



EUROPEAN COMMISSION

***CASES DMA.100015 – MICROSOFT
– ONLINE SEARCH ENGINES;
DMA.100028 – MICROSOFT – WEB
BROWSERS; DMA.100034 –
MICROSOFT – ONLINE
ADVERTISING SERVICES***

(Only the English text is authentic)

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

Article 16(1) and 17(3) Regulation (EU) 2022/1925

Date: 05.09.2023



EUROPEAN COMMISSION

Brussels, 5.9.2023
C(2023) 6078 final

PUBLIC VERSION

Microsoft Corporation One
Microsoft Way Redmond,
WA 98052 United States

**Subject: DMA.100015 – MICROSOFT – ONLINE SEARCH ENGINES;
DMA.100028 – MICROSOFT – WEB BROWSERS;
DMA.100034 – MICROSOFT – ONLINE ADVERTISING
SERVICES**

**Commission decision opening a market investigation pursuant
to Articles 16(1) and 17(3) of Regulation (EU) 2022/1925 of the
European Parliament and of the Council on contestable and fair
markets in the digital sector
Only the English text is authentic**

Dear Sir or Madam,

- (1) On 3 July 2023, Microsoft Corporation notified the Commission, pursuant to Article 3(3), first subparagraph, of Regulation (EU) 2022/1925,¹ that Microsoft Corporation, together with all the legal entities directly or indirectly controlled by it (hereinafter referred to as “Microsoft” 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 operating system Windows PC OS; (ii) its online search engine Bing; (iii) its web browser Edge; (iv) its online advertising services Microsoft Advertising; (v) its number-independent interpersonal communication service Outlook.com; and (vi) its online social networking service LinkedIn.³

¹ OJ L 265, 12.10.2022, p. 1-66.

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

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

- (2) Together with its notification, Microsoft presented arguments, pursuant to Article 3(5), first subparagraph, of Regulation (EU) 2022/1925, aimed at demonstrating that, although (i) its online search engine Bing, (ii) its web browser Edge, and (iii) its online advertising services Microsoft Advertising constitute CPSs within the meaning of Article 2, point (2) of that Regulation and that each meet all the thresholds laid down in Article 3(2), Microsoft exceptionally does not satisfy the requirements listed in Article 3(1) of that Regulation in relation to those services, due to the circumstances in which they operate.

I. THE UNDERTAKING'S VIEWS

A. Microsoft's online search engine Bing

- (3) In order to seek to rebut the presumptions laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to its online search engine CPS Bing, Microsoft puts forward the following main arguments pursuant to Article 3(5), first subparagraph, of that Regulation.
- (4) First, according to Microsoft, Bing does not constitute an important gateway for business users to reach end users in the Union due to its relatively small scale, considering the overall scale of activities within the online search engines CPS category and in comparison to other online search engines offered in the Union.⁴ In addition, Microsoft argues that Bing's scale is very dependent on its web browser CPS Edge and its online advertising service Microsoft Advertising,⁵ which are themselves, in Microsoft's view, of limited scale.⁶ Therefore, Microsoft argues that the analysis of whether Bing constitutes an important gateway within the meaning of Article 3(1)(b) of Regulation (EU) 2022/1925 requires a holistic assessment of that CPS, taking into account its close connections with Edge and Microsoft Advertising.⁷
- (5) Second, Microsoft argues that Bing is not an important gateway with an entrenched and durable position in relation to online search engine services. This is because Bing neither benefits from strong positive feedback loops, nor does it exhibit strong monetisation potential.⁸ According to Microsoft, that is

⁴ According to data provided by Microsoft, Bing accounts for a small fraction of the overall activities of online search engine services, namely 3.6% (see Form GD, Annex A, paragraph 12). Notably, Microsoft has highlighted that, based on StatCounter data, Bing is 25 times smaller than the largest operator in the CPS category of online search engines, Google Search (Form GD, Annex A, paragraph 16). Microsoft has additionally outlined that Bing's scale is limited across all activities of the online search engines CPS category. Based on StatCounter data, provided by Microsoft, Google Search would lead on all platforms: 83.5% on desktop, 93% on tablet, and 97% on mobile. Furthermore, Microsoft highlights that even on desktop where Microsoft's operating system for PC, which includes Windows PC OS, is the largest operating system, Bing would only account for 9.9% of desktop search engine service usage (Form GD, Annex A, paragraphs 17 to 19).

⁵ Form GD, Annex A, paragraphs 21 and 22.

⁶ Form GD, Annex A, paragraph 23.

⁷ Form GD, Annex A, paragraphs 20 to 22.

⁸ Form GD, Annex A, paragraph 54.

principally the case because a significant number of websites withhold permission to crawl content by Bing due to a lack of perceived benefit.⁹

B. Microsoft's web browser Edge

- (6) In order to seek to rebut the presumptions laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to its web browser CPS Edge, Microsoft puts forward the following main arguments pursuant to Article 3(5), first subparagraph, of that Regulation.
- (7) First, according to Microsoft, Edge does not constitute an important gateway for business users to reach end users in the Union due to its relatively small scale, considering the overall scale of activities within the web browser CPS category and in comparison to other web browsers offered in the Union.¹⁰ In addition, Microsoft argues that given Edge's link to other Microsoft's services, the analysis of whether Edge constitutes an important gateway within the meaning of Article 3(1)(b) of Regulation (EU) 2022/1925 requires a holistic assessment of that CPS, taking into account its close connections with Bing and Microsoft Advertising.¹¹
- (8) Second, Microsoft argues that Edge is not an important gateway providing Microsoft with an entrenched and durable position in the market for web browser services because Microsoft decided to stop offering its own browser rendering engine and to rely instead on browser engines offered by a competitor. According to Microsoft, the main reason for that decision was that websites did not ensure operability with Microsoft's own browser rendering engine and software developers did not create extensions for Microsoft's browser rendering engine.¹² Microsoft submits that, as a result, Edge cannot influence the operations of business users to its advantage because business users do not optimize their websites specifically for Edge.¹³

C. Microsoft's online advertising service Microsoft Advertising

- (9) In order to seek to rebut the presumptions laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to its online advertising CPS Microsoft Advertising, Microsoft puts forward the following main arguments pursuant to Article 3(5), first subparagraph, of that Regulation.

⁹ Form GD, Annex A, paragraph 55.

¹⁰ According to data provided by Microsoft, Edge accounts for 5.8% of the overall activities of web browsers (Form GD, Annex B, paragraph 12) and is ten times smaller than the largest operator in the web browser CPS category, Chrome (Form GD, Annex B, paragraph 16). Microsoft has additionally outlined that Edge's scale is considerably smaller on mobile devices, which are increasingly used for web browsing, compared to larger web browsers. Based on StatCounter data provided by Microsoft, Safari's usage share on mobile devices is 33% while Edge's share is less than 0.18% (Form GD, Annex B, paragraphs 17 to 22). On desktop, where Microsoft's operating system for PC, which includes Windows PC OS, has a usage share of approximately 78%, Edge accounted for around 12% whereas Google Chrome accounted for 60.5% (Form GD, Annex B, paragraph 22).

¹¹ Form GD, Annex B, paragraphs 23 to 25.

¹² Form GD, Annex B, paragraph 45.

¹³ Form GD, Annex B, paragraphs 49 to 51.

- (10) First, according to Microsoft, Microsoft Advertising does not constitute an important gateway for business users to reach end users in the Union due to its relatively small scale, considering the overall scale of activities within the online advertising services CPS category and in comparison to other online advertising services offered in the Union.¹⁴ In addition, Microsoft argues that the scale of Microsoft Advertising is very dependent on Edge's and Bing's business, which Microsoft claims are of small scale themselves.¹⁵ Therefore, Microsoft argues that the analysis of whether Microsoft Advertising constitutes an important gateway within the meaning of Article 3(1)(b) of Regulation (EU) 2022/1925 requires a holistic assessment of that CPS taking into account its close connections with Bing and Edge, given that a major part of revenues of Microsoft Advertising is related to ads on Bing.¹⁶
- (11) Second, Microsoft argues that Microsoft Advertising is not an important gateway with an entrenched and durable position in the market for online advertising services because Microsoft Advertising does not enjoy strong data-driven advantages, unlike those enjoyed by other undertakings with considerable scale effects offering online advertising services.¹⁷ Further, Microsoft submits that Microsoft's advertising tracking tool, "Universal Event Tracking", is used only by a minority of Microsoft Advertising's business users, showing the limited importance of Microsoft Advertising for business users and demonstrating that Microsoft Advertising is not an important gateway.¹⁸ Finally, Microsoft submits that the importance of Microsoft Advertising is decreasing, since advertisers are moving away from desktop advertising towards mobile advertising, where Microsoft's properties are less popular.¹⁹

II. THE COMMISSION'S ASSESSMENT

- (12) According to Article 3(5), first subparagraph of Regulation (EU) 2022/1925, an undertaking providing a CPS may present, with its notification, sufficiently substantiated arguments to demonstrate that, exceptionally, although it meets all the thresholds in Article 3(2) of that Regulation, due to the circumstances in which the relevant CPS operates, it does not satisfy the requirements listed in Article 3(1) thereof.
- (13) Pursuant to Article 3(5), third subparagraph, of Regulation (EU) 2022/1925, if the undertaking presents sufficiently substantiated arguments manifestly calling into question the presumptions set out in Article 3(2) of that Regulation, the Commission may open a market investigation pursuant to Article 17(3) thereof.

¹⁴ Form GD, Annex C, paragraph 12.

¹⁵ Form GD, Annex C, paragraphs 13 to 15.

¹⁶ Form GD, Annex C, paragraphs 29 to 31.

¹⁷ According to the data provided by Microsoft, Microsoft Advertising's global revenue accounts for less than 3% of combined revenues of the seven most significant players in 2022 (Google, Meta, Amazon, Microsoft, Twitter, Snap, and Pinterest) (Form GD, Annex C, paragraphs 12 and 18.). In terms of global revenues in 2022, Microsoft Advertising is 19 times smaller than Google Ads and 10 times smaller than Meta Ads (Form GD, Annex C, paragraph 20). See also Form GD, Annex C, paragraphs 43 to 48.

¹⁸ Form GD, Annex C, paragraphs 49 to 52.

¹⁹ Form GD, Annex C, paragraphs 53 to 56.

- (14) The Commission takes the view that Microsoft has presented certain arguments which are sufficiently substantiated, so as, considered together, to manifestly call into question the presumptions laid down in Article 3(2)(b) and (c) of Regulation (EU) 2022/1925 in relation to each of Microsoft's online search engine CPS Bing, web browser CPS Edge and online advertising CPS Microsoft Advertising.
- (15) In particular, Microsoft has supported its argument regarding the alleged limited scale of those CPSs with data on the relatively low scale of usage of Bing, Edge and Microsoft Advertising, respectively, compared to the overall scale of activity in the respective CPS category and to other undertakings providing similar services in the Union, pointing to external data and internal estimates. Study reports and public statistics were also provided by Microsoft to support its arguments.
- (16) The Commission considers that it is appropriate to open market investigations pursuant to Article 17(3) of Regulation (EU) 2022/1925 in relation to Bing, Edge and Microsoft Advertising, respectively, to further verify the arguments submitted by Microsoft pursuant to Article 3(5), first subparagraph, of Regulation (EU) 2022/1925. The market investigations will aim to determine whether, in light of those arguments, although Microsoft meets all the thresholds in Article 3(2) of that Regulation in relation to the online search engine CPS Bing, the web browser CPS Edge, and the online advertising service CPS Microsoft Advertising, Microsoft exceptionally does not satisfy the requirements laid down in Article 3(1) of Regulation (EU) 2022/1925 in relation to those CPSs, due to the circumstances in which they operate. In this context, among other relevant considerations, the Commission will investigate the close connections between Bing, Edge and Microsoft Advertising, the role of Microsoft's Windows PC OS in this regard, and the possible impact of the fact that Microsoft exercises control over the whole platform ecosystem which includes Bing, Edge and Microsoft Advertising on the assessment of whether each of those CPSs constitutes an important gateway for business users to reach end users.

III. CONCLUSION

- (17) In light of the above, the Commission has decided to open market investigations on 5 September 2023, pursuant to Articles 16(1) and 17(3) of Regulation (EU) 2022/1925, for the purpose of determining whether Microsoft should be designated as a gatekeeper in relation to the CPSs listed below:
- a. Microsoft's online search engine CPS Bing,
 - b. Microsoft's web browser CPS Edge,
 - c. Microsoft's online advertising CPS Microsoft Advertising.

Done at Brussels,

For the Commission
Thierry BRETON
Member of the Commission

