹⁶ Form GD, paragraphs 32, 229-232.

¹⁷ Form GD, paragraphs 33, 233-235.

- (32) In the second place, Apple argues that each App Store also serves a different purpose from a business user perspective, based on the following reasons. First, not all of the five app stores are gateways for business users to reach end users because they vary in their relevance for end users. Second, app developers offer apps targeting each device’s use cases and thereby targeting different groups of end users across the five app stores.¹⁸ Third, app developers choose for which operating system they would like to develop and optimize their respective apps. In this process, app developers make use of operating systems-specific optimization of their respective apps and build a user interface that is designed for a specific operating system.¹⁹ Fourth, each of the five app stores offers a different set of marketing and performance tracking tools to app developers and Apple provides usage data to app developers on a by-app-store basis.²⁰ According to Apple, it is irrelevant that app developers can access an extensive set of marketing tools through App Store Connect irrespective of the devices targeted by the app developers. Moreover, Apple claims that the tools offered through App Store Connect may vary between app stores. In support of this view, Apple claims that the in-app events feature is only available with regard to apps distributed through the iOS App Store and the iPadOS App Store.²¹ Fifth, the distinct nature and purpose of Apple’s five app stores is not changed by the fact that Apple uses a common basis of agreements, guidelines and terms and conditions across its five app stores. In support of this view, Apple submits (i) that this is merely a result of contractual efficiency;²² (ii) that it is common practice in a range of industries, such as the accounting services industry, to apply the same rules and policies across different services;²³ and (iii) that the majority of the principles and details contained in these rules are not device-specific and can therefore be bundled in a common sets of rules and policies.²⁴
- (33) In the third place, Apple argues that, in general, the purpose of each App Store is to provide software applications for end users on the particular device on which it runs, and that each app store gives access to a different set of apps which have been specifically tailored to the operating system of that device.²⁵ Apple considers that its view is supported by the explicit reference to ‘operating systems’ in the definition of a ‘software application’ in Article 2, point (15), of Regulation (EU) 2022/1925, and that when this definition is read together with the definition of a “software application store”, an app store is a store for apps that run on a certain operating system.²⁶
- (34) Moreover, Apple considers that the fact that similar services are provided to both end users and business users in relation to each app store is not informative to the question of whether they are a single CPS.²⁷ [...] ²⁸ Furthermore, Apple contends that

¹⁸ Form GD, paragraphs 36, 242-244.

¹⁹ Form GD, paragraph 245.

²⁰ Form GD, paragraphs 246-249.

²¹ Form GD, paragraphs 36 and 248.

²² Form GD, paragraph 250, and Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, paragraph 128.

²³ Form GD, paragraph 254, and Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, paragraph 128.

²⁴ Form GD, paragraph 252 and 253.

²⁵ Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, paragraph 120.

²⁶ Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, paragraphs 122-123.

²⁷ Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, paragraph 131.

²⁸ Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, paragraph 131.

[...].²⁹ It also considers that the fact that end users need a single Apple ID for all devices is not indicative of a common purpose, but merely serves to make user engagement with devices as efficient as possible.³⁰ As regards alternative plausible delineations, Apple only considers the possibility of potentially defining a “mobile” app store comprising the iOS App Store and iPadOS App Store. However, Apple submits that such an alternative delineation would be incorrect given the differences between both app stores.³¹

5.1.1.2. The Commission’s assessment

- (35) Article 2, point (2), subpoint (a), of Regulation (EU) 2022/1925 lists online intermediation services as one of the categories of CPSs within the meaning of that Regulation. Article 2, point (14), of Regulation (EU) 2022/1925 defines software application stores (“app stores”) as a “*type of online intermediation services, which is focused on software applications as the intermediated product or service*”.
- (36) Article 2, point (5) of Regulation (EU) 2022/1925 defines ‘online intermediation services’ by cross-referring to Article 2, point (2) of Regulation 2019/1150.³² According to Article 2, point (2) of Regulation 2019/1150, online intermediation services are services that meet all of the following requirements:
- (a) they constitute information society services within the meaning of Article 1(1), point (b) of Directive (EU) 2015/1535;³³
 - (b) they allow business users to offer goods or services to consumers, with a view to facilitating the initiating of direct transactions between those business users and consumers, irrespective of where those transactions are ultimately concluded;
 - (c) they are provided to business users on the basis of contractual relationships between the provider of those services and business users which offer goods or services to consumers.
- (37) The Commission considers that Apple’s software application store (“App Store”), which is currently offered on Apple devices running on iOS, iPadOS, macOS, watchOS and tvOS, fulfils the definition of online intermediation services laid down in Article 2, point (2), of Regulation (EU) 2019/1150, to which Article 2, point (5) of Regulation (EU) 2022/1925, refers. First, the App Store satisfies the definition of an information society service within the meaning of Article 1(1), point (b) of Directive (EU) 2015/1535. Second, it allows business users to offer goods or services to consumers by facilitating the initiation of direct transactions between those business users and consumers. Third, it involves contractual relationships between the undertaking providing the app store service, i.e., Apple, and the business users offering goods or services to consumers through that service. Moreover, since the intermediated products or services on the App Store are software applications, the

²⁹ Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, paragraph 132.

³⁰ Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, paragraph 133.

³¹ Form GD, paragraphs 23 and 257.

³² 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, 11.7.2019, p. 57.

³³ Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification), OJ L 241, 17.9.2015, p. 1.

App Store also fulfils the definition of software application store laid down in Article 2, point (14) of Regulation (EU) 2022/1925.

- (38) The Commission further considers that, contrary to the views of Apple, the App Store constitutes a single online intermediation CPS, irrespective of the device through which that service can be accessed. That finding is based on the following reasons.
- (39) In the first place, the App Store is used for the same purpose from both an end user and a business user perspective across all devices on which it is available, namely to intermediate the distribution of applications. Business users (i.e., developers of software applications within the meaning of Article 2, point (15) of Regulation (EU) 2022/1925) use the App Store to offer end users free or paid applications, as well as digital content within those applications. End users use the App Store to search, download or update those applications and to purchase digital content within applications they have downloaded.
- (40) The Commission does not dispute that, as argued by Apple,³⁴ there may be a number of differences in the distribution of apps through the App Store across devices, e.g., in terms of the number and types of apps that are listed and distributed through the App Store, the number of end users and the rate at which they access the App Store, the presentation and marketing of apps to end users, the user interfaces and experiences, and the search results yielded by the App Store. Similarly, the Commission does not contest Apple's claim that apps which are distributed through the App Store on several devices may have been programmed, adapted and optimised by app developers to cater for differences of the different devices on which they are used.³⁵
- (41) However, the elements referred to by Apple predominantly relate to the nature, function and usage of the different devices on which the App Store can be accessed and the related user experiences, rather than to the online intermediation service the App Store provides. Therefore, those elements do not alter the common purpose the App Store serves across all Apple's devices on which it is available, namely to intermediate the distribution of apps and in-app digital content between business and end users; nor do they alter the specific purpose for which the App Store is used by end users and business users, as set out in recital (39) above. Accordingly, these differences do not justify treating the App Store as five distinct online intermediation CPSs.
- (42) Furthermore, contrary to Apple's view,³⁶ the reference to 'operating system' in the definition of 'software application' in Article 2, point (15), of Regulation (EU) 2022/1925 does not suggest that a software application and, by extension, a software application store within the meaning of Article 2, point (14), of that Regulation should be delineated based on the operating system on which they run. Article 2, point (15) of Regulation (EU) 2022/1925 defines a software application as a digital product or service that runs on "an operating system", rather than on a particular operating system. Moreover, the definition of 'software application store' set out in Article 2, point (14), of that Regulation does not contain any reference to 'operating systems'.

³⁴ Form GD, paragraphs 24-34 and 217-236.

³⁵ Form GD, paragraph 245.

³⁶ See recital (33) above.

- (43) In the second place, Apple applies the same or very similar rules and policies with regard to app developers and end users on the App Store across the devices on which the App Store is offered, which indicates that the App Store is one single service, irrespective of the device through which it is accessed.
- (44) First, Apple applies the same App Store Review Guidelines for the acceptance and review of the apps on the App Store,³⁷ irrespective of the device, as also acknowledged by Apple itself.³⁸ In those guidelines, Apple considers the App Store as a single service: *“Apps are changing the world, enriching people’s lives, and enabling developers like you to innovate like never before. As a result, the App Store has grown into an exciting and vibrant ecosystem for millions of developers and more than a billion users. Whether you are a first time developer or a large team of experienced programmers, we are excited that you are creating apps for the App Store and want to help you understand our guidelines so you can be confident your app will get through the review process quickly.”* [...], in accordance with a single set of terms and conditions.³⁹
- (45) Second, Apple provides a common framework of agreements governing Apple’s legal relationship with app developers, such as the Apple Developer Program License Agreement⁴⁰ and the Apple Developer Agreement.⁴¹ These agreements apply to all of Apple’s app developers, regardless of the device and operating system on which they distribute their apps. Both agreements refer to a single App Store.⁴² In particular, the Apple Developer Program License Agreement specifies under its “Purpose” section that it applies to all Apple-branded products, mentioning iOS, iPad OS, tvOS, watchOS and macOS. In this context, the agreement refers to “the App Store”, whenever there is a reference to the distribution of applications. For instance, the “Purpose” section of the Apple Developer Program License Agreement explains that: *“Applications developed under this Agreement for iOS, iPadOS, macOS, tvOS, visionOS, and watchOS can be distributed: (1) through the App Store, if selected by Apple, (2) on a limited basis for use on Registered Devices (as defined below), and (3) for beta testing through TestFlight. Applications developed for iOS, iPadOS, macOS, and tvOS can additionally be distributed through Custom App Distribution, if selected by Apple. Applications developed for macOS can additionally be separately distributed as described in this Agreement. Application that meet Apple’s Documentation and Program Requirements may be submitted for consideration by Apple for distribution via the App Store, Custom App Distribution, or for beta testing through TestFlight. (...).”*

³⁷ See <https://developer.apple.com/app-store/review/guidelines/> (accessed on 21 August 2023).

³⁸ *“Apple applies the same App Store Review Guidelines across all of its App Stores to ensure that users have a similarly safe and trusted experience across all Apple devices”*. Form GD, paragraph 252.

³⁹ Form GD, paragraph 253.

⁴⁰ See: <https://developer.apple.com/support/downloads/terms/apple-developer-program/Apple-Developer-Program-License-Agreement-20230605-English.pdf> (accessed on 21 August 2023).

⁴¹ See <https://developer.apple.com/support/downloads/terms/apple-developer-agreement/Apple-Developer-Agreement-20230605-English.pdf> (accessed on 21 August 2023).

⁴² The Apple Developer Program License Agreement refers to “the App Store”, defined as “an electronic store”, throughout the document. See: <https://developer.apple.com/support/downloads/terms/apple-developer-program/Apple-Developer-Program-License-Agreement-20230605-English.pdf> (accessed on 21 August 2023). The Apple Developer Agreement considers there to be one App Store as mentioned in 16.B., referring to the countries or regions in which “the App Store” is available. See: <https://developer.apple.com/support/downloads/terms/apple-developer-agreement/Apple-Developer-Agreement-20230605-English.pdf> (accessed on 21 August 2023).

- (46) Third, Apple applies common agreements, rules, policies or guidelines regarding other aspects of the App Store across devices, namely:
- (a) the agreement on the use of application development tools, in particular the Xcode and SDKs Agreement.⁴³ This agreement contains a reference to the distribution of apps developed for specific operating systems through the (single) App Store;⁴⁴
 - (b) the privacy policy vis-à-vis app developers;⁴⁵
 - (c) the advertising policies⁴⁶ applicable on the App Store;
 - (d) the Marketing Resources and Identity Guidelines,⁴⁷ which also contain one single set of Legal Requirements regarding the marketing of content in the App Store as well as the App Store Promotional Artwork Guidelines;⁴⁸ and
 - (e) the rules governing the possibility for app developers to allow for the pre-ordering of apps on the App Store.⁴⁹
- (47) Contrary to the view of Apple, these common sets of guidelines, rules and technical specifications are not merely related to contractual efficiency or industry standards. Rather, they underline the fact that Apple has built and offers the App Store, from a technical, commercial and user experience point of view, as one single service that can be accessed on different Apple devices and used for the same purpose, irrespective of the device on which it is offered, of purchasing and distributing apps under a very similar set of guidelines, rules and technical specifications. The fact that end users and business users are required to agree to or follow these guidelines, rules and technical specifications in order to purchase or distribute apps through the App Store across all devices further supports the fact that the App Store serves the same purpose across all devices.
- (48) In the third place, Apple provides the same or very similar services to end users and business users in relation to the apps distributed through the App Store, which

⁴³ The Xcode and SDKs Agreement lists all operating systems under “Apple SDKs” and “Applications” in the corresponding definitions. See: <https://www.apple.com/legal/sla/docs/xcode.pdf>, (accessed on 21 August 2023).

⁴⁴ Section 2.4 of the Xcode and SDKs Agreement states the following: “*If You would like a third-party to use Your Application for iOS, watchOS, iPadOS, or tvOS, or You would like to distribute Your Application for macOS through the App Store (...)*” [Emphasis added].

⁴⁵ According to Apple’s privacy policy: “*The App Store now helps users better understand an app’s privacy practices before they download the app on any Apple platform.*” See: <https://developer.apple.com/app-store/app-privacy-details/#privacy-links> (accessed on 21 August 2023).

⁴⁶ The Apple Advertising Policies contain a comprehensive set of rules and principles for search advertising by app developers with regard to apps listed in and distributed via the App Store. These policies do not differentiate on the basis of the devices through which the ads are accessed by the relevant end users. See: <https://searchads.apple.com/policies/>, (accessed on 21 August 2023).

⁴⁷ The Marketing Resources and Identity Guidelines detail, e.g., the use of App Store Badges or Apple Product Images as well as specific rules on how to customize photography and video marketing content as well as on messaging and writing style. See: <https://developer.apple.com/app-store/marketing/guidelines/>, (accessed on 21 August 2023).

⁴⁸ The App Store Promotional Artwork Guidelines contain one single set of technical specifications, examples and instructions for the creation and delivery of promotional artwork by app developers in the App Store. The guidelines apply to the promotional artwork in the App Store across devices, with a few additional rules on specific features of the MacOS App Store as well as the tvOS App Store. See: <https://help.apple.com/asc/apps promoart/> (accessed on 21 August 2023).

⁴⁹ See <https://developer.apple.com/app-store/pre-orders/> (accessed on 21 August 2023).

indicates that the App Store is a single service, irrespective of the device through which it is accessed, as shown below. This is borne out by the following facts.

- (49) First, Apple offers the same support service for the App Store across devices, thereby providing a single point of contact for issues or questions that consumers may have around the App Store.⁵⁰
- (50) Second, Apple offers a single tool, the App Store Connect, providing means for developers to upload, submit and manage their apps on the App Store and to access sales reports, analytics etc., irrespective of the device on which those applications are used.⁵¹ The fact that, as argued by Apple,⁵² a few features of App Store Connect, such as the In-app events feature, do not apply to the entire App Store does not alter this conclusion. Most tools available on the App Store Connect platform are available across devices.
- (51) Third, both end users and business users can use the same account (the Apple ID) to access App Store-related services across devices and to purchase or sell apps or in-app content. This default feature facilitates end users' ability to access the App Store and purchase apps, irrespective of the device, by, for example, allowing them to store their payment information or app data, or manage purchases and subscriptions. From the perspective of business users, the Apple ID enables them to use features such as App Store Connect and the Apple Developer Program to offer apps on the App Store across one or more Apple devices. This indicates that Apple offers, and end users use, the App Store as a single CPS, serving the common purpose of online intermediation irrespective of the device on which the App Store is provided.⁵³
- (52) Fourth, the Apple Developer Program is offered across all devices. In Apple's own words, that program allows business users *"to reach customers around the world on the App Store for iPhone, iPad, Mac, Apple Watch, and Apple TV. Membership includes all the tools, resources, and support you need to develop and distribute apps, including access to beta software, app services, testing tools, app analytics, and more"*.⁵⁴
- (53) Fifth, while Apple allows app developers to offer their apps separately on the App Store for each device, app developers can also offer their apps to end users for all Apple devices, through what is known as a "universal purchase". In this case, end users acquire an app that can be used in all their Apple devices with a single purchase: *"Distribute iOS, iPadOS, watchOS, macOS, and tvOS versions of your app as a universal purchase to let customers easily enjoy your app and in-app purchases across platforms. They'll only need to purchase once on the App Store."*⁵⁵
- (54) Moreover, as acknowledged by Apple, app developers can distribute apps developed for one device on other devices. For instance, Mac users who own a silicon Mac can access through the App Store apps originally customised for the iPhone or the iPad.⁵⁶
- (55) Sixth, Apple also offers the same family sharing features across devices, allowing families to share apps, subscriptions and purchases with each other.⁵⁷

⁵⁰ See <https://support.apple.com/apps> (accessed on 21 August 2023).

⁵¹ See <https://developer.apple.com/app-store-connect/> (accessed on 21 August 2023).

⁵² See recital (32) above.

⁵³ See <https://support.apple.com/en-gb/apple-id>, (accessed on 21 August 2023).

⁵⁴ See <https://developer.apple.com/programs/> (accessed on 21 August 2023).

⁵⁵ See <https://developer.apple.com/support/universal-purchase/> (accessed on 21 August 2023).

⁵⁶ Form GD, footnote 57.

- (56) The list of common services and tools available to end users and app developers set out above further underlines that the App Store serves the same purpose across all devices through which it is accessed, namely the provision of an online intermediation service for apps between app developers and end users.
- (57) In the fourth place, in its official publications, Apple refers to the App Store as one single service, irrespective of the device through which it is accessed.
- (58) For instance, the Apple Trademark List, a non-exhaustive list of Apple’s trademarks published by Apple on its website and containing an overview of Apple’s most relevant trademarks, contains only one specific trademark for the App Store, namely App Store®,⁵⁸ without any further reference or differentiation per device. Since e.g., Apple’s Marketing Resources and Identity Guidelines explicitly call on app developers “[f]or the correct trademark symbols, refer to the Apple Trademark List,”⁵⁹ this further underlines that different devices have no stand-alone significance when it comes to Apple’s commercial relationship with its app developers in respect of the App Store.
- (59) In a similar vein, Apple states in its annual report for the year 2022, that it “operates various platforms, including the App Store®, that allow customers to discover and download applications and digital content, such as books, music, video, games and podcasts.”⁶⁰
- (60) For the reasons set out above, the Commission concludes that the App Store constitutes an online intermediation service and a software application store within the meaning of Article 2, points (5) and (14), respectively, of Regulation (EU) 2022/1925 and, therefore, a CPS within the meaning of Article 2, point (2), subpoint (a), of that Regulation.

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

5.1.2.1. The Undertaking’s view

- (61) Apple indicates that it meets the thresholds of Article 3(2)(a) of Regulation (EU) 2022/1925. As summarised in Table 1, Apple indicates that its average market capitalisation or its equivalent fair market value amounted to at least EUR 75 billion in the last financial year.⁶¹

Table 1: Apple’s average market capitalisation

Financial year	Market capitalisation or equivalent
2022	approx. EUR 2 625 170 149 200

Source: Form GD, Table 39.

⁵⁷ See <https://support.apple.com/en-gb/HT201060> and <https://support.apple.com/en-gb/HT203046> (accessed on 21 August 2023).

⁵⁸ See <https://www.apple.com/legal/intellectual-property/trademark/appletmlist.html> (accessed on 21 August 2023).

⁵⁹ See <https://developer.apple.com/app-store/marketing/guidelines/> (accessed on 21 August 2023).

⁶⁰ Apple, Annual Report 2022, Form 10-K, p.4, [https://s2.q4cdn.com/470004039/files/doc_financials/2022/q4/_10-K-2022-\(As-Filed\).pdf](https://s2.q4cdn.com/470004039/files/doc_financials/2022/q4/_10-K-2022-(As-Filed).pdf).

⁶¹ Form GD, Table 39.

- (62) In addition, Apple indicates that it provides all of its App Stores in all Member States.⁶²
- (63) Apple further indicates that its iOS App Store meets the monthly active end user and annual active business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925. In particular, Apple provided its best estimates of active end users and active business users for the last financial year in the Union for the iOS App Store, [...].⁶³
- (64) By contrast, Apple submits that iPadOS App Store, watchOS App Store, macOS App Store and tvOS App Store, which in Apple’s view constitute distinct CPSs, did not individually meet the quantitative thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925,⁶⁴ without providing the respective estimates of monthly active end users and monthly active business users for these services.
- (65) In relation to Article 3(2)(c) of Regulation (EU) 2022/1925, Apple indicates that its iOS App Store meets the requirement according to which the thresholds laid down in Article 3(2)(b) of that Regulation have been met in each of the last three financial years.⁶⁵ The data provided by Apple in this respect is summarised in Table 2.

Table 2: Monthly active end users and yearly active business users established or located in the Union for financial years 2020 to 2022 of Apple’s iOS and [...]

Financial year	Monthly active end users		Yearly active business users	
	iOS App Store	[...]	iOS App Store	[...]
2020	[>45 million]	[>45 million]	[>10 000]	[>10 000]
2021	[>45 million]	[>45 million]	[>10 000]	[>10,000]
2022	[>45 million]	[>45 million]	[>10 000]	[>10 000]

Source: Form GD, Table 40.

- (66) By contrast, Apple submits that iPadOS App Store, watchOS App Store, macOS App Store, and tvOS App Store, which in Apple’s view constitute distinct CPSs, did not individually meet the quantitative thresholds laid down in Article 3(2)(c) of Regulation (EU) 2022/1925,⁶⁶ without providing the respective estimates of active end users and active business users for these services.

5.1.2.2. The Commission’s assessment

- (67) Based on the information provided by Apple, the Commission considers that Apple meets the market capitalisation threshold laid down in Article 3(2)(a) of Regulation (EU) 2022/1925, as well as the requirement laid down in that provision that the CPS at issue, i.e., App Store, is offered in at least three Member States.

⁶² Form GD, paragraph 356.

⁶³ Form GD, Table 40.

⁶⁴ Form GD, Table 4.

⁶⁵ Form GD, Table 40.

⁶⁶ Form GD, Table 4.

- (68) Furthermore, based on the information provided by Apple, the Commission considers that since the App Store available on iOS devices meets the monthly active end user and the yearly active business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925, Apple's online intermediation CPS App Store *a fortiori* meets those thresholds.
- (69) Finally, based on the information provided by Apple, the Commission considers that, since the iOS App Store meets the requirement laid down in Article 3(2)(c) of Regulation (EU) 2022/1925 that the monthly active end user and the yearly active business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 were met in each of the last three financial years, Apple's online intermediation CPS App Store *a fortiori* meets that requirement.
- (70) 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 Apple's approach to identifying and estimating monthly active end users and yearly business users of App Store 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 Apple.

5.1.3. Conclusion for the online intermediation service App Store

- (71) For the reasons set out in recitals (35) to (60) and (67) to (69) above, the Commission concludes that App Store constitutes an online intermediation CPS within the meaning of Article 2, point (2), subpoint (a), of Regulation (EU) 2022/1925 and that Apple meets the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to that CPS. Consequently, Apple is to be designated as a gatekeeper pursuant to Article 3(4) of Regulation (EU) 2022/1925 in relation to its online intermediation service App Store CPS.

5.2. Apple's operating system iOS

5.2.1. CPS qualification and delineation

5.2.1.1. The Undertaking's view

- (72) Apple submits that it offers five distinct operating systems:
- (a) iOS (for Apple's smartphone, iPhone);
 - (b) iPadOS (for Apple's tablet, iPad);
 - (c) macOS (for Apple's laptop and desktop computer, Mac);
 - (d) watchOS (for Apple's smartwatch, Apple Watch); and
 - (e) tvOS (for Apple's media streaming device designed to integrate with consumer TV sets, Apple TV).⁶⁷
- (73) According to Apple, each of those five operating systems qualify as an operating system within the meaning of Article 2, point (10), of Regulation (EU) 2022/1925.
- (74) Moreover, Apple submits that each of those operating systems constitutes a distinct CPS, of which only iOS meets the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925.⁶⁸ In this context, Apple disagrees with the preliminary view set out

⁶⁷ Form GD, Table 4.

⁶⁸ Form GD, paragraphs 69 and 73.

in the Commission’s letter of 25 July 2023 that iOS and iPadOS should be considered as one single operating system CPS. In its reply to that letter, Apple reiterated its position that iOS and iPadOS constitute two distinct CPSs and provided additional evidence supporting the distinct purposes of the two operating systems from both the end user and business user perspective.

- (75) Apple’s position that each of its operating systems constitutes a distinct CPS is based on the following reasons.
- (76) First, Apple submits that iOS, iPadOS, macOS, watchOS and tvOS are customised to support the use case of each type of Apple devices and cannot run on other Apple devices or on devices of other brands.⁶⁹ The intrinsic purpose of each of these operating systems is to exclusively operate the respective device. According to Apple, this results in specific and differing use cases for the respective operating systems.⁷⁰ When it comes specifically to mobile devices, namely smartphones and tablets, Apple submits that, although it used to have a single operating system for both iPhones and iPads until 2019, it has started differentiating between those products over time and, since 2019, it has been offering distinct operating systems for each device – iOS for iPhones and iPadOS for iPads.⁷¹ In addition, Apple submits that the extent to which its operating systems are tailored to a specific device and to Apple’s hardware, differentiates Apple from other providers, such as Google, whose operating system Android is designed to support both smartphones and tablets and to work on devices of many original equipment manufacturers.⁷²
- (77) Second, as regards end users, Apple contends that end users use Apple’s devices and their respective integrated and customised operating systems for clearly distinguishable purposes. Apple submits data aimed at showing that, [...], the top-three uses of its operating systems are [...] for iOS; [...] for iPadOS; [...] for macOS; [...] for watchOS; and [...] for tvOS.⁷³
- (78) More specifically, in support of its position that iOS and iPadOS serve a different purpose for end users, Apple submits, among others, that: (i) iPhones and iPads are complementary [...];⁷⁴ (ii) iPhones are suitable for ‘on-the-go’ use, while iPads are mostly used in a seated position and at home;⁷⁵ (iii) more than 30 functionalities are exclusive to either iOS or iPadOS;⁷⁶ (iv) use cases and session length differ between iOS and iPadOS [...];⁷⁷ (v) the data on app activation, i.e., the number of times an end user opens an application, confirms diverging top activities ([...] for iOS, [...] for iPadOS) and shows other focus use cases (e.g., [...] for iOS);⁷⁸ (vi) an analysis of

⁶⁹ Form GD, paragraphs 76, 101-105; and Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, paragraphs 41 and 42.

⁷⁰ Form GD, paragraphs 100 et seqq.

⁷¹ Form GD, paragraph 93; Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, paragraph 39.

⁷² Form GD, paragraph 77.

⁷³ Form GD, paragraphs 12-18, 80-109; 116-155; and Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023 concerning Apple’s notification under Article 3(3) of Regulation (EU) 2022/1925, paragraphs 82-103.

⁷⁴ Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, paragraphs 55-59.

⁷⁵ Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, paragraphs 63-76.

⁷⁶ Form GD, para. 98 et seqq.; Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, paragraphs 77-80.

⁷⁷ Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, paragraphs 83-88.

⁷⁸ Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, paragraphs 89-94.

the download data for the top 2 500 apps shows that user preferences for downloading individual apps differ between iOS and iPadOS.⁷⁹

- (79) Third, as concerns the business users, Apple asserts that each operating system and the device it enables serves a different purpose from the business user perspective. It claims that app development tools reflect the differences between Apple operating systems, that app developers often tailor their applications separately to each Apple operating system, and that, in most cases, an application developed for one Apple operating system will not have full functionality on another Apple operating system. According to Apple, iOS, iPadOS, macOS, watchOS and tvOS each require specifically adapted applications.⁸⁰ While iOS applications (not developed for iPadOS) technically function on iPadOS, and iOS and iPadOS applications (not developed for macOS) technically function on macOS, they need to be run in “Compatibility Mode”, providing a subpar user experience.⁸¹ When developers decide for which operating system to adapt their applications, they take into account the use cases of the respective device.⁸²

5.2.1.2. The Commission’s assessment

- (80) Article 2, point (2), subpoint (f), of Regulation (EU) 2022/1925 lists operating systems as one of the categories of CPSs within the meaning of that Regulation. Article 2, point (10), of Regulation (EU) 2022/1925 defines an operating system as “*a system software that controls the basic functions of the hardware or software and enables software applications to run on it*”.
- (81) The Commission considers that iOS, iPadOS, macOS, watchOS and tvOS qualify as operating systems pursuant to Article 2, point (10), of Regulation (EU) 2022/1925, since they constitute software systems that control the basic functions of the respective devices on which they are installed and enable software applications to run on those devices.
- (82) Moreover, the Commission considers, in line with Apple’s view, that iOS, iPadOS, macOS, watchOS, and tvOS constitute distinct CPSs within the meaning of Article 2, point (2), sub (f), of Regulation (EU) 2022/1925. This is so for the following reasons.
- (83) As a preliminary remark, it follows from Article 2, point (10), of Regulation (EU) 2022/1925 that the purpose of an operating system should be assessed from a technological perspective, taking into account that the notion of ‘operating system’ is intrinsically linked to the hardware or software (e.g., the device) whose basic functions the operating system is specifically designed to control and on which that operating system is intended to enable the functioning of applications. Consequently, the delineation of CPSs in relation to operating systems should take into account that the type of device(s) for which the operating system is designed, in principle, affects the purpose of the operating system running that device.
- (84) In the first place, Apple develops, optimises, and offers distinct operating systems for different Apple devices, namely iOS for iPhone, iPadOS for iPad, macOS for Mac, watchOS for Apple Watch and tvOS for Apple TV. Due to Apple’s device-specific

⁷⁹ Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, paragraphs 95-103.

⁸⁰ Form GD, paragraphs 159-168.

⁸¹ Form GD, paragraphs 169-174 and 197.

⁸² Form GD, paragraphs. 19-21, 156-185; and Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, paragraphs 104-115.

approach, each of its operating systems is tailored to a specific Apple device and is not intended to run on other Apple devices or on devices of other manufacturers.⁸³

- (85) For instance, iOS is designed to control iPhones, but cannot be used to control other devices, such as iPads, and vice versa.⁸⁴ In addition, Apple’s submissions indicate that, in Apple’s case, iOS and iPadOS are specifically designed to support the more advanced hardware features of iPhone and iPad, respectively, and that these features are technically enabled by, and reflected in, the design of each operating system. In particular, the level of multi-tasking enabled by iPadOS is considerably more advanced than that enabled by iOS (with features such as ‘stage manager’, ‘overlapping windows’, and ‘shelf view’). Some features, such as compatibility with the Apple Pencil, a mouse, a trackpad, and an external display are exclusive to iPadOS, while others, such as the cellular phone and SMS service, NFC payment and enhanced camera capabilities, are exclusive to iOS.⁸⁵ In this context, Apple presented a non-exhaustive table with 30 functionalities that are only available on either iPadOS or iOS, but not on both.⁸⁶
- (86) In the second place, and in any event, the devices for which Apple has developed distinct operating systems have different functionalities and serve different purposes from an end user and business user perspective, which are reflected in the purposes of the respective operating system.
- (87) First, Apple’s devices operated by macOS, watchOS and tvOS, respectively, have different functionalities and serve different purposes than the devices operated by iOS and iPadOS. Indeed, while the devices operated by iOS and iPadOS are primarily used by end users [...], and require extended battery life, other devices have different user requirements, such as [...] (macOS), [...] (tvOS), [...] (watchOS). Similarly, business users develop programmes and applications specifically for macOS, watchOS and tvOS, which cannot be used on iOS and iPadOS.⁸⁷
- (88) Second, as regards iOS and iPadOS, evidence provided by Apple suggests that Apple further customises those operating systems for smartphones and for tablets respectively, which contributes to the different purposes for which end users and business users utilise each of them to operate the specific device.
- (89) As regards end users, the predominantly distinct use cases of iOS and iPadOS are reflected in the data on use time, number of downloads, and application activations provided by Apple. In particular, these data suggest that [...] are the most popular use cases for iOS, while iPadOS is most commonly used for [...]. Some activities are (almost) exclusive to one of the two operating systems (e.g., [...] for iOS and [...] for iPadOS).⁸⁸ Such use cases guide Apple’s optimisation of iOS and iPadOS for the corresponding device. In particular, Apple introduces device-specific software features which enhance existing hardware features. For example, iPadOS supports

⁸³ Form GD, paragraphs 75-79; and Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, paragraphs 43-46.

⁸⁴ Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, paragraph 41.

⁸⁵ Form GD, paragraphs 106 to 109.

⁸⁶ Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, Tables 2 and 3.

⁸⁷ Form GD, paragraphs 156-168.

⁸⁸ Form GD, Figure 21 and Table 5; Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, Figure 6 and Table 4.

Apple Pencil and Magic Keyboard and iOS does not. [...].⁸⁹ Moreover, based on Apple's submission, the most downloaded applications on a given operating system are adapted to that operating system. [...].⁹⁰

- (90) As regards business users, Apple's submissions indicate that developers typically develop and adapt their applications specifically to iOS and iPadOS. The development of applications for iOS and iPadOS takes place in Apple's integrated development environment Xcode, which includes all the tools that a developer needs to produce an application. According to Apple, several of Xcode's functions are either unique or highly tailored to each operating system.⁹¹ Similarly, although developers can use Xcode for developing applications for both iOS and iPadOS, the technologies and functionalities that they can use on each operating system differ significantly, including with respect to the specific Application Programming Interfaces ("APIs") available.⁹² It follows that developing applications for either iOS or iPadOS requires a specific effort on the part of developers, who are likely to make the investment of modifying their applications to run on another operating system only where they see a potential benefit.⁹³ This is not called into question by the availability of the so-called "Compatibility Mode", which enables iOS applications to run on iPadOS without making any modifications. Indeed, it follows from Apple's submissions that "Compatibility Mode" provides a significantly inferior experience on an iPad compared to running the same application natively on an iPhone, and does not allow an application developed for iPadOS to run on iOS.⁹⁴ In other words, "Compatibility Mode" does not alleviate the need to adapt applications in order to make them sufficiently user friendly and successful.
- (91) For the reasons set out above, the Commission concludes that iOS constitutes an operating system within the meaning of Article 2, point (10), of Regulation (EU) 2022/1925 and therefore a CPS within the meaning of Article 2, point (2), subpoint (f), of that Regulation.

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

5.2.2.1. The Undertaking's view

- (92) Apple indicates that it meets the thresholds laid down in Article 3(2)(a) of Regulation (EU) 2022/1925. As summarised in Table 1 above, Apple indicates that its average market capitalisation in the last financial year was above EUR 75 billion.
- (93) In addition, Apple indicates that it provides its operating system CPS iOS in all Member States.⁹⁵
- (94) Apple further indicates that its operating system CPS iOS meets the monthly active end user and annual active business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925.⁹⁶

⁸⁹ Form GD, Tables 9 and 10; Apple's reply of 1 August 2023 to the Commission's letter of 25 July 2023, paragraphs 41, 46, and Table 2.

⁹⁰ Apple's reply of 1 August 2023 to the Commission's letter of 25 July 2023, paragraph 111.

⁹¹ Form GD, paragraph 181.

⁹² Form GD, paragraph 182.

⁹³ Form GD, paragraphs 159 et seq.

⁹⁴ Form GD, paragraph 172.

⁹⁵ Form GD, paragraph 356.

⁹⁶ Form GD, Table 4.

- (95) Finally, in relation to Article 3(2)(c) of Regulation (EU) 2022/1925, Apple indicates that its operating system CPS iOS has met the thresholds laid down in Article 3(2)(b) of that Regulation in each of the last three financial years, as reflected in Table 3.⁹⁷

Table 3: Monthly active end users and yearly active business users of iOS established or located in the Union for financial years 2020 to 2022

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

Source: Form GD, Table 40.

5.2.2.2. The Commission's assessment

- (96) Based on the information provided by Apple, the Commission considers that Apple meets the market capitalisation threshold laid down in Article 3(2)(a) of Regulation (EU) 2022/1925, as well as the requirement laid down in that provision that the CPS at issue, i.e., the operating system iOS, is offered in at least three Member States.
- (97) Moreover, based on the information provided by Apple, the Commission considers that Apple's operating system CPS iOS meets the monthly active end user and the yearly active business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925.
- (98) Finally, based on the information provided by Apple, the Commission considers that Apple's operating system CPS iOS meets the requirement laid down in Article 3(2)(c) of Regulation (EU) 2022/1925 that the monthly active end user and the yearly active business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 were met in each of the last three financial years.
- (99) 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 Apple's approach to identifying and estimating monthly active end users and yearly business users of its operating system CPS is sufficiently inclusive in line with the relevant definition in Section E of the Annex to Regulation (EU) 2022/1925, given that the aforementioned thresholds are met based on the information provided by Apple.

5.2.3. Conclusion for the operating system iOS

- (100) For the reasons set out in recitals (80) to (91) and (96) to (98) above, the Commission concludes that iOS constitutes an operating system CPS within the meaning of Article 2, point (2), subpoint (f) of Regulation (EU) 2022/1925 and that Apple meets the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to that CPS. Consequently, Apple is to be designated as a gatekeeper pursuant to Article 3(4) of Regulation (EU) 2022/1925 in relation to its operating system iOS CPS.

⁹⁷ Form GD, Table 4.

5.3. Apple’s web browser Safari

5.3.1. CPS qualification and delineation

5.3.1.1. The Undertaking’s view

- (101) Apple describes Safari as its proprietary web browser. The Safari web browser is currently only accessible on Apple devices [...]. Apple explains that “*Safari allows users to browse websites, open multiple tabs, search for content and add bookmarks*” and that users can customise the browser window with additional functionalities⁹⁸ In addition, Apple explains that Safari is pre-installed on iPhones, iPads and Macs as the web browsers are integrated in the respective Apple operating systems.⁹⁹
- (102) Apple submits that it provides three distinct web browsers:¹⁰⁰
- (a) Safari on iOS (accessible on iPhones);
 - (b) Safari on iPadOS (accessible on iPads); and
 - (c) Safari on macOS (accessible on Mac computers).
- (103) According to Apple, Safari on iOS, Safari on iPadOS and Safari on macOS qualify as web browsers within the meaning of Article 2, point (11), of Regulation (EU) 2022/1925¹⁰¹ and each of them constitutes a distinct CPS. Accordingly, Apple disagrees with the preliminary view set out in the Commission’s letter of 25 July 2023 that the Safari web browsers should be considered as one single web browser CPS. In its reply to that letter, Apple reiterated its position that each of its Safari web browsers constitutes a distinct CPS.¹⁰² Moreover, Apple considers that it meets the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 only in relation to Safari on iOS.¹⁰³
- (104) Apple’s claim that Safari on iOS, Safari on iPadOS, and Safari on macOS constitute distinct CPSs within the meaning of Section D(2)(b) of the Annex to Regulation (EU) 2022/1925 is based on the following arguments.
- (105) First, according to Apple, each version of Safari is closely integrated with the respective operating system and device on which it runs. The different web browsers are designed to support different use cases on the different Apple devices. This translates into different functionalities of Safari running on iOS, iPadOS and macOS that, according to Apple, cater for the different use cases.¹⁰⁴ For example, Safari on iPadOS and macOS include a sidebar feature, which allows end users to see opened tabs, tab groups, bookmarks and browsing history. This feature is unavailable on Safari on iOS.¹⁰⁵
- (106) Second, Apple submits that each version of Safari serves different purposes for end users depending on the device on which the web browser is accessed. End users “*engage with web content from different devices, in situations and for purposes*

⁹⁸ Form GD, paragraph 274.

⁹⁹ Form GD, paragraph 273.

¹⁰⁰ Form GD, paragraph 271. [...]. See Form GD, footnote 11 and Apple’s announcement available at <https://www.apple.com/apple-vision-pro/> (accessed on 18 July 2023).

¹⁰¹ Form GD, paragraph 270.

¹⁰² Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, paragraphs 139-142.

¹⁰³ Form GD, paragraph 299.

¹⁰⁴ Form GD, paragraphs 287-291.

¹⁰⁵ Form GD, paragraph 287.

*corresponding to the different use cases of these devices*¹⁰⁶ To support this view, Apple submits data aimed to show that mobile, tablet and desktop devices are typically used for browsing different content in different situations and with different intensity of use.¹⁰⁷ For instance, [...].¹⁰⁸

- (107) Third, according to Apple, the fact that each of the three versions of Safari serves a different purpose from the end user perspective is sufficient to conclude that each of them constitutes a different CPS, and therefore, it is unnecessary to consider the business user perspective.¹⁰⁹

5.3.1.2. The Commission's assessment

- (108) Article 2, point (2), subpoint (g), of Regulation (EU) 2022/1925 lists web browsers as one of the categories of CPSs within the meaning of that Regulation. Article 2, point (11), of Regulation (EU) 2022/1925 defines web browsers as software applications that “*allow end users to access and interact with web content hosted on servers that are connected to networks such as the Internet, including standalone web browsers as well as web browsers integrated or embedded in software or similar*”.
- (109) Apple's web browser Safari, which is currently offered on different Apple devices running on iOS, iPadOS, and macOS fulfils this definition, since it allows its users to offer, access and interact with web pages, in particular content and other functionalities offered by such web pages. The Commission therefore considers that Safari constitutes a web browser within the meaning of Article 2, point (11), of Regulation (EU) 2022/1925.
- (110) The Commission further considers that, contrary to Apple's view, Safari, together with all elements that allow for the display of and access to web content, either standalone, integrated or embedded in other software applications or similar, constitutes a single web browser CPS within the meaning of Article 2, point (2), subpoint (g), of Regulation (EU) 2022/1925, irrespective of the device on which it is offered. Web browsers, including both standalone web browsers and web browsers that are integrated or embedded in other software applications or similar, serve the common purpose of allowing users to offer, access, and interact with web content, irrespective of the device through which the web browser is accessed. This finding is supported by the following considerations.
- (111) First and foremost, Safari appears to serve the same purpose from both an end user and a business user perspective across all devices on which it is available, which is to allow users to offer, access and interact with web content. In particular, end users use Safari, irrespective of the device, to access and interact with web content, for example, by making web searches, scrolling on websites, clicking on content, and adding bookmarks. Business users, in particular businesses providing websites in a

¹⁰⁶ Form GD, paragraph 292, and Apple's reply of 1 August 2023 to the Commission's letter of 25 July 2023, paragraph 144.

¹⁰⁷ Form GD, paragraphs 292 to 297, and Apple's reply of 1 August 2023 to the Commission's letter of 25 July 2023 concerning Apple's notification under Article 3(3) of Regulation (EU) 2022/1925, paragraph 141. See also recital (115) below regarding data referred to by Apple in Apple's reply of 1 August 2023 to the Commission's letter of 25 July 2023 concerning Apple's notification under Article 3(3) of Regulation (EU) 2022/1925.

¹⁰⁸ Form GD, paragraph 292.

¹⁰⁹ Form GD, paragraph 298.

commercial or professional capacity, as well as providers of extensions, plug-ins or add-ons (hereinafter referred to as “extensions”), use Safari to make those websites or extensions accessible to end users, irrespective of the device on which they are made available.

- (112) The differences in certain features of Safari on iPhones, iPads and Mac, which according to Apple cater for Safari’s different use cases depending on the device type,¹¹⁰ appear to concern essentially the nature, function and usage of the different devices on which Safari is available, rather than the web browser Safari. In particular, and contrary to Apple’s contentions, the common purpose that Safari serves across devices, namely that of providing end users and business users with a tool to offer, access and interact with web content, is not altered by the alleged duration of browsing sessions or the extent to which users of different Apple devices use the web browser, the alleged differences in popularity of the web browser when offered on different devices, the alleged differences in user interface, or the reported differences in specific functionalities available to end users.
- (113) Second, while certain features of Safari may be adapted to the type of device (e.g., due to the devices’ different screen sizes), the principal functionalities that allow end users to access and interact with web content on Safari are common to all Apple devices on which that service is available. In particular, Safari’s navigation bar offers very similar functionalities on all Apple devices, providing the same ability to open new tabs, navigate between previously visited or “next” web pages, share web pages with others, access bookmarks, and display opened tabs. Moreover, end users can browse pages by entering URLs or search terms in the address bar in the same manner on all devices.¹¹¹ Furthermore, Safari offers access to the same web content irrespective of the device used by the end user. Any differences in Safari’s functionalities across devices do not limit the compatibility of websites with specific devices and their accessibility for end users. This holds true notwithstanding Apple’s claim that certain websites may render content differently on iOS, iPadOS and macOS.¹¹² As a result, the central elements of the browsing experience and the ways end users engage with websites are largely the same across different Apple devices.
- (114) Third, and beyond the common main functionalities mentioned in the previous recital, end users enjoy an integrated user experience on Safari across all devices on which that service is available. Apple allows the synchronisation of certain user data (e.g., user names, passkeys, passwords, credit card numbers, bookmarks and history tabs) through iCloud Keychain and iCloud Tabs¹¹³ on Safari across devices.
- (115) The commonality of main functionalities, as set out in recital (113) above, together with the ability for users to synchronise their personal information across Safari on different types of devices, as set out in the previous recital, demonstrate that Safari is designed to facilitate the same experience for end users, so that they can conveniently and smoothly engage with the web browser for the same purpose across devices, namely, in order to access to and interact with web content. As Apple explains on its website, all these features allow Safari to work seamlessly across devices: “*Same Safari. Different device: Safari works seamlessly and syncs your*

¹¹⁰ Form GD, paragraphs 287-291.

¹¹¹ Form GD, paragraphs 278, 280 and 284.

¹¹² Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023 concerning Apple’s notification under Article 3(3) of Regulation (EU) 2022/1925, paragraph 145.

¹¹³ See <https://support.apple.com/en-us/HT202530> (accessed on 18 July 2023).

passwords, bookmarks, history, tabs, and more across Mac, iPad, iPhone, and Apple Watch.”¹¹⁴

- (116) Fourth, there are no substantial differences for business users providing websites or extensions for Safari, depending on the device on which Safari is used. Developers can and do create websites in a broadly uniform manner for all devices (e.g., by using responsive web design to automatically adapt content to different screen sizes), without Safari raising any meaningful compatibility issues in relation to device types. While there may be certain differences in writing content optimised for each device (e.g., app developers may adjust the layout or design of icons for smartphone-sized screens compared to the desktop layout), these differences do not alter the conclusion that, from the perspective of app developers, web browsers in general, and web browser Safari in particular, serve the same purpose. Each business user providing a website decides on its own the level of website optimisation to particular devices, and they may also decide not to optimise websites to particular devices at all. Furthermore, Apple provides business users with a single set of tools and guidelines for Safari across devices (e.g., currently, Safari HTML Reference,¹¹⁵ Safari HTML5 Audio and Video Guide,¹¹⁶ Safari HTML Canvas Guide,¹¹⁷ Safari CSS Visual Effects Guide,¹¹⁸ etc.). In addition, Apple’s Safari Web Content Guide lays down the guidelines to develop web content that is optimised for each type of device.¹¹⁹
- (117) Fifth, there are also no major differences in the use and development of extensions for Safari. From the end user perspective, extensions are very similar and can synchronise across different Apple devices.¹²⁰ From a business user perspective, the process of developing extensions for Safari is also largely the same across different Apple devices. Apple offers the same tool – Xcode, Apple’s integrated development environment – for business users to develop web extensions for Safari on all devices.¹²¹ This means that developers can ensure that the extension works on different devices or that they can upgrade an existing macOS Safari extension to also

¹¹⁴ See <https://www.apple.com/safari/> and <https://www.apple.com/macOS/continuity/> (accessed on 18 July 2023).

¹¹⁵ See https://developer.apple.com/library/archive/documentation/AppleApplications/Reference/SafariHTMLRef/Introduction.html#//apple_ref/doc/uid/TP40002049 (accessed on 18 July 2023).

¹¹⁶ See https://developer.apple.com/library/archive/documentation/AudioVideo/Conceptual/Using_HTML5_Audio_Video/Introduction/Introduction.html#//apple_ref/doc/uid/TP40009523 (accessed on 18 July 2023).

¹¹⁷ See https://developer.apple.com/library/archive/documentation/AudioVideo/Conceptual/HTML-canvas-guide/Introduction/Introduction.html#//apple_ref/doc/uid/TP40010542 (accessed on 18 July 2023).

¹¹⁸ See https://developer.apple.com/library/archive/documentation/InternetWeb/Conceptual/SafariVisualEffectsProgGuide/Introduction.html#//apple_ref/doc/uid/TP40008032 (accessed on 18 July 2023).

¹¹⁹ See https://developer.apple.com/library/archive/documentation/AppleApplications/Reference/SafariWebContent/CreatingContentforSafariiPhone/CreatingContentforSafariiPhone.html#//apple_ref/doc/uid/TP40006482-SW1 (accessed on 18 July 2023).

¹²⁰ See <https://support.apple.com/en-us/HT203051> (accessed on 18 July 2023).

¹²¹ See <https://developer.apple.com/safari/>; <https://developer.apple.com/safari/resources/> and <https://developer.apple.com/safari/extensions/> (accessed on 18 July 2023).

support other devices.¹²² In addition, Apple encourages the joint offering of extensions across devices and enables their joint distribution.¹²³

- (118) Sixth, Apple applies the same set of privacy and security rules and features across its different devices.¹²⁴ For example, most privacy features offered by Apple, such as Intelligent Tracking Prevention¹²⁵ and Private Browsing¹²⁶ are available on Safari across different devices. Apple’s security policy also applies consistently across its different devices, as evidenced by the availability of security indicators and password managers on Safari across devices.¹²⁷
- (119) Therefore, the Commission considers that Safari qualifies as a single web browser, irrespective of the device through which that service is accessed.
- (120) For the reasons set out above, the Commission concludes that Safari, including all the elements that allow for the display of and access to web content, either standalone, integrated or embedded in other software applications or similar, constitutes a web browser within the meaning of Article 2, point (11), of Regulation (EU) 2022/1925 and therefore a CPS within the meaning of Article 2, point (2), subpoint (g), of that Regulation.

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

5.3.2.1. The Undertaking’s view

- (121) Apple indicates that it meets the thresholds laid down in Article 3(2)(a) of Regulation (EU) 2022/1925. As summarised in Table 1 above, Apple indicates that its average market capitalisation in the last financial year was above EUR 75 billion¹²⁸.
- (122) In addition, Apple indicates that its Safari web browser offered on iOS alone is provided in all Member States.¹²⁹
- (123) Apple further indicates that Safari on iOS meets the monthly active end user and annual active business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925.¹³⁰
- (124) Finally, in relation to Article 3(2)(c) of Regulation (EU) 2022/1925, Apple indicates that Safari on iOS has met the thresholds laid down in Article 3(2)(b) of that Regulation in each of the last three financial years.¹³¹ As summarised in Table 4,

¹²² Apple asserts, it is also “*easy to upgrade an existing macOS Safari web extension to also support iOS and iPadOS.*” See <https://developer.apple.com/safari/extensions/> (accessed on 18 July 2023).

¹²³ Through Universal Purchase developers can be “*selling them together as one product to improve the purchasing experience for [their] users*” See https://developer.apple.com/documentation/safariservices/safari_web_extensions/distributing_your_safari_web_extension (accessed on 18 July 2023).

¹²⁴ See <https://www.apple.com/privacy/features/> and https://www.apple.com/safari/docs/Safari_White_Paper_Nov_2019.pdf (accessed on 18 July 2023).

¹²⁵ Id., page 4.

¹²⁶ Id., page 7

¹²⁷ See <https://pkic.org/uploads/2017/03/CASC-Browser-UI-Security-Indicators.pdf> and <https://appleinsider.com/articles/21/12/29/how-to-use-icloud-keychain-apples-built-in-and-free-password-manager> (accessed on 18 July 2023).

¹²⁸ Form GD, paragraphs 64 and 65.

¹²⁹ Form GD, paragraph 356.

¹³⁰ Form GD, table 40.

¹³¹ Form GD, paragraph 357. Apple also submits that Safari offered on both iOS and iPadOS (“mobile Safari”) had [>45 million] monthly active end users established or located in the Union in the last

Apple provided its best estimates of active end users and active business users for each of the last three financial years in the Union.¹³²

Table 4: Monthly active end users and yearly active business users of Safari on iOS established or located in the Union for financial years 2020 to 2022

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

Source: Form GD, Table 40.

(125) Apple did not provide the total number of end users and business users for Safari across all devices on which it is offered. Nor did Apple provide the number of end users and business users of Safari on macOS or iPadOS separately.

5.3.2.2. The Commission's assessment

(126) Based on the information provided by Apple, the Commission considers that Apple meets the market capitalisation threshold laid down in Article 3(2)(a) of Regulation (EU) 2022/1925, as well as the requirement laid down in that provision that the CPS at issue, i.e., the web browser Safari, is offered in at least three Member States.

(127) Furthermore, based on the information provided by Apple,¹³³ the Commission considers that, since Safari on iOS meets the monthly active end user and the yearly active business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925, Apple's web browser CPS Safari *a fortiori* meets those thresholds.

(128) Finally, based on the information provided by Apple,¹³⁴ the Commission considers that, since Safari on iOS meets the requirement laid down in Article 3(2)(c) of Regulation (EU) 2022/1925 that the monthly active end user and the yearly active business user thresholds laid down in Article 3(2)(b) of that Regulation were met in each of the last three financial years, Apple's web browser CPS Safari *a fortiori* meets that requirement.

(129) 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 Apple's approach to identifying and estimating monthly active end users and yearly business users for its web browser Safari 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 Apple.

5.3.3. Conclusion for the web browser Safari

(130) For the reasons set out in recitals (108) to (120) and (126) to (128) above, the Commission concludes that Safari, including all the elements that allow for the

financial year, and [>10 000] yearly active business users established or located in the union in the last financial year (see Form GD, table 40).

¹³² Form GD, table 40.

¹³³ Form GD, paragraphs 377-381.

¹³⁴ Form GD, paragraphs 357 and 377-381.

display of and access to web content, either standalone, integrated or embedded in other software applications or similar, constitutes a web browser CPS within the meaning of Article 2, point (2), subpoint (g), of Regulation (EU) 2022/1925 and that Apple meets the thresholds set out in Article 3(2) of Regulation (EU) 2022/1925 in relation to that CPS. Consequently, Apple is to be designated as a gatekeeper pursuant to Article 3(4) of Regulation (EU) 2022/1925 in relation to its web browser Safari CPS.

5.4. Apple’s number-independent interpersonal communication service iMessage

5.4.1. CPS qualification and delineation

5.4.1.1. The Undertaking’s view

- (131) iMessage is an instant messaging service which is available to those users that have an Apple device and which allows them to send text messages, photos, videos and other content to users of other Apple devices (between individual users or within groups) via the Internet.¹³⁵ iMessage is accessed through the Messages software application (“Messages App”) developed and provided by Apple, which is pre-installed on Apple devices.¹³⁶
- (132) While Apple listed its service iMessage in Section 2 of its Form GD, it did so under the caveat that it should not be considered as a CPS covered by Article 2 of Regulation (EU) 2022/1925.¹³⁷
- (133) First, Apple submits that iMessage does not qualify as a NIICS because it is not provided for remuneration, which is one of the elements for any service to qualify as an interpersonal communication service (“ICS”) pursuant to Article 2, point (5), of Directive (EU) 2018/1972,¹³⁸ to which the definition in Article 2, point (9), of Regulation (EU) 2022/1925 refers. According to Apple, iMessage is not a fee-based service and Apple does not monetise it via the sale of hardware devices nor via the processing of personal data.¹³⁹ In particular, Apple argues that there is no direct link between the setting of the price and the purchase of hardware devices, and the use of iMessage. According to Apple, its devices can be used without iMessage and iMessage can be set up on one device multiple times by different users, for instance when the device is re-sold on the secondary market.¹⁴⁰ Additionally, Apple submits that digital in-app purchases cannot be considered to be a remuneration for iMessage because it is a purchase that takes place in the App Store. Furthermore, according to Apple, such in-app purchase is optional and is not necessarily used in iMessage.¹⁴¹ Apple also argues that the fact that other messaging services are offered for remuneration is irrelevant for the qualification of iMessage.¹⁴²

¹³⁵ Form GD, paragraph 316.

¹³⁶ Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, paragraph 161.

¹³⁷ Form GD, paragraphs 322 and 323.

¹³⁸ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ L 321, 17.12.2018, p. 36).

¹³⁹ Form GD, paragraphs 333-346.

¹⁴⁰ Form GD, paragraph 338; and Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, paragraphs 161 and 162.

¹⁴¹ Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, paragraphs 163 to 165; and Apple’s response to Question 1 of the EC’s RFI of 28 June 2023.

¹⁴² Form GD, paragraphs 347-350.

- (134) Second, and regardless of the qualification of iMessage as a NIICS, Apple argues that iMessage is not designed for business-to-consumer (“B2C”) communication but only for personal, consumer-to-consumer (“C2C”) communication, [...]. In addition, Apple submits that, besides iMessage, it offers a different service for businesses called “Messages for Business” which is meant for B2C communication.¹⁴³
- (135) Finally, Apple puts forward arguments, pursuant to Article 3(5) of Regulation (EU) 2022/1925, to rebut the presumptions laid down in Article 3(2) of that Regulation in relation to iMessage.¹⁴⁴

5.4.1.2. The Commission’s assessment

- (136) Notwithstanding the aforementioned caveat made by Apple, the Commission considers that Apple has notified its service iMessage in accordance with Article 3(3), first subparagraph, of Regulation (EU) 2022/1925, since Apple included that service in Section 2 of its Form GD and it does not dispute that iMessage exceeds the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925.¹⁴⁵
- (137) Article 2, point (2), subpoint (e), of Regulation (EU) 2022/1925 lists NIICS as one of the categories of CPSs within the meaning of that Regulation. Article 2, point (9), of Regulation (EU) 2022/1925 defines NIICS by cross-referring to Article 2(7) of Directive (EU) 2018/1972. According to the latter provision, a NIICS is “*an interpersonal communication service which does not connect with publicly assigned numbering resources, namely, a number or numbers in national or international numbering plans, or which does not enable communication with a number or numbers in national or international numbering plans*”. According to Article 2, point (5), of Directive (EU) 2018/1972, an ICS is “*a service normally provided for remuneration that enables direct interpersonal and interactive exchange of information via electronic communications networks between a finite number of persons, whereby the persons initiating or participating in the communication determine its recipient(s) and does not include services which enable interpersonal and interactive communication merely as a minor ancillary feature that is intrinsically linked to another service*”.
- (138) Contrary to Apple’s view, the Commission considers that iMessage meets the definition of NIICS laid down in Article 2, point (9), of Regulation (EU) 2022/1925. That view is supported by the following considerations.
- (139) First, as regards Apple’s submission that iMessage does not constitute a NIICS because it is not provided for remuneration, the definition of ICS laid down in Article 2, point (5), of Directive (EU) 2018/1972 refers to services that are “*normally provided for remuneration*”. That definition follows, in substance, the definition of services set out in Article 57 of the Treaty.¹⁴⁶ In that context, the Court of Justice of the European Union has interpreted the concept of remuneration broadly, as

¹⁴³ Form GD, paragraphs 327-330; and Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, paragraphs 170 and 171.

¹⁴⁴ Form GD, Annex 4.

¹⁴⁵ Form GD, paragraph 351. Even if Apple argues that it cannot provide the Commission with a meaningful estimate of business users and that it reserves its position as to the exact number of business users for iMessage, Apple acknowledges that iMessage is likely to have exceeded 10 000 business users in the last three financial years. See Form GD, paragraphs 411 and 412; and Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, paragraph 170.

¹⁴⁶ See recital 16 of the preamble to Directive (EU) 2018/1972.

including not only direct payment for the service itself but also other forms of indirect remuneration, such as through the sale of associated devices, among others.¹⁴⁷ In addition, according to settled case law, such remuneration does not have to be paid directly by the recipient of the service.¹⁴⁸ In fact, the concept of “services” within the meaning of Article 57 of the Treaty extends, insofar as they represent an economic activity, to services which are not remunerated by those who receive them.¹⁴⁹ That is the case where, for example, the performance of a service free of charge is provided by a service provider for the purposes of marketing and advertising the goods sold and services provided by that service provider, since the cost of that activity is incorporated into the price of those goods or services.¹⁵⁰

- (140) iMessage is provided through the Messages app which is pre-installed¹⁵¹ and can only be used on Apple’s devices,¹⁵² which are sold to end users and business users. Therefore, Apple receives a remuneration through the sale of Apple devices not only for the hardware, but also for Apple’s software applications that go with it, including the iMessage service. In this respect, and even if it is not decisive for the notion of remuneration whether a service plays a minor or major role in the marketing of hardware devices, iMessage is an important element of the expansion of Apple’s ecosystem which, by the same token, includes hardware. Contrary to Apple’s claim that iMessage does not play a significant role in Apple’s hardware sales marketing strategy,¹⁵³ both Apple’s marketing communication and observations from the industry indicate that iMessage plays an important role in the marketing and sales of Apple’s devices like iPhone,¹⁵⁴ whose sales account for a significant part of Apple’s

¹⁴⁷ Judgment of the Court of Justice of 15 September 2016, *Tobias Mc Fadden v Sony Music Entertainment Germany GmbH* (hereinafter referred to as “*Mc Fadden*”), C-484/14, EU:C:2016:689, paragraph 42.

¹⁴⁸ Case C-484/14, *Mc Fadden*, paragraph 41; and Judgment of the Court of Justice of 11 September 2014, *Sotiris Papasavvas v O Fileleftheros Dimosia Etaireia Ltd and Others* (hereinafter referred to as “*Papasavvas*”), C-291/13, EU:C:2014:2209, paragraphs 28 and 29.

¹⁴⁹ Case C-291/13, *Papasavvas*, paragraph 28; Judgment of the Court of Justice of 11 April 2000, *Deliège v Ligue francophone de Judo et disciplines Associées Asb*, (hereinafter referred to as “*Deliège*”), joined cases C-51/96 and C-191/97 EU:C:2000:199, paragraph 52 and Judgment of the Court of Justice of 18 December 2007, *Hans-Dieter Jundt and Hedwig Jundt v Finanzamt Offenburg*, case C-281/06, EU:C:2007:816 paragraphs 32, 34 and 39.

¹⁵⁰ Case C-484/14, *Mc Fadden*, paragraph 42 and C-51/96 and case C-191/97, *Deliège*, paragraph 56.

¹⁵¹ Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, paragraph 161.

¹⁵² iMessage cannot be used on any other device than Apple’s own devices, either free of charge or against any remuneration. See Form GD, paragraph 318.

¹⁵³ Form GD, footnote 93.

¹⁵⁴ See, for example, the Financial Times, ‘How Apple captured Gen Z in the US — and changed their social circles’, of 21 February 2023, available at <https://on.ft.com/3EpbqKy> (last accessed on 28 June 2023); and the statement of Meta’s Chief Executive Officer Mark Zuckerberg who said, when addressing to investors in 2020, that “*iMessage is a key linchpin of [Apple’s] ecosystem. It comes pre-installed on every iPhone and they’ve preferred it with private APIs and permissions [...]*”. See Facebook, Inc. (FB), Fourth Quarter 2020 Results Conference Call, of 27 January 2021, available at: page 3 (last accessed on 28 August 2023). Moreover, an exchange of emails between Apple’s executives made public in the context of the case *Epic Games, Inc. v Apple Inc.* before the U.S. District Court for the Northern District of California in 2021 revealed that iMessage is considered as one of the pillars of Apple’s ecosystem, as such Apple executives admitted that “*moving iMessage to Android will hurt us more than help us*”, referring to the lock-in effects of iMessage on users. See Case No. 4:20-cv-05640-YGR, *Epic Games, Inc. v Apple Inc.*, Rule 52 Order After Trial on the Merits of the U.S. District Court for the Northern District of California, of 10 September 2021, available at: <https://s3.documentcloud.org/documents/21060631/apple-epic-judgment.pdf>, page 47 (last accessed on 28 August 2023). The fact that iMessage plays a key role in Apple’s ecosystem is also confirmed by the relevance that iMessage has in the marketing of Apple’s new devices. See for example Apple’s press

overall revenue.¹⁵⁵ Finally, the fact that, as argued by Apple,¹⁵⁶ iMessage can be set up on one device multiple times by different users, for instance, when the device is re-sold on secondary markets, does not call into question the finding that Apple is remunerated for the provision of that service through the first sale of the device in question.

- (141) Moreover, Apple allows the purchase of applications and digital content within the Messages App and through Apple’s App Store for iMessage, including stickers and emojis, which are created by third-party developers.¹⁵⁷ Such applications and digital content are publicly called “iMessage apps” by Apple.¹⁵⁸ Apple garners a commission from the purchase of such digital content that it charges to the third-party developers.¹⁵⁹ The possibility for iMessage users to purchase iMessage apps, and the resulting commission received by Apple, which would not arise in the absence of the iMessage service, further corroborates the existence of remuneration in return for a service, irrespective of whether the related monetary element is specifically attributable to iMessage or to any other Apple service – e.g., the Apple’s App Store through which Apple processes the commission generated by the sale of the iMessage apps. In this respect, the circumstance that Apple systematically refers to “iMessage apps and stickers”¹⁶⁰ in its communication addressed to both end users and developers further evidences that this digital content is mainly designed and

release of 5 June 2023 concerning the previews of iPadOS 17 which states that “[...] *Messages offers new ways to connect, including a stickers experience with emoji stickers, and the ability for users to create Live Stickers from their own photos by lifting a subject from the background. Users can also add effects to Live Stickers that help bring conversations to life. Available from the keyboard, a new drawer gathers all of a user’s stickers in one place for easier access across iPadOS. New Messages features include an expandable menu that appears with a simple tap for easy access to the user’s most frequently used iMessage apps [...]*,” available at: <https://www.apple.com/lu/newsroom/2023/06/ipados-17-brings-new-levels-of-personalization-and-versatility-to-ipad/> (last accessed on 28 August 2023). [...].

¹⁵⁵ Apple’s iPhone sales accounted for 47.3 percent of the company’s overall revenue in the fourth quarter of fiscal year 2022. See, in this regard, <https://www.statista.com/statistics/382260/segments-share-revenue-of-apple/> (last accessed on 28 August 2023). Moreover, according to Apple’s Quarterly Report submitted to the US Securities and Exchange Commission on 5 May 2023, the net sales of iPhone devices counted for around half of the total net sales of Apple devices (e.g., iPhone net sales was of USD 51 334 million in a three-month period by 1 April 2023 out of a total net sales of USD 94 836 million, and of USD 117 109 million in a six-month period by 1 April 2023 out of a total net sales of USD 211 990 million); and the net sales increase during the second quarter of 2023 and the first six months of 2023 in Europe was largely due to the higher net sales of iPhone. See Apple Form 10-Q for the Fiscal Quarter Ended on 1 April 2023 available at: <https://d18rn0p25nwr6d.cloudfront.net/CIK-0000320193/52f2576b-2775-4676-b40c-a63e2b5d8e60.pdf>, pages 7 and 15 (last accessed on 28 August 2023). Apple’s press release of 4 March 2023 confirmed that iPhone revenue set a March quarter record, which is available at: <https://d18rn0p25nwr6d.cloudfront.net/CIK-0000320193/20a82475-1fe3-4e9c-bddd-dd402d3dde60.pdf> (last accessed on 28 August 2023). Moreover, the importance of iPhone sales in Europe has been also confirmed by Apple’s Form 10-Q for the quarterly period ended on 1 July 2023 available at: <https://d18rn0p25nwr6d.cloudfront.net/CIK-0000320193/f8aaeabb-7a2a-479d-bf72-9559ff51ea5d.pdf>, page 15 (last accessed on 28 August 2023).

¹⁵⁶ Form GD, paragraph 338; and Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023 concerning Apple’s notification under Article 3(3) of Regulation (EU) 2022/1925, paragraph 162.

¹⁵⁷ See documentation for app developers available at: <https://developer.apple.com/imessage/> (last accessed on 28 June 2023) and <https://developer.apple.com/design/human-interface-guidelines/imessage-apps-and-stickers> (last accessed on 28 August 2023).

¹⁵⁸ See <https://support.apple.com/en-us/HT206906> (last accessed on 28 August 2023).

¹⁵⁹ Apple’s response to Question 1 of RFI of 28 June 2023 and Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, paragraph 164.

¹⁶⁰ See footnotes 168 and 169.

promoted for its use in the context of iMessage, irrespective of whether part of this digital content is also available when using MMS, as Apple claims.¹⁶¹

- (142) Furthermore, the fact that other undertakings providing similar NIICS may have adopted a remuneration model different from Apple’s remuneration model does not call into question that iMessage is a service normally provided for remuneration. Quite the contrary, the fact that other undertakings providing similar NIICS request a remuneration for that service corroborates the Commission’s finding that NIICS like iMessage are ‘normally provided for remuneration’.
- (143) Second, regarding Apple’s argument that iMessage is not intended to act as a gateway for business users to reach end users because it is not designed for B2C communication, it follows from recital (15) of the preamble to Regulation (EU) 2022/1925 that the fact that a service also intermediates between end users does not preclude it from being an (important) gateway for business users to reach end users; nor, a fortiori, does it preclude it from being a CPS within the meaning of Article 2, point (2), of Regulation (EU) 2022/1925.
- (144) Similarly, contrary to what Apple suggests, the fact that a service neither provides CRM solutions nor allows for the creation of specific business accounts does not preclude it from qualifying as a NIICS. This is also confirmed by the definition of business users for NIICS provided in Section E of the Annex to Regulation (EU) 2022/1925, which includes not only business users who had a business account, but also those who have initiated or participated in any way in a communication through the NIICS to communicate directly with an end user. In this respect, Apple does not dispute that iMessage has business users.¹⁶² This reveals, therefore, that iMessage can be assumed to be used by business users to contact end users, regardless of whether this service has been designed as a specific tool for B2C communication. Therefore, the Commission considers, contrary to Apple’s views, that there is a business side to iMessage.
- (145) Furthermore, the Commission also considers that Apple’s “Messages for Business”,¹⁶³ which is incorporated and accessed via the Messages app like iMessage, targets business users allowing them to start a business chat, schedule appointments, make purchases, or resolve other issues.¹⁶⁴ The connection between Messages for Business and iMessage is apparent from Apple’s own documentation, which states that “[Your organization] can also use the full power of the iMessage framework to help your customers resolve issues, schedule appointments, make purchases, or make payments with Apple Pay”,¹⁶⁵ and that “Apple Messages for Business relies on your iMessages device settings”.¹⁶⁶ This shows that Messages for

¹⁶¹ Apple’s response to Question 1 of RFI of 28 June 2023 and Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, paragraph 165.

¹⁶² Form GD, paragraph 351 and Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, paragraph 170.

¹⁶³ Originally and still referred to as “Business Chat” on Apple’s website. Apple rebranded Business Chat to Messages for Business on 20 September 2021. See <https://register.apple.com/resources/messages/messaging-documentation/doc-rev-history> (last accessed on 28 June 2023).

¹⁶⁴ Form GD, paragraph 330.

¹⁶⁵ See <https://register.apple.com/resources/messages/messaging-documentation/> (last accessed on 28 June 2023).

¹⁶⁶ See <https://register.apple.com/resources/messages/messaging-documentation/troubleshooting#messaging> (last accessed on 28 August 2023).

Business enables iMessage end users to communicate directly with business users and vice versa in a seamless experience offered through the Messages App.

- (146) This seamless experience offered through the Messages App is also publicly advertised by Apple, whose website for Messages for Business announces the service as follows: *“Let your customers message with you through the Messages app. Messages for Business is a powerful new way for businesses to connect directly with customers using iPhone, iPad, Mac, and Apple Watch. With Messages for Business, your customers can easily get assistance, schedule appointments, and complete purchases with Apple Pay, right from within Messages”*.¹⁶⁷
- (147) Therefore, and irrespective of whether iMessage and Messages for Business may present differences from a technical perspective (including with regard to encryption) as claimed by Apple,¹⁶⁸ end users of iMessage can be reached by business users via Messages for Business (even if a Messages for Business conversation can only be started by end users) without the need to sign up to a different service. This is also confirmed by Apple’s own documentation quoted in the two preceding recitals, which clearly encourages business users to use Messages for Business for communication with iMessage users in a seamless experience offered through the Messages App.
- (148) For the reasons set out above, the Commission concludes that iMessage constitutes a NIICS within the meaning of Article 2, point (9), of Regulation (EU) 2022/1925 and therefore a CPS within the meaning of Article 2, point (2), subpoint (e), of that Regulation.

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

5.4.2.1. The Undertaking’s view

- (149) Apple indicates that it meets the thresholds laid down in Article 3(2)(a) of Regulation (EU) 2022/1925. As summarised in Table 1 above, Apple submits that its average market capitalisation in the last financial year was above EUR 75 billion.¹⁶⁹
- (150) While Apple does not explicitly indicate that it offers the iMessage service in all Member States,¹⁷⁰ this is confirmed by the fact that, as indicated in recital (140) above, the Messages app through which iMessage is provided is pre-installed on Apple’s devices offered for sale to end users and business users in all Member States. As such, iMessage is provided in all Member States.
- (151) Furthermore, Apple indicates that iMessage meets the end user threshold laid down in Article 3(2)(b) of Regulation (EU) 2022/1925. In particular, Apple considers that iMessage had approximately [>45 million] monthly active end users established or located in the Union in the last financial year. Although Apple argues that it cannot provide the Commission with a reasonable estimate, Apple does not dispute that the number of unique active business users established in the Union in each of its last three financial years is likely to have exceeded 10 000.¹⁷¹

¹⁶⁷ See <https://register.apple.com/messages> (last accessed on 28 June 2023).

¹⁶⁸ Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, paragraph 171.

¹⁶⁹ Form GD, Table 39 and paragraph 355.

¹⁷⁰ Form GD, paragraph 351.

¹⁷¹ Form GD, paragraphs 351, 411 and 412; and Apple’s reply of 1 August 2023 to the Commission’s letter of 25 July 2023, paragraph 170.

- (152) Finally, in relation to Article 3(2)(c) of Regulation (EU) 2022/1925, Apple indicates that iMessage has met the thresholds laid down in Article 3(2), point (b) of Regulation (EU) 2022/1925 in each of the last three financial years. Apple provided its best estimates of active end users and active business users in the Union for each of the last three financial years accordingly.

Table 5: Monthly active end users and yearly active business users of iMessage established or located in the Union for financial years 2020 to 2022

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

Source: Form GD, Table 40.

5.4.2.2. The Commission's assessment

- (153) Based on the information provided by Apple, the Commission considers that Apple meets the market capitalisation threshold laid down in Article 3(2)(a) of Regulation (EU) 2022/1925, as well as the requirement laid down in that provision that the CPS at issue, the NIICS iMessage, is offered in at least three Member States.
- (154) Moreover, on the basis of the information provided by Apple,¹⁷² the Commission considers that Apple's NIICS CPS iMessage meets the monthly active end user and yearly active business user thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925.
- (155) Finally, based on the information provided by Apple,¹⁷³ the Commission considers that Apple's NIICS CPS iMessage meets the requirement laid down in Article 3(2)(c) of Regulation (EU) 2022/1925 that the monthly active end user and the yearly active business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 were met in each of the last three financial years.
- (156) As regards the thresholds laid down in Article 3(2)(b) and (c) of Regulation (EU) 2022/1925, it is not necessary to determine whether Apple's approach to identifying and estimating monthly active end users and yearly business users 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 Apple.

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

5.4.3.1. The Undertaking's view

- (157) As summarised in the decision opening a market investigation as referred to in recital (160) below, Apple has put forward arguments pursuant to Article 3(5), first subparagraph, of Regulation (EU) 2022/1925 seeking to rebut the presumptions laid down in Article 3(2) of that Regulation.

¹⁷² Form GD, paragraphs 351 and 412.

¹⁷³ Form GD, paragraph 351.

5.4.3.2. The Commission's assessment

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

5.4.4. *Conclusion for the number-independent interpersonal communication service iMessage*

(159) For the reasons set out in the recitals (136) to (148) and (153) to (155) above, the Commission concludes that iMessage constitutes a NIICS CPS within the meaning of Article 2, point (2), subpoint (e), of Regulation (EU) 2022/1925 and that Apple meets the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to that CPS.

(160) Pursuant to Article 3(5), third sub-paragraph, of Regulation (EU) 2022/1925, the Commission has decided to open a market investigation, pursuant to Article 17(3) of that Regulation, to assess further the arguments presented by Apple calling into question the presumptions laid down in Article 3(2) of that Regulation in relation to its NIICS CPS iMessage.

6. CONCLUSION

(161) In light of the above, the Commission concludes, pursuant to Article 3 of Regulation (EU) 2022/1925, that Apple is to be designated as a gatekeeper and that the following [...] CPSs of Apple are individually an important gateway for business users to reach end users: (i) its online intermediation service App Store; (ii) its operating system iOS; and (iii) its web browser Safari.

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

HAS ADOPTED THIS DECISION:

Article 1

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

Article 2

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

- (a) Apple's online intermediation service App Store;
- (b) Apple's operating system iOS; and
- (c) Apple's web browser Safari.

Article 3

This Decision is addressed to Apple Inc., One Apple Park Way, Cupertino, CA 95014, United States of America.

Done at Brussels, 5.9.2023

For the Commission
Margrethe VESTAGER
Executive Vice-President

