



EUROPEAN COMMISSION

***CASES DMA.100018 Amazon - online
intermediation services – marketplaces;
DMA.100016 Amazon - online
advertising services***

(Only the English text is authentic)

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

Article 3 Regulation (EU) 2022/1925

Date: 05/09/2023

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EUROPEAN
COMMISSION

Brussels, 5.9.2023
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PUBLIC VERSION

COMMISSION DECISION

of 5.9.2023

**designating Amazon 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.100018 Amazon - online intermediation services – marketplaces
DMA.100016 Amazon - online advertising services**

(Only the English text is authentic)

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COMMISSION DECISION

of 5.9.2023

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**DMA.100018 Amazon - online intermediation services – marketplaces
DMA.100016 Amazon - online advertising services**

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

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

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

Whereas:

1. INTRODUCTION

- (1) On 3 July 2023, Amazon.com, Inc. notified the Commission,² pursuant to Article 3(3), first subparagraph, of Regulation (EU) 2022/1925, that Amazon.com Inc., together with all legal entities directly or indirectly controlled by Amazon.com, Inc. (hereinafter collectively referred to as “Amazon” or “the Undertaking”),³ 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 Amazon marketplace; and (ii) its online advertising service Amazon Advertising.

2. THE UNDERTAKING

- (2) Amazon is a retailer operating a number of online stores (“Amazon Store”) as well as physical stores around the world. Amazon also offers a number of digital services that support and complement its core retail operations, including voice assistant, advertising, cloud computing, audio-visual content, and gaming services. In addition, Amazon develops and offers for sale several devices, including tablets, digital media players and e-readers, as well as services including an operating system and an app store.

¹ OJ L 265, 12.10.2022, p. 1.

² Amazon.com, Inc., Notification pursuant to Article 3 of Regulation (EU) 2022/1925, Form for Gatekeeper Designation (GD), notified on 3 July 2023 (“Form GD”).

³ See Article 2, point (27), of Regulation (EU) 2022/1925.

- (3) Amazon's parent company is Amazon Inc., a publicly traded company founded in 1994,⁴ which is headquartered in Seattle, Washington, United States of America. Amazon Services Europe S.à.r.l. ("ASE") and Amazon Europe Core S.à.r.l. ("AEC") are Amazon subsidiaries established in Luxembourg. ASE provides marketplace services to third-party sellers which enable those sellers to offer products for sale to consumers on Amazon Store's European online interfaces.⁵ ASE also provides Amazon's European advertising services.⁶ AEC is responsible for the technical operation of the online interfaces through which Amazon Store is provided in Europe.⁷

3. PROCEDURE

- (4) On 3 July 2023, Amazon submitted a complete Form GD pursuant to Article 3(3), first subparagraph, of Regulation (EU) 2022/1925.
- (5) On 9 July 2023, Amazon sent a letter to the Commission complementing its Form GD.
- (6) On 24 July 2023, the Commission sent a letter to Amazon ("the Commission's letter of 24 July 2023") in which it set out its preliminary views on Amazon's possible designation as a gatekeeper pursuant to Article 3(4) of Regulation (EU) 2022/1925 and on its intention to list in Amazon's designation decision the following CPSs that are provided by Amazon and which individually appear to constitute an important gateway for business users to reach end users:
- (i) Amazon's online intermediation service Amazon marketplace;
 - (ii) Amazon's online advertising service Amazon Advertising.
- (7) On 31 July 2023, Amazon submitted written observations in response to the Commission's letter of 24 July 2023.

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

- (8) 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 Amazon.com, Inc.'s common stock is publicly traded on the NASDAQ Composite Index. Amazon.com, Inc. is neither solely nor jointly controlled by any party. The persons or entities known by Amazon to beneficially own more than 5% of Amazon.com, Inc.'s common stock are: Mr. Jeffrey P. Bezos (12.7%); The Vanguard Group, Inc. (6.6%); and BlackRock, Inc. (5.7%). See Amazon's Form GD, paragraph 2 (Notice of 2022 Annual Meeting of Shareholders & Proxy Statement, May 25, 2022, p. 87, available at: https://s2.q4cdn.com/299287126/files/doc_financials/2022/ar/Amazon-2022-Proxy-Statement.pdf, last accessed on 2 August 2023).

⁵ Form GD, paragraph 3; and letter of Amazon of 7 July 2023 complementing the Form GD, paragraph 3.2.

⁶ Letter of Amazon of 7 July 2023 complementing the Form GD, paragraphs 3.1 and 3.2.

⁷ Form GD, paragraph 3.

4.1. The delineation of CPSs

- (9) 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, and (j) online advertising services, including any advertising networks, advertising exchanges and any other advertising intermediation services, provided by an undertaking that provides any of the CPSs listed in points (a) to (i).
- (10) 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.
- (11) 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;⁸
 - 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;⁹ 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.¹⁰
- (12) 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.¹¹ 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.
- (13) 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.

⁸ Annex to Regulation (EU) 2022/1925, Section D, point 2(a).

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

¹⁰ Annex to Regulation (EU) 2022/1925, Section D, points 2(b) and (c)(ii).

¹¹ The same applies when the undertaking provides CPSs in an integrated way.

- (14) As Recital (11) of the preamble to Regulation (EU) 2022/1925 points out, that regulation pursues an objective that is complementary to, but different from, that of EU competition rules, which is to protect undistorted competition on any given market. Consequently, the application of EU competition rules, including competition law precedents, is without prejudice to the application of Regulation (EU) 2022/1925, and vice versa. Accordingly, the delineation of CPSs under Regulation (EU) 2022/1925 has no bearing on the definition of the relevant market for the purpose of applying EU competition rules (and vice versa) and those two types of analyses may thus lead to different results.

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

- (15) 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.
- (16) 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.
- (17) 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.
- (18) 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.

5. THE CORE PLATFORM SERVICES

- (19) As set out in recital (1) of this Decision, Amazon's Form GD refers to two CPSs provided by Amazon that meet the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925: (i) its online intermediation service Amazon marketplace (Section 5.1); and (ii) its online advertising service Amazon Advertising (Section 5.2).

5.1. Amazon's online intermediation service Amazon marketplace

5.1.1. CPS qualification and delineation

5.1.1.1. The Undertaking's view

- (20) According to Amazon, its marketplace services offered to third-party sellers enable business users to offer goods and services for sale to end users on 'Amazon Store', thereby facilitating direct transactions between business users and end users.¹² Consequently, Amazon notified its marketplace service as an online intermediation CPS within the meaning of Article 2, point (2), subpoint (a), of Regulation (EU) 2022/1925.
- (21) In addition to the marketplace service Amazon offers to third-party sellers through 'Amazon Store', Amazon also offers its own retail service ('Amazon Retail') through 'Amazon Store', by which Amazon sells goods and services directly to end users.¹³ In addition, business users using the marketplace service of 'Amazon Store' have the option of using Amazon's logistics service, 'Fulfilment by Amazon', which enables those business users to outsource to Amazon the storage, packaging, shipment and handling of customer order enquiries made on 'Amazon Store'.¹⁴ Amazon considers 'Amazon Retail' and 'Fulfilment by Amazon' to constitute services distinct from the online intermediation service it provides through the 'Amazon Store'.¹⁵ In particular, Amazon argues that 'Amazon Retail' does not qualify as an online intermediation service for the purposes of Article 2, point (5), of Regulation (EU) 2022/1925, since it concerns products offered directly by Amazon in its stores.¹⁶
- (22) Amazon also offers end users 'Amazon Prime', which it describes as a membership programme that includes, among others, fast and free delivery, and audio and video streaming of digital content.¹⁷ Amazon submits that 'Amazon Prime' is neither a CPS, nor a distinct service, but rather a collection of benefits that are either provided together with or separately from 'Amazon Store'.¹⁸ More specifically, Amazon submits that some of these benefits, such as its digital video streaming service 'Prime Video' or its music streaming service 'Amazon Music', may constitute distinct services for the purposes of Regulation (EU) 2022/1925.¹⁹ However, Amazon argues

¹² Form GD, paragraph 13.

¹³ Form GD, paragraphs 12 and 14.

¹⁴ Form GD, paragraph 45.

¹⁵ Form GD, paragraphs 14 and 17; and Amazon letter sent on 7 July 2023 complementing the Form GD, paragraphs 1.1 and 2.1.

¹⁶ Form GD, paragraph 14.

¹⁷ Form GD, paragraph 16.

¹⁸ Form GD, paragraph 16.

¹⁹ Amazon's reply of 31 July 2023 to the Commission's letter of 24 July 2023, p. 2 and 3.

that other benefits of ‘Amazon Prime’, such as shopping benefits (e.g., discounts applicable during ‘Prime Days’ and shipping benefits) or reading benefits (e.g., early access to new books and books with audible narration), are mere benefits and not services. Amazon considers that these ‘mere benefits’ are inextricably linked to its online intermediation service, are part of it, and are not provided separately from it.²⁰

- (23) Amazon further considers that its online intermediation service provided through ‘Amazon Store’ constitutes a single marketplace operating in the Union through its EU-localised stores for Belgium, France, Germany, Italy, the Netherlands, Poland, Spain, and Sweden,²¹ which can each be accessed through dedicated domains, namely Amazon.com.be, Amazon.fr, Amazon.de, Amazon.it, Amazon.nl, Amazon.pl, Amazon.es, and Amazon.se.²² Amazon adds that any interpretation of Regulation (EU) 2022/1925 according to which Amazon would be considered to target its online intermediation service to end users and business users established or located in the Union, through any of its stores localised outside the Union, would amount to an unjustified overexpansion of the jurisdictional reach of Regulation (EU) 2022/1925 and would also be inconsistent with the treatment of online intermediation services in other areas of Union law,²³ notably Regulation (EU) 2019/1150.²⁴
- (24) Finally, Amazon provides advertising services to business users using ‘Amazon Store’, which it considers to constitute an inherent part of the customer shopping experience on that online interface.²⁵ For this reason, Amazon does not consider its online advertising service to constitute a distinct service from its online intermediation service provided through Amazon Store. However, in its Form GD, Amazon provided an alternative delineation of its CPSs in which its online advertising service constitutes a distinct CPS from its online intermediation CPS.²⁶

5.1.1.2. The Commission’s assessment

- (25) 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 (5), of Regulation (EU) 2022/1925 defines ‘online intermediation services’ by cross-referring to Article 2, point (2), of Regulation 2019/1150. 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)(b) of Directive (EU) 2015/1535 of the European Parliament and of the Council;²⁷

²⁰ Amazon’s reply of 31 July 2023 to the Commission’s letter of 24 July 2023, p. 3.

²¹ Form GD, paragraph 12.

²² Form GD, paragraph 66.

²³ Amazon’s reply of 31 July 2023 to the Commission’s letter of 24 July 2023, p. 2.

²⁴ 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.

²⁵ Form GD, paragraphs 21 and 51.

²⁶ Form GD, paragraph 22.

²⁷ 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.

- (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.
- (26) In line with the information provided by Amazon, the Commission considers that Amazon provides, through ‘Amazon Store’, an online intermediation service for third-party sellers (“Amazon marketplace”), which fulfils the definition 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, that service constitutes an information society service within the meaning of Article 1(1)(b) of Directive (EU) 2015/1535. Second, that service allows 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. Third, that service is provided to business users on the basis of contractual relationships between the provider of the intermediation service, i.e., Amazon, and business users which offer goods or services to consumers through that service. Consequently, Amazon marketplace constitutes an online intermediation service within the meaning of Article 2, point (5), subpoint (a), of Regulation (EU) 2022/1925 and a CPS within the meaning of Article 2, point (2), subpoint (a), of that Regulation.
- (27) The Commission further considers that ‘Amazon Retail’ and the logistics service ‘Fulfilment by Amazon’ constitute distinct services that do not form part of the online intermediation CPS Amazon marketplace, notwithstanding the fact that both services are provided through ‘Amazon Store’ and that they form part of an integrated ‘Amazon Store’ experience from an end user’s perspective. Regarding ‘Amazon Retail’, the Commission considers that it is a service distinct from Amazon marketplace, by which Amazon itself, rather than third parties, offers products to end users. Similarly, the Commission considers that ‘Fulfilment by Amazon’ is a distinct service from Amazon marketplace by which Amazon, whether itself or via third parties (i.e., carriers), provides another type of service, namely a logistics service, to third-party sellers. Furthermore, ‘Amazon Retail’ and ‘Fulfilment by Amazon’ do not fulfil 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. In particular, those services do not 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.
- (28) As regards ‘Amazon Prime’, the Commission does not agree with Amazon’s claim that that service is merely a membership programme.²⁸ Rather, ‘Amazon Prime’ is a paid optional service consisting of a bundle of benefits, such as access to ‘Prime Video’, ‘Amazon Music’, and free and faster delivery, which aims to build business and end user loyalty to the Amazon ecosystem of services. Nor can the Commission accept Amazon’s claim that some of these benefits may constitute distinct services, while others are inextricably linked to its online intermediation CPS Amazon

²⁸ Form GD, paragraph 16.

marketplace.²⁹ Such a segmentation of the benefits contained in the paid optional service ‘Amazon Prime’ is not offered by Amazon, since users can only subscribe to the entire bundle of benefits that are included in the distinct optional paid service ‘Amazon Prime’.³⁰ Consequently, the Commission considers that ‘Amazon Prime’ does not form part of the online intermediation CPS Amazon marketplace.

- (29) Similarly, the Commission considers, for the reasons set out in recitals (47) to (54) below, that Amazon’s online advertising service ‘Amazon Advertising’ constitutes a distinct CPS and not an integral part of the online intermediation CPS Amazon marketplace.
- (30) The Commission further considers, in line with Amazon, that the online intermediation CPS Amazon marketplace constitutes a single CPS notwithstanding the existence of country-specific domains for the localised stores that Amazon operates. According to Section D(2)(a) of the Annex to Regulation (EU) 2022/1925, 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 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.
- (31) Amazon operates localised stores that can be accessed through dedicated existing and future EU and non-EU domains. Regarding those domains, the Commission notes that Article 1(2) of Regulation (EU) 2022/1925 provides that that Regulation applies to CPSs provided or offered by gatekeepers to business users established, or end users established or located, in the Union, irrespective of the place of establishment or residence of the gatekeeper. Regulation (EU) 2022/1925 should, therefore, apply to online intermediation services provided or offered by Amazon to business users established, or end users established or located, in the Union, irrespective of the existing or future EU or non-EU domains that are used for providing and offering such services in the Union.
- (32) Consequently, the Commission considers that the domains under which Amazon marketplace is or will be operated and through which the service is or will be offered are not in themselves determinative of whether that service is offered to business and end users in the Union. In this regard, the Commission notes that recital (7) of the preamble to Regulation (EU) 2022/1925 explains that the purpose of that Regulation is to contribute to the proper functioning of the internal market by laying down rules to ensure contestability and fairness in digital markets, while acknowledging that gatekeepers may have global business models and yet adopt different business conditions and practices in different Member States. Accordingly, for the provisions of Regulation (EU) 2022/1925 to be effective, they should apply to CPSs, which target business and end users established or located within the internal market.³¹
- (33) The Commission considers that this is the case where it is apparent that an undertaking ‘directs its activities’ to business users established, or end users

²⁹ Amazon’s reply of 31 July 2023 to the Commission’s letter of 24 July 2023, p. 2 and 3.

³⁰ See https://www.amazon.com.be/prime?language=en_GB&ie=UTF8&tag=betxtgostddef-21&hvadid=628910335823&hvpos=&hvexid=&hvnetw=g&hvrnd=8081782555595738514&hvpone=&hvptwo=&hvmqmt=p&hvdev=c&ref=pd_sl_7a5xktzspa_e&gclid=EAIaIQobChMIImbu0hIq7gAMVaZRoCR06zgXoEAAAYAiAAEgLowwPD_BwE, last accessed on 2 August 2023.

³¹ Recital (8) of the preamble to Regulation (EU) 2022/1925.

established or located, in the Union, irrespective of whether those activities are directed through dedicated EU or non-EU domains.³² In this regard, the Commission considers that while the mere accessibility of a website from the Union does not suffice to conclude that the undertaking operating that website directs its activities to users established or located in the Union, it does suffice that the undertaking has manifested its intention to establish commercial relations with such users to reach that conclusion.

- (34) Consequently, the Commission considers that the online intermediation CPS Amazon marketplace covers those marketplace services offered through Amazon's localised stores, which can be accessed through dedicated existing and future EU and non-EU domains, insofar as Amazon directs or will direct, via those domains, its marketplace activities to business users established, or end users established or located, in one or more Member States.
- (35) For the reasons set out above, the Commission concludes that the online intermediation service Amazon provides through 'Amazon Store' constitutes an online intermediation CPS within the meaning of Article 2, point (2), subpoint (a), of Regulation (EU) 2022/1925.

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

5.1.2.1. The Undertaking's view

- (36) Amazon indicates that it meets the thresholds laid down in Article 3(2)(a) of Regulation (EU) 2022/1925. As summarised in Table 1, Amazon submits that it generated an annual Union turnover of more than EUR 7.5 billion in each of the last three financial years and that its average market capitalisation in the last financial year was above EUR 75 billion.³³

Table 1: Amazon's annual Union turnover (in EUR millions) and average market capitalisation (in EUR millions)

Undertaking	2020 Union turnover	2021 Union turnover	2022 Union turnover	2022 Average market capitalisation
Amazon	> 7 500	> 7 500	> 7 500	>75 000

Source: Form GD, Sections 3.1 and 3.2

- (37) In addition, Amazon indicates that it offers its online intermediation CPS Amazon marketplace in at least three EU Member States, namely through its EU Stores in Belgium, France, Germany, Italy, the Netherlands, Poland, Spain and Sweden.³⁴
- (38) Amazon further indicates that its online intermediation CPS Amazon marketplace meets the thresholds for end users and business users laid down in Article 3(2)(b) of

³² Contrary to Amazon's argument, highlighted at recital (23) above, this outcome is consistent with the treatment of online intermediation services in other areas of Union law, notably Regulation (EU) 2019/1150. Recital (9) of the preamble to Regulation (EU) 2019/1150 provides that "in order to determine whether business users or corporate website users are offering goods or services to consumers located in the Union, it is necessary to ascertain whether it is apparent that the business users or corporate website users direct their activities to consumers located in one or more Member States".

³³ Form GD, paragraphs 64 and 65.

³⁴ Form GD, paragraph 66.

Regulation (EU) 2022/1925.³⁵ Amazon explains that when calculating its end user numbers for the purposes of those thresholds, it was unable to distinguish whether end user engagement in ‘Amazon Store’ was with goods and services offered through the Amazon marketplace CPS or through ‘Amazon Retail’.³⁶ Accordingly, it took into account both types of end user engagement to determine that Amazon marketplace meets the thresholds of Article 3(2)(b) of Regulation (EU) 2022/1925.³⁷

- (39) Finally, in relation to Article 3(2)(c) of Regulation (EU) 2022/1925, Amazon indicates that its online intermediation CPS Amazon marketplace has met the thresholds laid down in Article 3(2)(b) of that Regulation in each of the last three financial years.³⁸

5.1.2.2. The Commission’s assessment

- (40) Based on the information provided by Amazon,³⁹ the Commission considers that Amazon meets the turnover 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., Amazon marketplace, is offered in at least three Member States.
- (41) Moreover, based on the information provided by Amazon,⁴⁰ the Commission considers that the online intermediation CPS Amazon marketplace 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.
- (42) Finally, based on the information provided by Amazon,⁴¹ the Commission considers that the online intermediation CPS Amazon marketplace 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.
- (43) 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 Amazon’s approach to identifying and estimating monthly active end users and yearly business users of the online intermediation CPSs Amazon marketplace 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 easily met, based on the information provided by Amazon.

5.1.3. Conclusion for the online intermediation service Amazon marketplace

- (44) For the reasons set out in recitals (25) to (35) and (40) to (43), the Commission concludes that Amazon’s marketplace service constitutes an online intermediation CPS within the meaning of Article 2, point (2), subpoint (a), of Regulation (EU) 2022/1925 and that Amazon meets the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to that CPS. Consequently, Amazon is to be

³⁵ Form GD, paragraphs 41 and 73.

³⁶ Amazon letter sent on 7 July 2023 complementing the Form GD, paragraph 2.1.

³⁷ Amazon letter sent on 7 July 2023 complementing the Form GD, paragraph 2.1.

³⁸ Form GD, paragraphs 41 and 73; and Amazon letter sent on 7 July 2023 complementing the Form GD, paragraph 2.1.

³⁹ Form GD, paragraphs 64, 65 and 66.

⁴⁰ Form GD, paragraphs 41 and 73; and Amazon letter sent on 7 July 2023 complementing the Form GD, paragraph 2.1.

⁴¹ Form GD, paragraphs 41 and 73; and Amazon letter sent on 7 July 2023 complementing the Form GD, paragraph 2.1.

designated as a gatekeeper pursuant to Article 3(4) of Regulation (EU) 2022/1925 in relation to the online intermediation CPS Amazon marketplace.

5.2. Amazon's online advertising service Amazon Advertising

5.2.1. CPS qualification and delineation

5.2.1.1. The Undertaking's view

- (45) According to Amazon,⁴² it offers business users online advertising services through 'Amazon Advertising', which allows those users to advertise their goods and services on the 'Amazon Store' and, to a lesser extent, on Amazon-owned devices and entertainment services (e.g., the video-sharing platform service Twitch), as well as on third-party websites and software applications. Amazon further explains that Amazon Advertising includes: (i) 'Sponsored Ads'; (ii) Amazon's demand-side platform for ad placements on Amazon-owned and operated services and third-party websites and apps; (iii) 'Amazon Publisher Services'; and (iv) 'Amazon Ad Server'. Amazon explains that Amazon Advertising also includes 'Amazon Attribution' and 'Amazon Marketing Cloud', tools which advertisers using Amazon Advertising can use to measure the effectiveness of their advertising campaigns.⁴³
- (46) Amazon states that its online advertising services for sellers and brands related to the 'Amazon Store' constitute paid merchandising services.⁴⁴ Amazon submits that these paid merchandising services form part of the Amazon Store and should be designated as part of Amazon's online intermediation CPS, since those services are inextricably linked to the 'Amazon Store' activities.⁴⁵ In the alternative, Amazon argues that if Amazon Advertising were to be considered a separate online advertising CPS within the meaning of Article 2, point (2), subpoint (j), of Regulation (EU) 2022/1925, online advertising services on the 'Amazon Store' should not be considered to be provided separately from the 'Amazon Store'.⁴⁶

5.2.1.2. The Commission's assessment

- (47) Article 2, point (2), subpoint (j), of Regulation (EU) 2022/1925 lists online advertising services as one of the categories of CPSs within the meaning of that Regulation. According to that provision, online advertising services include '*any advertising networks, advertising exchanges and any other advertising services*'. The Annex to Regulation (EU) 2022/1925, which specifies the methodology for identifying and calculating active end users and active business users of online advertising services, refers to '*proprietary sales of advertising space as well as advertising intermediation services*'.⁴⁷ To be designated as gatekeeper in relation to an online advertising CPS, Article 2, point (2), subpoint (j) of Regulation 2022/1925 requires the undertaking providing those advertising services to provide at least one other CPS listed in Article 2, point (2), subpoints (a) to (i), of that Regulation.
- (48) The Commission considers that the online advertising services Amazon provides to advertisers, publishers and other intermediaries constitute online advertising services

⁴² Form GD, paragraphs 18 to 21.

⁴³ Form GD, paragraphs 20 and 63.

⁴⁴ According to Amazon, paid merchandising services consist of advertising placements for sellers and brands on the Amazon Store; Form GD paragraphs 52 to 60.

⁴⁵ Form GD, paragraphs 21 and 52 to 60.

⁴⁶ Form GD, paragraph 22.

⁴⁷ Section E of the Annex to Regulation (EU) 2022/1925.

within the meaning of Article 2, point (2), subpoint (j), of Regulation (EU) 2022/1925. According to that provision, online advertising services constitute a CPS where they are provided by an undertaking that provides any of the CPSs in the categories listed in Article 2, point (2), subpoints (a) to (i), of that Regulation. As follows from Section 5.1.1, Amazon provides an online intermediation CPS (i.e., the Amazon marketplace CPS) through the ‘Amazon Store’, within the meaning of Article 2, point (2), subpoint (a), of Regulation (EU) 2022/1925.

- (49) Contrary to what Amazon claims, the Commission finds that the online advertising service Amazon Advertising constitutes a distinct CPS from the Amazon marketplace online intermediation CPS, irrespective of the fact that the Amazon Advertising and the Amazon marketplace CPSs are provided, to a certain extent, in an integrated manner. That finding is based on the following considerations.
- (50) First, according to section D(2)(c)(i) of the Annex to Regulation (EU) 2022/1925, CPSs which an undertaking offers in an integrated way should be considered as distinct if they do not belong to the same category of CPS within the meaning of Article 2, point (2), of that Regulation. Therefore, even though parts of Amazon’s online advertising service may be provided in an integrated way with the Amazon marketplace CPS, they do not belong to the same category of CPSs and therefore constitute distinct CPSs.
- (51) In this regard, the Commission observes that the display of an advertisement by an undertaking on another CPS provided by that same undertaking, such as the online intermediation CPS Amazon marketplace provided through the ‘Amazon Store’, constitutes the culmination of the advertisement selection process within the online advertising CPS, such as the online advertising CPS Amazon Advertising. It is the advertising delivery process which activates every layer of the online advertising value chain, with the ultimate purpose of exposing end users to advertisements. The display of an advertisement can therefore be considered part of both the online advertising CPS and the other CPS on which the advertisement is displayed. However, this fact does not alter the Commission’s finding that the Amazon marketplace CPS and the Amazon Advertising CPS remain distinct services, in line with Section D(2)(c)(i) of the Annex to Regulation (EU) 2022/1925, since the display of an advertisement is limited to the incident of exposing that advertisement.
- (52) Second, Amazon Advertising is not an online advertising service provided exclusively to third-party sellers on the online intermediation CPS Amazon marketplace. As acknowledged by Amazon, its advertising services also enable brands to advertise their products for sale through ‘Amazon Retail’ and business users to advertise on Amazon-owned devices and entertainment services (e.g., the video-sharing platform service Twitch), as well as on third-party websites and software applications. Moreover, third-party sellers using the online intermediation CPS Amazon marketplace are not obliged but may choose to purchase online advertising services on the ‘Amazon Store’ as additional services to the online intermediation service. Contrary to what Amazon claims,⁴⁸ the proportion of Amazon’s revenue that is generated by the different advertising channels, or which of those channels Amazon considers to constitute its core business, is not decisive for the purpose of determining whether Amazon Advertising constitutes a CPS distinct from the online intermediation CPS Amazon marketplace. In any event, even if

⁴⁸ Form GD, paragraph 54.

Amazon were to provide its online advertising services only to business users that wish to advertise on the online intermediation CPS Amazon marketplace, such advertising services would still be treated as distinct from that CPS, as required by section D(2)(c)(i) of the Annex to Regulation (EU) 2022/1925.

- (53) In addition, the Commission finds that the online advertising CPS Amazon Advertising consists of services going beyond the mere sale of advertisements on the ‘Amazon Store’, on Amazon-owned devices and entertainment services, and on third-party websites and software applications. In light of the broad definition of ‘online advertising services’, reproduced in recital (47) above, the Commission considers that Amazon’s online advertising service Amazon Advertising comprises all the advertising services, tools, features, interfaces, and functionalities that interact with each other, the ultimate purpose of which is exposing end users to advertisements on Amazon’s own services and third-party advertising inventory. In line with the information provided by Amazon, the Commission considers that Amazon Advertising consists of all components listed in recital (45) above, including the services ‘Amazon Attribution’ and ‘Amazon Marketing Cloud’ which enable advertisers to optimise, manage, and distribute advertisements across several channels, including both: (i) on services and devices owned and operated by Amazon and (ii) on third-party websites and apps.⁴⁹ Consequently, all those services should be considered to form part of the online advertising CPS Amazon Advertising.
- (54) For the reasons set out above, the Commission concludes that Amazon Advertising constitutes an online advertising CPS within the meaning of Article 2, point (2), subpoint (j), of Regulation (EU) 2022/1925.

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

5.2.2.1. The Undertaking’s view

- (55) Amazon indicates that it meets the thresholds laid down in Article 3(2)(a) of Regulation (EU) 2022/1925. As summarised in Table 1 above, Amazon submits that it generated an annual Union turnover of more than EUR 7.5 billion in each of the last three financial years, and that its average market capitalisation in the last financial year was above EUR 75 billion.⁵⁰
- (56) In addition, Amazon indicates that its online advertising CPS Amazon Advertising is provided in all Member States.⁵¹
- (57) Amazon further indicates that its online advertising CPS Amazon Advertising meets the end user and business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925.⁵²
- (58) Finally, in relation to Article 3(2)(c) of Regulation (EU) 2022/1925, Amazon indicates that the online advertising CPS Amazon Advertising has met the thresholds laid down in Article 3(2)(b) of that Regulation in each of the last three financial years.⁵³

⁴⁹ Form GD, paragraph 62.

⁵⁰ Form GD, paragraphs 64 and 65.

⁵¹ Form GD, paragraphs 66 and 72.

⁵² Form GD, paragraph 73.

⁵³ Form GD, paragraph 73.

5.2.2.2. The Commission's assessment

- (59) Based on the information provided by Amazon,⁵⁴ the Commission considers that Amazon meets the turnover 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, Amazon Advertising, is offered in at least three Member States.
- (60) Based on the information provided by Amazon, the Commission considers that the online advertising CPS Amazon Advertising 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.
- (61) Finally, based on the information provided by Amazon, the Commission considers that the online advertising CPS Amazon Advertising 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.
- (62) 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 Amazon's approach to identifying and estimating monthly active end users and yearly business users of the online advertising CPS Amazon Advertising 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 Amazon.

5.2.3. *Conclusion for the online advertising service Amazon Advertising*

- (63) For the reasons set out in recitals (47) to (54) and (59) to (62), the Commission concludes that Amazon Advertising constitutes an online advertising CPS within the meaning of Article 2, point (2), subpoint (j), of Regulation (EU) 2022/1925 and that Amazon meets the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to that service. Consequently, Amazon is to be designated as a gatekeeper pursuant to Article 3(4) of Regulation (EU) 2022/1925 in relation to its online advertising CPS Amazon Advertising.

6. CONCLUSION

- (64) In the light of the above, the Commission concludes, pursuant to Article 3 of Regulation (EU) 2022/1925, that Amazon is to be designated as a gatekeeper and that the following CPSs of Amazon are an important gateway for business users to reach end users: (i) its online intermediation service Amazon marketplace and (ii) its online advertising service Amazon Advertising.
- (65) 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,

⁵⁴ Form GD, paragraphs 64, 65 and 66.

HAS ADOPTED THIS DECISION:

Article 1

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

Article 2

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

- (a) Amazon's online intermediation service Amazon marketplace; and
- (b) Amazon's online advertising service Amazon Advertising.

Article 3

This Decision is addressed to Amazon.com, Inc., 410 Terry Avenue North, Seattle, Washington, 98109-5210, United States of America.

Done at Brussels, 5.9.2023

For the Commission
Thierry BRETON
Member of the Commission

