



EUROPEAN COMMISSION

***CASE DMA.100040 ByteDance – Online
social networking 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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Brussels, 5.9.2023
C(2023) 6102 final

PUBLIC VERSION

COMMISSION DECISION

of 5.9.2023

designating ByteDance 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.100040 ByteDance - Online social networking services

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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 thereof,¹

Whereas:

1. INTRODUCTION

- (1) On 3 July 2023, ByteDance Ltd. notified² to the Commission, pursuant to Article 3(3), first subparagraph, of Regulation (EU) 2022/1925, that ByteDance Ltd., together with all legal entities directly or indirectly controlled by ByteDance Ltd. (hereinafter collectively referred to as “ByteDance” or “the Undertaking”) meets the thresholds laid down in Article 3(2)(a) and (b), but not Article 3(2)(c), of that Regulation in relation to the following core platform services (“CPSs”): (i) ByteDance’s video-sharing platform service (or alternatively, ByteDance’s online social networking service)³ TikTok, and (ii) ByteDance’s online advertising services.

2. THE UNDERTAKING

- (2) ByteDance is a global technology group that operates the content platform TikTok.
- (3) ByteDance’s parent company is ByteDance Ltd., which was founded in 2012, is incorporated in the Cayman Islands,⁴ [...]. TikTok Technology Limited is a subsidiary of ByteDance,⁵ established in Ireland, which operates ByteDance’s

¹ OJ L 265, 12.10.2022, p. 1.

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

³ See Form GD, paragraph 36: ByteDance submits that it does not qualify as an online social networking service within the meaning of Article 2 point (2), subpoint (c) and Article 2, point (7) of Regulation (EU) 2022/1925. However, ByteDance proposes an alternative delineation of TikTok as an online social networking service solely for completeness and without prejudice to its view that it considers that this qualification is legally incorrect.

⁴ Form GD, paragraph 16.

⁵ Technology Limited is directly controlled by TikTok Information Technologies UK Ltd. which in turn is indirectly controlled by ByteDance Ltd.

platform service TikTok in the Union. TikTok was launched in the Union in August 2018.

3. PROCEDURE

- (4) On 3 July 2023, ByteDance submitted a complete Form GD pursuant to Article 3(3), first subparagraph, of Regulation (EU) 2022/1925.
- (5) On 26 July 2023, the Commission sent a letter to ByteDance concerning ByteDance’s notification under Article 3(3) of Regulation (EU) 2022/1925 (“the Commission’s letter of 26 July 2023”).⁶ In that letter, the Commission set out its preliminary views on ByteDance’s possible designation as a gatekeeper pursuant to Article 3(4) of Regulation (EU) 2022/1925 and on its intention to list in ByteDance’s designation decision the following CPS that is provided by ByteDance and which individually appears to constitute an important gateway for business users to reach end users: (i) ByteDance’s online social networking service TikTok.
- (6) On 2 August 2023, ByteDance submitted a reply to the Commission’s letter of 26 July 2023 (“ByteDance’s 2 August 2023 reply”).⁷
- (7) On 17 August 2023, a virtual meeting took place, at ByteDance’s request, between ByteDance and the Commission services for ByteDance to present and further explain the arguments and views presented in its Form GD and in its 2 August 2023 reply.

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).

4.1. 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 services, (e) number-independent interpersonal communications services, (f) operating systems, (g) web browsers, (h) virtual assistants, (i) cloud computing services, and (j) online advertising services, including any advertising networks, advertising exchanges and any other advertising intermediation services, provided by an undertaking that provides any of the CPSs listed in points (a) to (i).
- (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

⁶ That letter followed up on exchanges that took place with TikTok Technology Limited prior to notification.

⁷ ByteDance’s reply of 2 August 2023 to the Commission’s letter of 26 July 2023.

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.
- (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.

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.

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.

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

- (19) 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.

- (20) 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.
- (21) 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.
- (22) 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

- (23) As set out in recital (1) above, ByteDance's Form GD refers to two CPSs: (i) ByteDance's video-sharing platform service (or alternatively, ByteDance's online social networking service) TikTok (Section 5.1); and (ii) ByteDance's online advertising service.
- (24) As regards ByteDance's online advertising services, ByteDance argues that it meets the business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925, but not those of Article 3(2)(c) of that Regulation.¹² As provided by Regulation (EU) 2022/1925, in particular Section A(1) of the Annex to that Regulation, it is ByteDance's responsibility to undertake a self-assessment and come to the best approximation possible for identifying and calculating active end users and active business users of the CPSs that it provides. The Commission notes that receipt of this self-assessment as presented in the Form GD does not amount to an endorsement of its approximation methodology and its results and is without prejudice to the Commission requesting further information in relation to that service in the future.

¹² See Form GD, Table 2.

5.1. ByteDance’s online social networking service TikTok

5.1.1. CPS qualification and delineation

5.1.1.1. The Undertaking’s view

- (25) ByteDance notified TikTok as a video-sharing platform CPS within the meaning of Article 2, point (2), subpoint (d), of Regulation (EU) 2022/1925.
- (26) According to ByteDance, TikTok is an entertainment platform that allows users to post, view, or search for videos and live streams, comment on and like videos, and follow chosen video creators. ByteDance further explains that TikTok “*suggests videos curated to the users’ interests based on their interaction with the service and offers the option to follow particular users.*” [...] “*The algorithm refines the feed based on user engagement (i.e., whether the user likes the video, watch time, comments, or whether the user follows this or similar accounts) and video information (i.e., captions, hashtags, video descriptions, text overlays, and sounds) to serve more videos tailored to the user’s interests.*”¹³ According to ByteDance, most users do not post videos or live streams, but only consume this content on TikTok. ByteDance adds that “[a]ny user can create and post videos on TikTok and be a ‘creator’.”¹⁴
- (27) ByteDance submits that TikTok does not qualify as an online social networking service within the meaning of Article 2, point (7), of Regulation (EU) 2022/1925, and it therefore notified TikTok as an online social networking CPS solely for completeness and without prejudice to its view that this qualification is legally incorrect. ByteDance’s claim that TikTok does not qualify as an online social networking CPS but rather as a video-sharing platform CPS is based on the following reasons.
- (28) First, ByteDance submits that Article 2, point (7), of Regulation (EU) 2022/1925 defines an online social networking service by reference to its primary purpose and core function, namely connecting friends and family,¹⁵ and that the qualification of a service under a given category of CPS should be done on the basis of its primary purpose. It also submits that videos are described in Article 2, point (7), of that Regulation as just one type of content that falls within the definition of online social networking services, together with chats, posts and recommendations.¹⁶
- (29) Second, ByteDance submits that TikTok’s primary purpose and core function is not to facilitate social connections with friends and family, but to allow users to view content in the form of short, posted videos curated to and aligned with their personal interests based on their interaction with the service.¹⁷ As such, ByteDance submits that TikTok does not depend on end users identifying “friends”, nor on information based on a social graph to view or share content.¹⁸ According to ByteDance, users

¹³ Form GD, paragraph 26.

¹⁴ Form GD, paragraph 45.

¹⁵ Form GD, paragraphs 23-25.

¹⁶ Form GD, paragraph 24.

¹⁷ Form GD, paragraphs 26-27 and as further laid out in ByteDance’s 2 August 2023 reply, paragraph 10.

¹⁸ Annex 4 to the Form GD, paragraph 5; Form GD, paragraph 14 and ByteDance’s 2 August reply, paragraph 10. ByteDance claims that a “social graph” focuses on the information generated from personal interaction for deciding what content end users see, whereas in a “content graph”, end user preferences determine what is shown, rather than delivering content on a relationship basis.

upload videos on TikTok aiming to reach as many other TikTok users as possible, regardless of whether such users are followers or friends.

- (30) ByteDance further contends that TikTok qualifies as a content sharing or entertainment platform with an indefinite audience, while online social networking services focus on enabling personal interactions.
- (31) Furthermore, ByteDance submits that TikTok is only marginally used for social networking purposes, even if its platform offers basic and ancillary messaging, comment functions and the ability to follow particular creators.¹⁹ To support its submission that TikTok’s social networking features are ancillary to its video-sharing purpose, ByteDance refers to recital (51) of the preamble to Regulation (EU) 2022/1925, on the basis of which it claims that the distribution of videos through a video-sharing platform service should be distinguished from displaying information in the newsfeed of an online social networking service and it points out that TikTok does not have a newsfeed.²⁰ ByteDance asserts that only a limited portion of TikTok’s end users (i.e., approximately [...]%) engages in social interactions on its platform, which ByteDance defines as “likes, comments, profile views, direct messages, and shares”.²¹ ByteDance further asserts that [...]% of video views on TikTok relate to content shared between mutual followers; TikTok’s daily active users have a median of [...] friends on TikTok; [...]% of video content posted by TikTok users is posted to the platform as a whole, and; on average [...]% of video views on TikTok are obtained from the “For You” page, as opposed to [...]% from the “Follow” page and [...]% from the “Friends” page.²² ByteDance submits that these figures are insufficient to establish that a service qualifies as an online social networking service.
- (32) From the perspective of business users, ByteDance claims that TikTok’s offering for business users centres on video-sharing, whereas true social networks provide a much wider feature set for business users to reach end users.²³
- (33) Third, ByteDance submits that user experience research conducted or commissioned by TikTok confirms that end users see TikTok as an entertainment platform and not as an online social network, [...].²⁴
- (34) Fourth, ByteDance submits that [...], confirming that TikTok’s value proposition is about content discovery, not about establishing or maintaining real-world connections.²⁵
- (35) Fifth, ByteDance submits that there is no basis in Regulation (EU) 2022/1925 for a delineation of CPSs depending on whether a service “goes beyond” certain functionalities.²⁶ ByteDance claims that pursuant to the definition of a video-sharing platform service laid down in Article 1(1), point (aa), of Directive 2010/13/EU,²⁷ it is

¹⁹ Form GD, paragraph 27 as further laid out in ByteDance’s 2 August reply, paragraphs 9 and 10.

²⁰ ByteDance’s 2 August reply, paragraph 11.

²¹ Form GD, footnote 12.

²² Form GD, paragraph 27.

²³ Form GD, paragraph 14.

²⁴ Form GD, paragraph 28-30.

²⁵ Form GD, paragraph 35.

²⁶ ByteDance’s 2 August reply, paragraph 8.

²⁷ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member

irrelevant that the service has certain additional features or functionalities, but that the “principal purpose” or “essential functionality” of the service must be devoted to video sharing. Accordingly, ByteDance reiterates that the TikTok platform’s principal purpose is video sharing and that it should therefore be qualified solely as a video-sharing CPS.²⁸

- (36) Sixth, ByteDance submits that it would be a breach of the principle of equal treatment to qualify services of other undertakings that share the same functionalities as TikTok as video-sharing platforms, whereas TikTok would be qualified as an online social networking service.²⁹
- (37) Finally, ByteDance submits that key competition and consumer protection authorities have determined that TikTok is not a social network, but rather a social media platform or an entertainment platform.³⁰

5.1.1.2. The Commission’s assessment

- (38) Article 2, point (2), subpoints (c) and (d), of Regulation (EU) 2022/1925 list online social networking services and video-sharing platform services, respectively, as categories of CPSs within the meaning of that Regulation.
- (39) Article 2, point (7), of Regulation (EU) 2022/1925 defines an ‘online social networking service’ as “a platform that enables end users to connect and communicate with each other, share content and discover other users and content across multiple devices and, in particular, via chats, posts, videos and recommendations”.
- (40) Article 2, point (8), of Regulation (EU) 2022/1925 defines a ‘video-sharing platform service’ by cross-referring to Article 1(1), point (aa), of Directive 2010/13/EU, as amended by Directive (EU) 2018/1808. The latter provision defines a video-sharing platform service as “*a service as defined by Articles 56 and 57 [TFEU], where the principal purpose of the service or of a dissociable section thereof or an essential functionality of the service is devoted to providing programmes, user-generated videos, or both, to the general public, for which the video-sharing platform provider does not have editorial responsibility, in order to inform, entertain or educate, by means of electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC and the organisation of which is determined by the video-sharing platform provider, including by automatic means or algorithms in particular by displaying, tagging and sequencing.*”
- (41) As follows from the above, the definition of ‘video-sharing platform service’ laid down in Article 1(1), point (aa), of Directive 2010/13/EU focuses on the provision of programmes or user-generated videos in order to inform, entertain or educate. By contrast, the definition of ‘online social networking service’ in Article 2, point (7), of Regulation (EU) 2022/1925 mentions the sharing of videos as one among several features and functionalities of an online social networking service and describes that service as enabling users to connect and communicate with each other, share content, and discover other users and content.

States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), OJ L 095 15.4.2010, p. 1.

²⁸ ByteDance’s 2 August reply, paragraph 8.

²⁹ ByteDance’s 2 August reply, paragraph 12.

³⁰ Form GD, paragraphs 31-34.

- (42) The Commission does not contest that, in line with ByteDance’s view, TikTok meets the definition of a video-sharing platform service within the meaning of Article 2, point (8), of Regulation (EU) 2022/1925 because an essential functionality of that service is devoted to user-generated videos. However, the Commission considers that the features and functionalities of TikTok go beyond those of a video-sharing platform service. As explained in recitals (43) to (65) below, the Commission considers that TikTok not only fulfils the definition of an online social networking service, but that that classification also best reflects the characteristics and breadth of TikTok’s features and functionalities. Consequently, the Commission considers that TikTok constitutes an online social networking CPS within the meaning of Article 2, point (2), subpoint (c), of Regulation (EU) 2022/1925. This finding is based on the following considerations.
- (43) First, TikTok offers all the features and functionalities of an online social networking service that are expressly listed in Article 2, point (7), of Regulation (EU) 2022/1925, of which the sharing of videos is only one functionality, and it enables end users to carry out all the user activities referred to in that provision. TikTok enables connections and communications between users, across multiple devices, by allowing them to form networks and interact through various means, such as through videos (including through the possibility to upload collaborative content via “duets” or “stitch” videos, video replies and live streams³¹), as well as photos,³² text-based posts,³³ likes, comments, content sharing and hashtags. TikTok also has a chat function and allows users to follow other users and to participate in trends³⁴ and memes.³⁵ In particular, end users are able to share videos with other users, and in doing so, to use all features and functionalities offered by the TikTok platform, including TikTok’s chat functionality as well as its feed. Moreover, users can interact with one another through communities focusing on specific interests.³⁶ For example, the TikTok Book Club (commonly identified by the #BookTok hashtag by TikTok users) is used by end users to discuss new book titles together, discover new titles, and create and share reviews.³⁷ Another example consists in communities formed among culinary enthusiasts or fitness professionals.³⁸
- (44) Contrary to ByteDance’s submissions, all of these offerings, including the possibility to share videos, enable users to engage in shared activities and experiences with other users (regardless of whether they know these users outside the context of TikTok) and foster a sense of community and social interactions. This is further

³¹ See <https://newsroom.tiktok.com/en-gb/enhancing-the-live-community-experience-with-new-features-updates-and-policies>, last accessed on 9 August 2023.

³² See <https://www.tiktok.com/creators/creator-portal/en-us/product-feature-updates/tiktok-pulse-enhanced-editing-tools-new-product-features-for-booktok/>, last accessed on 28 August 2023.

³³ See <https://newsroom.tiktok.com/en-us/text-posts> last accessed on 9 August 2023.

³⁴ See <https://ads.tiktok.com/business/creativecenter/trends/home/pc/en> and <https://ads.tiktok.com/business/creativecenter/inspiration/popular/pc/en> last accessed on 21 August 2023.

³⁵ A “meme” is “An image, video, piece of text, or something similar, that parodies or provokes humour, that is usually spread virally on the internet by internet users who sometimes adapt or vary the meme when passing it on” (see <https://www.lexisnexis.co.uk/legal/glossary/meme>, last accessed on 21 August 2023 and also <https://www.tiktok.com/safety/en/online-challenges/>, last accessed on 9 August 2023).

³⁶ See <https://www.tiktok.com/business/en/blog/communities-on-tiktok> last accessed on 9 August 2023.

³⁷ See <https://newsroom.tiktok.com/en-gb/the-tiktok-bookclub> last accessed on 9 August 2023.

³⁸ See <https://www.tiktok.com/browse/fitness/all> last accessed 25 August 2023 and <https://www.tiktok.com/browse/recipes-food-trends/all> last accessed 25 August 2023.

supported by the way in which ByteDance describes TikTok in its Terms of Service, in which it explains that that service allows users to “*create, view, interact with and share content, and interact with others.*”³⁹ Furthermore, on its website, ByteDance states that features such as commenting on TikTok serve as a “*way to interact and build connections with the TikTok community*”⁴⁰ and that users can use the “Share” function to “*share trending sounds, creators, or videos with friends, family, and your larger community within TikTok or through other social media platforms.*”⁴¹

- (45) Second, TikTok’s algorithm, designed to analyse user behaviour and preferences, generates personalised content suggestions that enable end users not only to discover content that might be of interest to them (e.g. videos), but also to discover other *users* who create content, across multiple devices.⁴² These features enable end users to connect and communicate with each other, as well as share and discover content via recommendations suggested by either TikTok’s algorithm and/or other users. TikTok’s “For You” page, for example, showcases a diverse array of videos tailored to each user’s interests and helps users to discover a wide range of content, creators, communities and products, thereby creating social interactions.⁴³
- (46) Furthermore, ByteDance itself acknowledges that connections amongst users exist on TikTok by offering a “Following” feed which serves to suggest content based on accounts that the user has chosen to follow and a “Friends” tab suggesting videos from followers that the user follows back or other suggested accounts such as those belonging to someone in the user’s phone contacts or friends list on Facebook.⁴⁴ In addition, this interactive and interconnected network of creators, users and brands encourages users to share content and to discover other users and content, which are core features of an online social networking service.
- (47) In any event, the Commission further considers that none of ByteDance’s submissions call into question its finding that TikTok is an online social networking CPS. That is so for the following reasons.
- (48) First, contrary to what ByteDance claims, the fact that a particular service displays features of both an online social networking service and a video-sharing platform service does not mean that it must automatically be classified as a video-sharing platform service. Indeed, Regulation (EU) 2022/1925 does not preclude the possibility that a service falling within the broader definition of online social networking services laid down in Article 2, point (7), of Regulation (EU) 2022/1925 may also meet the narrower definition of video-sharing platform services laid down in Article 2, point (8), of that Regulation. Similarly, Article 1(1), point (aa), of Directive 2010/13/EU does not preclude that a service meeting the definition of a

³⁹ See <https://www.tiktok.com/legal/page/eea/terms-of-service/en>, last updated in August 2023 and last accessed on 9 August 2023.

⁴⁰ See <https://support.tiktok.com/en/using-tiktok/messaging-and-notifications/comments> last accessed on 10 August 2023.

⁴¹ See <https://support.tiktok.com/en/using-tiktok/exploring-videos/sharing> last accessed on 10 August 2023, clarifying that user interactions does not entail just sharing videos, but also following different accounts as well as commenting on different posts.

⁴² See also: <https://newsroom.tiktok.com/en-us/how-tiktok-recommends-videos-for-you> last accessed on 28 August 2023.

⁴³ See <https://newsroom.tiktok.com/fr-fr/de-nouveaux-moyens-pour-reactualiser-votre-fil-pour-toi-sur-tiktok> and <https://newsroom.tiktok.com/en-gb/why-this-tiktok> last accessed on 9 August 2023.

⁴⁴ See <https://support.tiktok.com/en/using-tiktok/exploring-videos/friends-tab> last accessed on 9 August 2023.

video-sharing platform service may offer further functionalities and serve a broader purpose, and thus may qualify as an online social networking service within the meaning of Article 2, point (7), of Regulation (EU) 2022/1925. Furthermore, the terms “essential functionality of the service” in Article 1(1), point (aa), of Directive 2010/13/EU suggest that, under the definition of a video-sharing platform service laid down in that Directive, a service may have a focus on video-sharing and at the same time offer more features and functionalities and thus may meet the more encompassing definition of an online social networking service under Article (2), point (7), of Regulation (EU) 2022/1925.

- (49) As explained in the recitals above, this is the case for TikTok. TikTok’s features and functionalities go beyond the provision of a video-sharing platform service, i.e., they are not limited to providing user-generated videos to the general public in order to inform, entertain or educate. Rather, TikTok is a platform where users can engage in broader social interactions through, among others, trends, via not only videos, but also photos, text posts, messages, likes, and comments.⁴⁵ As explained above, the (more encompassing) definition of an online social networking service pursuant to Article 2, point (7), of Regulation (EU) 2022/1925 is a more accurate representation of TikTok’s broad set of features and functionalities.
- (50) Second, contrary to ByteDance’s claim,⁴⁶ TikTok’s social networking features cannot be considered ancillary “non-essential” features to a video-sharing platform service. Apart from the fact that sharing videos is one of the features of an online social networking service, as defined in Article 2, point (7), of Regulation (EU) 2022/1925, that claim should be rejected for the following reasons.
- (51) In the first place, TikTok’s functionalities listed in recital (43) above, including notably the features that ByteDance itself considers to constitute social interactions (i.e., “likes, comments, profile views, direct messages, and shares, etc.”),⁴⁷ go beyond video-sharing, and enhance the user experience of TikTok as an online social networking service. Those functionalities, which synergise and interact with the video-sharing features of TikTok, enable users to connect, communicate, share, and discover new content, in line with the definition of an online social networking service laid down in Article 2, point (7), of Regulation (EU) 2022/1925. For example, TikTok’s community guidelines clearly stipulate that “*comments and direct messages on TikTok allow our users to interact with videos or directly with others, and provide an integral interactive experience to the platform.*”⁴⁸ In addition, some of these interactions can take place in real time through the TikTok LIVE functionality.⁴⁹ These are essential functionalities that drive user engagement and interaction on the TikTok platform. For instance, the ‘like’ feature not only serves as an endorsement of content but also influences the algorithm affecting the recommendations and discoverability of videos and aiding in the formation of

⁴⁵ See <https://www.tiktok.com/legal/page/global/reporting-illegal-content/en>, last accessed on 28 August 2023, which clearly suggests that type of engagement on TikTok goes well beyond sharing of videos. In particular, TikTok stipulates that there are number of different activities and engagement with the service that may be reported as illegal, such as sharing content featuring images which sexualise young people or engaging in any form of illegal threats.

⁴⁶ ByteDance’s 2 August reply, paragraph 8; and Form GD, paragraph 6.
⁴⁷ Form GD, footnote 12.

⁴⁸ See <https://www.tiktok.com/community-guidelines/en/accounts-features/#3> last accessed on 28 August 2023.

⁴⁹ See: <https://support.tiktok.com/en/live-gifts-wallet/tiktok-live> last accessed on 28 August 2023.

communities around shared interests or trending topics.⁵⁰ Similarly, the recommendation system plays a dual role: it not only surfaces relevant content for individual consumption but also suggests profiles and communities for users to connect with, effectively serving as a networking tool.

- (52) In the second place, TikTok’s functionalities other than video-sharing allow users not only to exchange video content, but also to discover content and other users through shared interests based on their engagement with the service, thereby facilitating new social interactions. Enabling the broadening of an end user’s existing circle is another characteristic of an online social networking service as defined in Article 2, point (7), of Regulation (EU) 2022/1925. In any event, ByteDance’s claim that TikTok does not qualify as an online social networking service on the ground that only a limited portion of its end users allegedly engage in social interaction, fails to consider that TikTok’s video-sharing functionality also constitutes (in addition to other functionalities such as likes, comments, profile views, direct messages, shares, follows, and photo and text-based posts) a way for users to connect and communicate and thus can be used as a means for social interactions between users.
- (53) In the third place, TikTok actively uses its users’ existing contacts from either their TikTok account, their phone, or other social networking services to suggest additional accounts for users to follow.⁵¹ For example, on the section of TikTok’s website explaining how TikTok suggests accounts to users, TikTok explains: “Depending on the information you allow TikTok to share, we may suggest your account to: • Contacts • Facebook friends • People with mutual connections • People who open or send links to you”. TikTok’s “suggested accounts” feature is a clear indication that TikTok aims to create social interactions.
- (54) In the fourth place and in any event, the alleged proportion of end users that engage in what ByteDance considers to constitute social interactions (i.e., “likes, comments, profile views, direct messages, and shares, etc.”)⁵² is rather significant (i.e., approximately [...] % of end users according to ByteDance)⁵³. Those data thus do not disprove, but rather support, the finding that TikTok’s features and functionalities aimed at social interactions are not ancillary to its video-sharing features, contrary to ByteDance’s claim. This is further underlined by the fact that TikTok’s users engage with videos posted by other users, in the form of likes, comments and shares, at a significantly higher rate than users on other social networks do.⁵⁴
- (55) Third, contrary to ByteDance’s submission, it is irrelevant that end users who connect and communicate on TikTok may lack a real-world connection to the accounts that they follow, or may not be friends, family, followers or specific personally-identified contacts. The definition of an online social networking service laid down in Article 2, point (7), of Regulation (EU) 2022/1925 is in no way limited

⁵⁰ See <https://newsroom.tiktok.com/en-us/how-tiktok-recommends-videos-for-you> last accessed 27 August 2023

⁵¹ See <https://support.tiktok.com/en/account-and-privacy/account-privacy-settings/suggested-accounts> last accessed on 27 August 2023.

⁵² Form GD, footnote 12.

⁵³ See recital (31).

⁵⁴ See <https://www.rivaliq.com/blog/good-engagement-rate-tiktok/>, last accessed on 27 August 2023. This article defines engagement as “measurable interaction on organic and paid social media posts”. It further specifies that on TikTok “this includes likes, comments and shares”. This article observes: “The median engagement rate per follower is 5.7%, according to our TikTok benchmark report. This rate is 12x more engaging than the next most engaging channel, Instagram.”

to connections and communication between users who are friends, family members, or other real-life acquaintances, but refers to end users in general. In fact, as observed in recitals (45) and (52) above, TikTok enables the forming of new social interactions.

- (56) Fourth, ByteDance’s reliance on recital (51) of the preamble to Regulation (EU) 2022/1925 to draw a distinction between the distribution of videos through a video-sharing platform service and the display of information in the newsfeed which allegedly characterises an online social networking service is misplaced.⁵⁵ That recital does not explain that an online social networking service should have a “newsfeed”, nor does the definition of an online social networking service laid down in Article 2, point (7), of Regulation (EU) 2022/1925 make any reference to a newsfeed as a condition for a service to fall within that definition. In addition, while the existence of a newsfeed is not relevant for the qualification of TikTok as an online social networking CPS under Regulation (EU) 2022/1925, it is noteworthy that that Regulation does not define the term “newsfeed” and that a feed which displays news in a video format, such as the one on the TikTok platform, may therefore qualify as a “newsfeed”.
- (57) Fifth, contrary to what ByteDance claims,⁵⁶ the existence of a ‘social graph’ is not a pre-condition for a service to qualify as an online social networking service within the meaning of Regulation (EU) 2022/1925. While a ‘social graph’ may be used by certain popular online social networking services, Regulation (EU) 2022/1925 does not make any reference to that notion. This is consistent with the fact that there are different ways in which online social networking services can be provided. Moreover, ByteDance’s submission⁵⁷ indicates that there are no clear boundaries between the notions of “social graph”, “content graph” or “interest graph”. Online social networking services, including TikTok, appear to rely on a combination of elements that may fall within any of these notions.⁵⁸ In addition, a service which recommends content to users based on what their interests are can enable users to form connections and communities based on their shared interests as revealed by their engagement with the service, which corresponds to what TikTok enables through the features listed in recitals (43) et seq.
- (58) Sixth, contrary to what ByteDance claims,⁵⁹ TikTok also facilitates communication and connection between business users and end users, as well as content discovery and sharing across multiple devices, and in particular via chats, posts, videos, and recommendations, with a view to enabling business users to grow their businesses (e.g., via a variety of creative tools), scale their brand presence (e.g., via auto-messaging and post scheduler), and drive sales with business-friendly features (e.g.,

⁵⁵ See recital (31).

⁵⁶ Form GD, paragraph 14.

⁵⁷ See footnote 18 above.

⁵⁸ See Form GD, paragraph 27 where ByteDance states: “As a result, TikTok is less reliant on the so-called “social graph” associated with social networking”. This indicates that ByteDance does rely to some extent on a social graph. See also for further explanation <https://newsroom.tiktok.com/en-us/how-tiktok-recommends-videos-for-you> last accessed 27 August 2023 where ByteDance states: “Recommendations are based on a number of factors, including things like:” indicating that a number of elements contribute to the creation of a graph.

⁵⁹ Form GD, paragraph 14.

via link-in-bio, business contact information, and lead generation tools).⁶⁰ For example, TikTok allows business users to create branded hashtags, events and participate in TikTok communities⁶¹ which foster social interactions through user-generated content, thus promoting active engagement between businesses and end users. Furthermore, business users can use interactive features to get in direct contact with end users through comments or direct chats.

- (59) Seventh, contrary to what ByteDance claims,⁶² the proportion of video views on TikTok that relate to content shared between mutual followers is irrelevant for the purposes of determining whether TikTok constitutes an online social networking service, since following other users is just one of many ways in which users can connect and communicate on TikTok. Moreover, while this in itself is not decisive for determining whether TikTok constitutes an online social networking service, the Commission observes that ByteDance has provided no evidence of [...]. In any event, even without these features and functionalities, TikTok would continue to meet the definition of an online social networking service laid down in Article 2, point (7), of Regulation (EU) 2022/1925.
- (60) Eighth, the research to which ByteDance refers⁶³ does not provide a sufficient basis to demonstrate that TikTok is not an online social networking CPS within the meaning of Regulation (EU) 2022/1925. This is so for the reasons set out below.
- (61) In the first place, the Commission understands, based on the limited information provided by ByteDance, that, in the study on which ByteDance seeks to rely, respondents were asked [...], which may encompass services that can qualify as either an online social networking service or a video-sharing platform service under Regulation (EU) 2022/1925.⁶⁴ That study is therefore not informative for the purposes of assessing the features and functionalities which could differentiate between the two categories of services that are at issue in the present case.
- (62) In the second place, the description of TikTok in a selected extract from internal research on which ByteDance seeks to rely⁶⁵ is not inconsistent with the qualification of an online social networking service under Regulation (EU) 2022/1925. In particular, the statement that “[...]” does not provide any indication of the degree of users’ interactive behaviour on TikTok in the Union. It simply suggests that [...]. In this regard, the Commission observes that other evidence indicates, to the contrary, a high user engagement on TikTok, as mentioned in recital (54) above.
- (63) In the third place, ByteDance only provided very limited extracts from the relevant studies and researches on which it seeks to rely. Such limited extracts do not support the conclusion that ByteDance seeks to draw from them, since information on the full scope and results, methodology, sample sizes and methods for selecting participants is lacking for such a conclusion.

⁶⁰ See <https://www.tiktok.com/business/en/solutions/business-account> and <https://ads.tiktok.com/help/article/tiktok-business-account-features?lang=en> last accessed on 9 August 2023.

⁶¹ <https://www.tiktok.com/business/en/blog/communities-on-tiktok> last accessed on 9 August 2023.

⁶² See recital (31) above.

⁶³ Form GD, paragraphs 28 to 30 and Figures 4 and 5.

⁶⁴ See the study referred to in Form GD, paragraph 29.

⁶⁵ Form GD, Figure 5.

- (64) Ninth, contrary to what ByteDance’s claims,⁶⁶ the fact that TikTok may share some features and functionalities with services provided by other undertakings does not mean that TikTok should automatically be considered to belong to the same CPS category as those services. Differences between TikTok and those other services in terms of functionalities other than video-sharing, may justify different qualifications.⁶⁷
- (65) Tenth, the market definition precedents from competition cases on which ByteDance seeks to rely have no bearing on the qualification of a service as belonging to a particular category of CPS under Regulation (EU) 2022/1925. As explained in recital (14) above, this is because that Regulation pursues an objective that is different from competition law and consciously departs from the concept of market definition.⁶⁸ Instead, Article 2 of Regulation (EU) 2022/1925 provides an exhaustive list of CPSs which the legislator considered as particularly prone to certain types of market failure. Accordingly, the definitions of CPSs laid down in the Regulation itself are the only relevant standard to determine if a given service qualifies as a particular type of CPS. As explained in detail in recitals (42) to (47) above, TikTok meets the definition of an online social networking service as provided in Article 2, point (7), of Regulation (EU) 2022/1925. The notion of a ‘social media platform’ on which ByteDance relies has, in contrast, no basis in Regulation (EU) 2022/1925.⁶⁹
- (66) For the reasons set out above, the Commission concludes that TikTok constitutes an online social networking service within the meaning Article 2, point (7), of Regulation (EU) 2022/1925 and therefore a CPS within the meaning of Article 2, point (2), subpoint (c), of that Regulation.

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

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

5.1.2.1.1. The Undertaking’s view

- (67) ByteDance indicates that its fair market value in the last financial year was estimated at approximately EUR [>75 billion], so that it meets the threshold laid down in Article 3(2)(a) of Regulation (EU) 2022/1925.⁷⁰
- (68) In addition, ByteDance indicates that it provides TikTok in all Member States.⁷¹

⁶⁶ See recital (36) above.

⁶⁷ Those differences may include, for instance, the following. On TikTok, users need to create an account and to log-in to view and upload videos. Moreover, TikTok focuses on a specific type of short, ephemeral user-generated video content (up to 60 seconds long with an average length of 15 seconds), as opposed to a wider offer of video content (including longer videos and programmes across all industries, from large media producers, companies and major advertisers to cultural institutions and amateur individuals including tutorials, long-form discussions, documentaries) that remain discoverable for a longer period. TikTok also has a set of functionalities enabling social interactions as described in recitals (45) to (51) above: for example, it enables users to share videos with other users via the chat functionality, or to re-post videos on their feed, post photo and text-based content, etc. In addition, TikTok also has elements of a social graph (see recital 57 above). Furthermore, TikTok provides users with a wide range of built-in editing tools, filters, effects and music options to create engaging videos as opposed to platforms for which creators often use external software for more advance editing.

⁶⁸ See recitals 11 and 23 of the preamble of Regulation (EU) 2022/1925 and paragraph 24 of the Impact Assessment Report accompanying the Proposal for this regulation (SWD(2020) 363 final, Part 1).

⁶⁹ Moreover, there appears to be different ways to interpret the term ‘social media platform’, some of which suggest that this would be a broader category of services encompassing both online social networking services and video-sharing platform services.

⁷⁰ Form GD, paragraph 55.

5.1.2.1.2. The Commission's assessment

(69) On the basis of the information provided by ByteDance,⁷² the Commission considers that ByteDance meets the fair market value threshold laid down in Article 3(2)(a) of Regulation (EU) 2022/1925, as well the requirement laid down in that provision that the CPS at issue, i.e., TikTok, is offered in at least three Member States.

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

5.1.2.2.1. The Undertaking's view

(i) Monthly active end users established or located in the Union

(70) ByteDance indicates that, irrespective of whether TikTok is considered a video-sharing platform CPS or an online social networking CPS, TikTok meets the monthly active end user threshold laid down in Article 3(2)(b) of Regulation (EU) 2022/1925. ByteDance submits that TikTok had 125 million monthly active end users established or located in the Union in the last financial year.

(ii) Yearly active business users established in the Union

(71) ByteDance indicates that, irrespective of whether TikTok is considered a video-sharing platform CPS or an online social networking CPS, its TikTok CPS meets the yearly active business user threshold laid down in Article 3(2)(b) of Regulation (EU) 2022/1925. ByteDance submits that the number of TikTok yearly active business users established in the Union in the last financial year was [$>10\,000$] (based on registered business accounts) or [$>10\,000$] (based on self-identified business accounts).

5.1.2.2.2. The Commission's assessment

(72) On the basis of the information provided by ByteDance,⁷³ the Commission considers that ByteDance's online social networking CPS TikTok meets the monthly active end user threshold laid down in Article 3(2)(b) of Regulation (EU) 2022/1925.

(73) On the basis of the information provided by ByteDance,⁷⁴ the Commission considers that ByteDance's online social networking CPS TikTok meets the yearly active business user threshold laid down in Article 3(2)(b) of Regulation (EU) 2022/1925.

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

5.1.2.3.1. The Undertaking's view

(i) Monthly active end users established or located in the Union

(74) ByteDance indicates that if TikTok is considered a video-sharing platform CPS, it has met the monthly active end user threshold laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 for monthly active end users in each of the last three financial years. Table 1 presents the number of average monthly active end users of TikTok as a video-sharing platform CPS in the Union as submitted by ByteDance.

⁷¹ Form GD, paragraph 56.

⁷² Form GD, paragraphs 55 to 56.

⁷³ In particular the figures provided in Table 7 of the Form GD.

⁷⁴ Form GD, Table 13.

Table 1: Monthly active end users of TikTok in the Union in the last three financial years (2020-2022)

Year	Monthly active end users (millions)
2020	[>45]
2021	[>45]
2022	125

Source: ByteDance’s Form GD, Table 7.

(75) Furthermore, ByteDance argues that if TikTok is considered an online social networking CPS, the relevant end user count provided in Table 1 above would need to be limited to users that have social interactions on the platform. ByteDance contends that only ~[...]% of TikTok’s end users are estimated to have social interactions, resulting in ~[<45] million monthly active end users in 2020, ~[>45] million in 2021 and ~[>45] million in 2022. Therefore, ByteDance submits that, if TikTok were to be considered as an online social networking CPS, TikTok would meet the relevant threshold for monthly active end users only in 2022 and 2021, but not in 2020.⁷⁵

(ii) Yearly active business users established in the Union

(76) ByteDance argues that the best estimate for the number of TikTok business users in the Union is the number of registered business accounts.

(77) Registered business accounts concern a newly introduced registration system of ByteDance enabling self-identified business accounts to register their business with TikTok to become “registered business accounts”. This registration feature is not mandatory and was introduced in France and Germany in April 2022 and in ten other EU Member States in November 2022.⁷⁶

(78) To estimate the number of registered business users for years prior to the introduction of the registration function (i.e., 2020 and 2021), ByteDance has examined, based on the registered account user IDs, how many of those who registered in 2022 were already present on the platform over the past three financial years. On that basis, ByteDance submits that TikTok only meets the threshold for yearly active business users laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 in 2022, but not in 2020 and 2021, irrespective of whether it is considered as a video-sharing platform CPS or an online social networking CPS.⁷⁷ Table 2 summarises the number of TikTok’s EU registered business accounts between 2020 and 2022.

Table 2: TikTok registered business accounts in the Union in the last three financial years (2020-2022)⁷⁸

Year	Registered business accounts
2020	[<10 000] (estimate)
2021	[<10 000] (estimate)

⁷⁵ Form GD, paragraph 64.

⁷⁶ Form GD, paragraph 88.

⁷⁷ Form GD, paragraph 94.

⁷⁸ The numbers have been adjusted to include (i) only those accounts that had registered their account in the EU; and (ii) only those accounts that were active in a given year. The figures prior to introduction of the registration function are based on registered user IDs that were already present on the platform (in whatever capacity) over the past three financial years.

2022	[>10 000] (actual)
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Source: ByteDance’s Form GD, Table 20.

(79) In addition, ByteDance has also provided figures for TikTok’s self-identified business accounts in 2020 to 2022, including figures for self-identified business accounts based on users’ historic activity on TikTok (second column of Table 3) and alternative (lower) figures for self-identified business accounts based on the year their business account was enabled (third column of Table 3).⁷⁹

Table 3: TikTok self-identified business accounts in the Union in the last three financial years (2020-2022)⁸⁰

Year	Business accounts based on activity since signing up to TikTok	Business accounts based on the year a business account was enabled
2020	[>10 000]	[>10 000]
2021	[>10 000]	[>10 000]
2022	[>10 000]	[>10 000]

Source: ByteDance’s Form GD, Tables 12 and 13.

(80) ByteDance submits that users can self-identify as a business account with a toggle in the menu of the TikTok application.⁸¹ The toggle was introduced in the Union in May/June 2020.⁸² This self-identification feature grants users access to business-specific functionalities, such as performance insights, creative tools, and exclusive account options.⁸³ While the thresholds for active business users laid down in Article 3(2)(c) of Regulation (EU) 2022/1925 would be met based on the figures summarised in Table 3, ByteDance does not consider self-identified business accounts to be a reliable estimate of TikTok’s active business users, since any user can use the toggle to self-identify as a business account and, consequently, there is no certainty that self-identified business accounts are real business users.⁸⁴ To support its view, ByteDance refers to a survey conducted in early 2022, focused on small and medium-sized businesses, which shows that only [...] % of respondents knew that they had set up a business account.⁸⁵

⁷⁹ Form GD, paragraph 83: The figures in the second column of Table 3 are based on users’ historic activity on TikTok, i.e., a user is included as a self-identified business account as of the date of joining TikTok, even if it made the switch from a personal account to a self-identified business account only at a later stage (although the self-identification possibility was already available). The figures in the third column of Table 3 are based on self-identified EU business accounts based on the date the self-certified business account was enabled.

⁸⁰ Business accounts count only those users that registered in the EU, posted at least one video to TikTok, or received at least one video view on TikTok. The figures based on the date users enabled their business account are significantly lower for 2020, which can likely be explained by the fact that the toggle was only introduced halfway through that year.

⁸¹ Form GD, paragraph 82.

⁸² Form GD, paragraph 83.

⁸³ Form GD, paragraph 82.

⁸⁴ Form GD, paragraph 84.

⁸⁵ Form GD, paragraphs 85 and 86. The survey was conducted with 207 US and UK top Promote spenders, and complemented with five 45-minute interviews as well as a “Strategic Sales Activation Pilot”. See Annex 7.A to the Form GD.

5.1.2.3.2. The Commission's assessment

- (i) Monthly active end users established or located in the Union in the last three financial years
- (81) The Commission does not agree with ByteDance's submission that only [...] % of TikTok's end users in the Union should be taken into account as end users of the online social networking CPS TikTok. Indeed, this adjusted number of end users, based on the proportion of users that engage with what ByteDance considers as social interactions on TikTok,⁸⁶ is not in line with the notion of 'active end user' laid down in Regulation (EU) 2022/1925. Section E of the Annex to that Regulation defines 'active end users' of an online social networking CPS as any end users who engage with the service by, for example, actively logging-in, opening a page, scrolling, clicking, liking, making a query, posting or commenting, without any further requirement that they should engage in the type of social interaction that ByteDance has used as a benchmark to calculate TikTok's adjusted number of end users. Consequently, any active end user engaging with the video-sharing functionality of TikTok must be considered an active end user of the online social networking CPS TikTok. Consequently, the number of TikTok active end users in the Union in the last three financial years comprises the full number of TikTok active end users in the Union as presented by ByteDance and reflected in Table 1 above.
- (82) Consequently, the Commission considers that ByteDance's online social networking CPS TikTok meets the requirement laid down in Article 3(2)(c) of Regulation (EU) 2022/1925 that the monthly active end user threshold laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 was met in each of the last three financial years.
- (ii) Yearly active business users established in the Union in the last three financial years
- (83) The Commission considers that TikTok's methodology based on the number of "registered business accounts"⁸⁷ as a proxy for determining the number of active business users under Regulation (EU) 2022/1925 has several shortcomings, likely represents a significant undercounting of TikTok's actual number of yearly active business users and is therefore unreliable. This is so for the following reasons.
- (84) First, ByteDance only recently introduced the registration feature, making it available in a limited number of Member States, including France and Germany in April 2022 and in ten more Member States in November 2022. Due to the absence of this feature in other Member States, the figures based on registered business accounts are not representative of the actual number of business users of TikTok in the Union in 2022, 2021 and 2020. Given its recent introduction, it is highly likely that many business users located or established in the Union where the feature has been made available may not have made use of it yet. Moreover, because the registration feature remains unavailable in many Member States, relying on that feature would lead to even more significant undercounting of the actual number of active business users.
- (85) Second, the registration feature is voluntary, meaning that a significant number of business users with existing accounts may not have undertaken the effort of registering themselves since its recent introduction, especially since businesses do not seem to have any incentive to do so.

⁸⁶ Form GD, paragraph 64.

⁸⁷ See recital (77) above.

- (86) Third, the fact that TikTok’s methodology does not count content creators acting in a professional capacity as business users, unless they have registered as a business account, further exacerbates the undercounting of business users.
- (87) Fourth, due to the registration feature only becoming available in 2022, the metric based on registered business accounts would not capture business users in 2020 and 2021 that were no longer business users in 2022.⁸⁸
- (88) In contrast to the number of registered business users, the Commission considers the other metric provided by ByteDance, namely the number of self-identified business accounts described in recital (80) above, to be a sufficiently reliable measure of TikTok’s active yearly business users for the purposes of determining whether the thresholds in Article 3(2)(c) of Regulation (EU) 2022/1925 are met. Indeed, the self-identification feature grants users access to business-specific functionalities, such as performance insights, creative tools, and exclusive account options.⁸⁹ Those functionalities are aimed squarely at businesses, making it likely that, at the very least, a significant portion of self-identified business accounts are actual business users. Furthermore, as stated by ByteDance,⁹⁰ the self-identification feature enables users to grow their businesses, scale their brand presence, and drive sales with business-friendly features. In addition, ByteDance also explains that business accounts are public profiles that allow brands and businesses to use TikTok’s marketing tools to build a cohesive marketing strategy on TikTok. This is evident from TikTok’s communication on the business features.⁹¹ Moreover, TikTok’s terms of use require that users engaging in business activities self-identify as business users to access specialised tools and features tailored to support their activities.⁹²
- (89) As follows from the data summarised in Table 3 above, when considering self-identified EU business accounts, TikTok exceeds the threshold of 10 000 business users for the last three financial years by a large margin, under both alternative counting methods relied on by ByteDance (see Table 3 above, second and third columns). Therefore, even though the number of self-identified business accounts in Table 3 may overestimate, to a certain extent, the actual number of yearly active business users, the number so greatly exceeds 10 000 that it forms a sufficiently solid basis to conclude that the yearly actual business user threshold was met in 2020, 2021 and 2022. By way of illustration: even when using the more conservative counting method in the second column of Table 3 (which results in approximately

⁸⁸ According to ByteDance’s Form GD, Table 20 and footnote 92, a total of as many as [$>10\,000$]business accounts made use of the registration feature and were active on the TikTok platform in 2022 in France and Germany (as of April 2022) and in Austria, Belgium, Greece, Italy, Netherlands, Poland, Portugal, Romania, Spain and Sweden (as of November 2022), the majority of which were users that signed up to the service for the first time in 2022. In the Commission’s view, this further corroborates the finding that there were at least 10 000 business users also in 2021 and 2020.

⁸⁹ See <https://www.tiktok.com/business/en/solutions/business-account> and <https://ads.tiktok.com/help/article/tiktok-business-account-features?lang=en> last accessed on 9 August 2023.

⁹⁰ See <https://www.tiktok.com/business/en/solutions/business-account> last accessed on 9 August 2023.

⁹¹ See, for example, <https://www.tiktok.com/business/en/solutions/business-account> and <https://support.tiktok.com/en/using-tiktok/growing-your-audience/switching-to-a-creator-or-business-account>, last accessed on 9 August 2023.

⁹² See Section 6 of TikTok’s EEA Business Terms: “Where you use your account primarily for Business Purposes, you agree that you will at all times use a TikTok account type designated for commercial or business use (a “Business Account”)”. <https://www.tiktok.com/legal/page/global/business-terms-eea/en> last updated in August 2023 and last accessed on 9 August 2023.

[>10 000] self-identified business users in 2020), TikTok would meet the business user thresholds laid down in Article 3(2)(c) of Regulation (EU) 2022/1925 even if just [a small percentage] of those users were considered to be actual active business users established in the Union. In other words, even if, as argued by ByteDance, part of TikTok's self-identified business accounts do not actually correspond to users acting in a professional or commercial capacity, it is highly unlikely that this could be the case for [a majority] or more of TikTok's self-identified business accounts.⁹³

- (90) Finally, ByteDance offered no other reliable alternative measure of business users showing that TikTok did not meet the relevant business user threshold. Although TikTok provided a survey purportedly showing that only [...]% of respondents knew that they had set up a business account,⁹⁴ this survey does not support TikTok's claim that it has fewer than 10 000 business users, and may rather confirm the conclusion that TikTok meets the business user threshold. This is so for the following reasons.
- (91) First, the survey is not representative, [...], a sample that is far too small and not geographically representative to generate meaningful results. As such, it cannot be considered reliable for determining whether self-identified business accounts can be considered as business users.
- (92) Second, even assuming that the survey were reliable (quod non), it rather appears to support the opposite conclusion, namely that TikTok has more than 10 000 business users:
- (a) When applying the [...]% figure (representing the percentage of respondents that confirmed they are aware that they have a business account) to the number of TikTok self-identified business accounts presented in Table 3 above, this results in more than [>10 000] business accounts in 2022, and, consequently, the business user threshold of 10 000 would still be greatly exceeded.
 - (b) The survey showed that [...]% of respondents use TikTok's paid Promote⁹⁵ feature frequently, which is a strong indicator that at least these respondents are genuine business users. When applying this percentage to the number of self-identified business accounts presented in Table 3, this results in more than [>10 000] business accounts in 2022, and, consequently, the business user threshold of 10 000 is once again still exceeded by a large margin.

⁹³ In addition, the Commission notes that even the category of self-identified business accounts does not appear to include all of TikTok's business users within the meaning of Regulation (EU) 2022/1925. Indeed, it appears that TikTok's Creator Next Program incentivises creators that are active in a professional capacity to keep personal accounts rather than change to a business account because several monetisation features that are available within the Creator Next Program do not appear to be available to business accounts. These monetisation features of the Creator Next Program for which only personal accounts appear to be eligible include TikTok Creator Marketplace, the official collaboration platform to connect brands and creators on TikTok through which creators can collaborate with brands on paid campaigns, as well as the TikTok Creator Fund, that rewards creators with at least 10 000 followers that regularly post content on TikTok, see TikTok's website <https://support.tiktok.com/en/using-tiktok/growing-your-audience/switching-to-a-creator-or-business-account> last accessed on 31 August 2023.

⁹⁴ See recital (72) above.

⁹⁵ *Promote* is an advertising tool you can use in the TikTok app that allows you to pay to get more people to discover your videos, guide more people to your website, and improve your chances to gain followers. This means that your video will be displayed as an ad for the time that you promote your video.

(93) For the reasons set out above, the Commission considers that the number of self-identified business accounts is the most reliable metric put forward by ByteDance and should therefore be used for the purpose of determining the number of TikTok's active business users under Article 3(2)(c) of Regulation (EU) 2022/1925. Consequently, the Commission considers that the number of TikTok yearly active business users exceeded the threshold laid down in Article 3(2)(b) of the Regulation (EU) 2022/1925 in each of the last three financial years.

(iii) Conclusion

(94) For the reasons set out above, the Commission concludes that the online social networking CPS TikTok 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.

(95) It is not necessary for the Commission to assess further whether ByteDance's approach to identifying and estimating monthly active end users and yearly business users of its TikTok CPS is sufficiently inclusive in line with the relevant definition in Section E of the Annex to Regulation (EU) 2022/1925, since the Commission's assessment of the information provided by ByteDance as set out in recitals (72) to (73) and (81) to (93) indicate that the relevant thresholds are met.

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

5.1.3.1. The Undertaking's view

(96) Together with its notification, ByteDance presented arguments pursuant to Article 3(5), first subparagraph, of Regulation (EU) 2022/1925 aimed at demonstrating that, even if it were to meet all the thresholds laid down in Article 3(2) of that Regulation in relation to TikTok, it exceptionally would not satisfy the requirements listed in Article 3(1) of that Regulation due to the circumstances in which TikTok operates.⁹⁶ ByteDance also submitted its views on how to interpret the legal framework for the analysis of rebuttal arguments under Article 3(5) of Regulation (EU) 2022/1925.⁹⁷

5.1.3.1.1. Arguments seeking to rebut the presumption laid down in Article 3(2)(a) of Regulation (EU) 2022/1925

(97) ByteDance puts forward the following arguments that, in its view, rebut the presumption stemming from Article 3(2)(a) of Regulation (EU) 2022/1925.⁹⁸

(98) First, ByteDance argues that its Union revenue is [...] below the thresholds laid down in Article 3(2)(a) of Regulation (EU) 2022/1925 (being EUR [<7,5 billion] in 2020, EUR [<7,5 billion] in 2021, and EUR [<7,5 billion] in 2022).⁹⁹ ByteDance also claims that its Union advertising revenues are mainly [...].¹⁰⁰

(99) Second, ByteDance asserts that TikTok [...] continues to build its customer base. ByteDance further claims that it is investing, in particular, in promoting its

⁹⁶ Form GD, Annex 4.

⁹⁷ Form GD, Annex 11.

⁹⁸ Form GD, Annex 4, points 31-36.

⁹⁹ Form GD, Annex 4, points 31-32.

¹⁰⁰ Form GD, Annex 4, point 33.

advertising monetisation model and incentivising creators to make content for TikTok.¹⁰¹

- (100) Third, ByteDance argues that it only meets the presumption laid down in Article 3(2)(a), of Regulation (EU) 2022/1925 on the basis of its global fair market value, which is driven by its China-focused business. According to ByteDance, that business has no connection to the Union, faces very different competitive dynamics, and operates in a distinct regulatory, linguistic, and cultural environment. Therefore, in ByteDance’s view, the global fair market value is not indicative of TikTok’s current or potential future ability to monetise users in the Union.¹⁰² According to ByteDance, its global market value was recently estimated by the press at [$>$ EUR 75] billion.¹⁰³ If that were translated into Union market value, with TikTok being ByteDance’s only meaningful activity in the Union and representing only [...] % of total revenues, this would equate to a Union market value of EUR [$<$ 75] billion, which is [...] below the threshold laid down in Article 3(2)(a) of Regulation (EU) 2022/1925.¹⁰⁴

5.1.3.1.2. Arguments seeking to rebut the presumption laid down in Article 3(2)(b) of Regulation (EU) 2022/1925

- (101) ByteDance puts forward the following arguments that, in its view, rebut the presumption stemming from Article 3(2)(b) of Regulation (EU) 2022/1925.¹⁰⁵
- (102) First, ByteDance argues that TikTok does not have an ecosystem that it could leverage and does not benefit from any significant network effects to lock in consumers and businesses.¹⁰⁶ According to ByteDance, Regulation (EU) 2022/1925 is intended to prevent improper ecosystem leverage by incumbents.¹⁰⁷ It submits that, unlike such incumbents that can sell advertising against their ecosystems, TikTok lacks the ability to set conditions and terms in a unilateral and detrimental manner for advertisers, which is reflected in the lower prices that TikTok can demand when compared to such incumbents.¹⁰⁸ TikTok also argues that it primarily operates based on a so-called “content graph” rather than a “social graph”, which would lead to less loyalty among users because they would not be building an online profile based on their contacts.¹⁰⁹ ByteDance claims that social connections between TikTok users are fairly indirect and relatively little used¹¹⁰ and, as such, lack the sort of stickiness and network effects that give rise to social networking “lock-in”.
- (103) Second, ByteDance argues that multi-homing by TikTok business users and end users demonstrates the absence of lock-in effects.¹¹¹ According to its estimates, TikTok accounts for only around [...] % of digital ad spend in different EU regions, while incumbents such as Alphabet and Meta account for approximately [...] % of

¹⁰¹ Form GD, Annex 4, point 34.

¹⁰² Form GD, Annex 4, point 35.

¹⁰³ Form GD, Annex 5, point 7 with footnote.

¹⁰⁴ Form GD, Annex 4, point 36.

¹⁰⁵ Form GD, Annex 4, points 37-70.

¹⁰⁶ Form GD, Annex 4, points 37-40.

¹⁰⁷ Form GD, Annex 4, point 38.

¹⁰⁸ Form GD, Annex 4, point 39, as further laid out in ByteDance’s 2 August 2023 reply, paragraph 24.

¹⁰⁹ Form GD, Annex 4, points 3, 5-12 and 40, as further laid out in ByteDance’s 2 August 2023 reply, paragraph 46.

¹¹⁰ Form GD, Annex 4, point 7-8, as further laid out in ByteDance’s 2 August 2023 reply, paragraph 10.

¹¹¹ Form GD, Annex 4, points 41-46, as further laid out in ByteDance’s 2 August 2023 reply, paragraphs 26-28.

total Union ad spend.¹¹² Moreover, ByteDance refers to internal analysis to claim that content creators also multi-home (e.g. around [...]% of creators used both Instagram Reels and TikTok and around [...]% YouTube Shorts and TikTok).¹¹³ ByteDance submits that TikTok end users also multi-home strongly, and asymmetrically, in the Union ([...]% of TikTok’s users also use YouTube and Instagram, [...]% also use Facebook, [...]% also use Snapchat, and [...]% also use X (formerly Twitter), while Meta’s end users multi-home more significantly within the Meta ecosystem).¹¹⁴ According to ByteDance, such levels of multi-homing run contrary to a gatekeeper designation under Regulation (EU) 2022/1925.

- (104) Third, ByteDance argues that, as a “challenger”, it invests in interoperability and facilitates multi-homing.¹¹⁵ To that end, it has created several possibilities for TikTok’s user base to repost and cross-post content on other services or allowed linking accounts by other services to TikTok accounts.
- (105) Fourth, ByteDance describes TikTok as a challenger in the Union compared to ecosystem incumbents against which it must compete for advertising. Indeed, TikTok’s business in the Union is small compared to those incumbents, as evidenced by revenues, monthly active users in the Union, and average revenue per user (“ARPU”).¹¹⁶
- (106) Fifth, ByteDance asserts that most of its advertisers and registered business users have [...].¹¹⁷ [...]% of TikTok’s advertisers in 2022 spent EUR [...] or less on advertising on the platform and only [...] Union-based advertisers spent in excess of EUR [...] on TikTok advertising in 2022.¹¹⁸
- (107) Sixth, ByteDance stresses that it faces a large number of competitors (including incumbent ecosystems) both in advertising and video sharing.¹¹⁹ On the advertising as well as on the end user side, it argues that other services are far more important than TikTok. These other services have also started to emulate TikTok, resulting in a fiercely competitive dynamic, including from entertainment services more generally.
- (108) Seventh, ByteDance submits that TikTok has limited social networking offering for business users to reach end users and explains that its offering for business users is [...] compared to its competitors and it only started developing relevant offerings for business users recently.¹²⁰

¹¹² Form GD, Annex 4, points 42, 64; and Annex 8.

¹¹³ Form GD, Annex 4, point 44, citing TikTok Internal Document, [...], November 2022.

¹¹⁴ Form GD, Annex 4, point 45, as further laid out in ByteDance’s 2 August 2023 reply, paragraphs 43-45.

¹¹⁵ Form GD, Annex 4, points 47-52, as further laid out in ByteDance’s 2 August 2023 reply, paragraph 37.

¹¹⁶ Form GD, Annex 4, point 53. In Europe, (i) TikTok’s revenues represented approximately [...]% of those of Meta, and [...]% of those of YouTube; (ii) TikTok’s 125 million monthly active users in the Union represent [...]% of Facebook’s EU user base, [...]% of Instagram’s Union user base, and [...]% of YouTube’s Union user base, and; (iii) TikTok’s ARPU in Europe (EUR [...]) is [...] than that of YouTube (EUR [...]), Instagram (EUR [...]), and Facebook (EUR [...]).

¹¹⁷ Form GD, Annex 4, points 54-62.

¹¹⁸ Form GD, Annex 4, point 60.

¹¹⁹ Form GD, Annex 4, points 63-69, as further laid out in ByteDance’s 2 August 2023 reply, paragraphs 32-34.

¹²⁰ Form GD, Annex 4, points 13-18; ByteDance’s 2 August 2023 reply, paragraphs 40-42.

5.1.3.1.3. Arguments seeking to rebut the presumption laid down in Article 3(2)(c) of Regulation (EU) 2022/1925

- (109) ByteDance claims that it is not a gatekeeper under Article 3(1)(c) of Regulation (EU) 2022/1925, because it does not enjoy an entrenched and durable position in its operations for the reasons set out below.¹²¹
- (110) First, according to ByteDance, TikTok has no advantages that place it in an “unassailable” position within the meaning of recital (21) of the preamble to Regulation (EU) 2022/1925, since it has no advantages that would allow it to create the entrenched and durable position of certain incumbent ecosystems, identified by ByteDance as Meta and Alphabet.¹²² ByteDance submits that it operates a single service in the Union without any ability to leverage its position across services. In contrast, incumbent rivals entrench their positions across different online services by leveraging their far superior user bases. According to ByteDance, TikTok’s position has been assailed by incumbent ecosystems introducing features emulating those offered by TikTok, and leveraging their large user bases to almost instantly develop a user base for their new services that took TikTok years to develop.¹²³ This phenomenon is shown by TikTok’s [...], namely Meta’s Instagram and Alphabet’s YouTube, gained a substantial user base in a short period of time by leveraging their pre-existing user base). [...] Instagram ‘Reels’ and YouTube ‘Shorts’ would make it even less likely for TikTok to have an entrenched position in the future.¹²⁴
- (111) Second, ByteDance argues that TikTok is a recent entrant and challenger of several established ecosystems.¹²⁵ ByteDance submits that, as a challenger, TikTok cannot be considered to have an entrenched or durable position in the Union, i.e., that ‘challenger’ and ‘gatekeepers’ are mutually exclusive positions. Unlike in the case of Meta and YouTube users, who multi-home less vis-à-vis TikTok, [...] show that, for both TikTok business users and end users, switching costs are low and they are not locked into TikTok’s ecosystem. In contrast, other incumbent platforms benefit from offering other applications (e.g., Meta’s Reels and display ads on Facebook), which creates a one-stop-shop ecosystem for advertising. TikTok, which has narrower offerings, has incentives to facilitate interoperability in order to attract incumbents’ users to its platform.

5.1.3.1.4. Additional arguments seeking to rebut the presumption laid down in Article 3(2) of Regulation (EU) 2022/1925

- (112) ByteDance submits additional arguments that, in its view, would render a designation of TikTok as a gatekeeper contrary to the policy intent of Regulation (EU) 2022/1925.¹²⁶
- (113) First, ByteDance submits that an effective application of Regulation (EU) 2022/1925 should aim at curbing certain conduct by dominant firms to level the playing field for

¹²¹ Form GD, Annex 4, points 71-82; as further laid out in ByteDance’s 2 August 2023 reply, paragraphs 35-38, and 47.

¹²² Form GD, Annex 4, points 72-77.

¹²³ Form GD, Annex 4, point 72; as further laid out in ByteDance’s 2 August 2023 reply, paragraph 47.

¹²⁴ Form GD, Annex 4, point 74.

¹²⁵ Form GD, Annex 4, points 78-82.

¹²⁶ Form GD, Annex 4, points 83-85; as further laid out in ByteDance’s 2 August 2023 reply, paragraphs 1-4.

challengers such as TikTok.¹²⁷ ByteDance argues that adopting this approach should: (i) [...]; (ii) reduce incumbents' ability to leverage their powerful ecosystems, including the requirement to seek end user consent or separate user data between different services; (iii) prohibit self-preferencing, [...]; and (iv) lower barriers to switch between competing services.

- (114) Second, ByteDance further submits that its designation as a gatekeeper under Regulation (EU) 2022/1925 [...].¹²⁸
- (115) Third, according to ByteDance, its designation as a gatekeeper at this stage of TikTok's development in the Union would impose a significant compliance cost on an already [...] challenger and, as a consequence, [...].¹²⁹
- (116) Fourth, ByteDance claims, in response to the preliminary views set out in the Commission's letter of 26 July 2023, that the Commission fails to apply correctly the substantive and procedural legal framework as provided for in Article 3(5) of Regulation (EU) 2022/1925.¹³⁰
- (117) In the first place, ByteDance claims that the test which the Commission intends to apply interprets Article 3(5) of Regulation (EU) 2022/1925 and recital (23) of the preamble to that Regulation too narrowly and conservatively, thereby depriving the rebuttal process of its role of taking out false positives.¹³¹
- (118) In the second place, according to ByteDance, the unique and exceptional circumstances in which TikTok operates were wrongly labelled as irrelevant by the Commission, while the Commission never informed ByteDance of those circumstances which would be deemed relevant. ByteDance considers that the Commission is foreclosing the rebuttal process and denying it its rights under the law.¹³²
- (119) In the third place, ByteDance states that the Commission's preliminary assessment of its rebuttal arguments breaches the principles of proportionality and sound administration as its arguments would in ByteDance's view require the Commission to open a market investigation under Article 3(5), subparagraph 3, in combination with Article 17(3) of Regulation (EU) 2022/1925.¹³³

5.1.3.2. The Commission's assessment

5.1.3.2.1. Assessment of the arguments seeking to rebut the presumption laid down in Article 3(2)(a) of Regulation (EU) 2022/1925

- (120) The Commission considers that the arguments submitted by ByteDance pursuant to Article 3(5), first subparagraph of Regulation (EU) 2022/1925, are not sufficiently

¹²⁷ Form GD, Annex 4, points 83-84.

¹²⁸ Form GD, Annex 4, point 85.

¹²⁹ Form GD, Annex 4, point 85.

¹³⁰ ByteDance's 2 August 2023 reply, paragraphs 5, 7, 13-39; and as further reiterated during a meeting between the Commission and ByteDance on 17 August 2023.

¹³¹ ByteDance's 2 August 2023 reply, paragraph 16; and as further reiterated during a meeting between the Commission and ByteDance on 17 August 2023.

¹³² ByteDance's 2 August 2023 reply, paragraph 16; and as further reiterated during a meeting between the Commission and ByteDance on 17 August 2023.

¹³³ ByteDance's 2 August 2023 reply, paragraph 17; and as further reiterated during a meeting between the Commission and ByteDance on 17 August 2023.

substantiated so as to manifestly call into question the presumption set out in Article 3(2)(a) of that Regulation.

- (121) First, the fact that ByteDance’s Union revenue is below the Union turnover threshold laid down in Article 3(2)(a) of Regulation (EU) 2022/1925¹³⁴ is irrelevant, since the thresholds relating to turnover, market capitalisation, and fair market value referred to in Article 3(2)(a) of Regulation (EU) 2022/1925 are alternative thresholds, as opposed to cumulative conditions. In this context, ByteDance acknowledges that its fair market value is significantly above the threshold value of EUR 75 billion. Furthermore, the level of ByteDance’s Union revenue is not an element related to the impact on the internal market “*beyond revenue or market cap*”, as follows from recital (23) of the preamble to Regulation (EU) 2022/1925.
- (122) Similarly, ByteDance’s submissions concerning the origin of ByteDance’s advertising turnover in the Union¹³⁵ are irrelevant, since the fair market value threshold is met. Furthermore, the portion of the turnover allocated to a specific CPS is not relevant when assessing whether the condition laid down in Article 3(1)(a) of Regulation (EU) 2022/1925 is met. It is rather the turnover in relation to the undertaking as a whole that is relevant in order to approximate its impact on the internal market. As indicated in recital (17) of the preamble to Regulation (EU) 2022/1925, “*the fact that an undertaking has a very significant turnover in the Union and provides a core platform service in at least three Member States constitutes compelling indication that that undertaking has a significant impact on the internal market. This is equally true where an undertaking providing a core platform service in at least three Member States has a very significant market capitalisation or equivalent fair market value.*”
- (123) Second, whether a particular CPS [...] in the Union to build out its customer base¹³⁶ cannot, as such, manifestly call into question the presumption laid down in Article 3(2)(a) of Regulation (EU) 2022/1925. As explained in recital (17) of the preamble to that Regulation, the market capitalisation/fair market value threshold, in conjunction with the threshold on the number of active users in the Union, reflects a relatively significant potential to monetise those users in the near future and, in turn, that monetisation potential reflects, in principle, the gateway position of the undertaking concerned. Recital (17) of the preamble of Regulation (EU) 2022/1925 further clarifies that a high global fair market value also reflects the financial capacity of the undertakings concerned, including their ability to leverage their access to financial markets to reinforce their position. In view of ByteDance’s level of fair market value, which is significantly above the threshold laid down in Article 3(2)(a) of Regulation (EU) 2022/1925, and of its number of end users and business users in the Union,¹³⁷ which exceed the user thresholds laid down in Article 3(2)(a) of that Regulation, ByteDance’s argument is not capable of disproving its significant potential to monetise users in the Union in the near future. That potential is, in particular, not called into question by the fact that TikTok has been [...] to build its customer base.

¹³⁴ Form GD, Annex 4, points 31-32.

¹³⁵ Form GD, Annex 4, points 31, 33.

¹³⁶ Form GD, Annex 4, point 34.

¹³⁷ See above Table 1, Table 2 and Table 3.

(124) Third, ByteDance’s argument that its global fair market value is not indicative of its ability to monetise TikTok’s users in the Union, since it stems from its Chinese operations,¹³⁸ is irrelevant. Regulation (EU) 2022/1925 clearly refers to the fair market value of the undertaking as a whole and not in relation to a specific geography. Moreover, that argument stands in direct contradiction with Article 3(2)(a) of Regulation (EU) 2022/1925, which, as explained in recital (17) of the preamble to that Regulation, is aimed at capturing the financial capacity of the undertaking concerned, including its access to financial markets and the resulting ability, for example, to acquire other, innovative undertakings providing similar services.

5.1.3.2.2. Assessment of the arguments seeking to rebut the presumption laid down in Article 3(2)(b) of Regulation (EU) 2022/1925

(125) The Commission considers that the arguments submitted by ByteDance pursuant to Article 3(5), first subparagraph, of Regulation (EU) 2022/1925 are not sufficiently substantiated to manifestly call into question the presumption set out in Article 3(2)(b) of that Regulation.

(126) As a general point applicable to all of ByteDance’s arguments assessed below, the Commission notes that, in terms of absolute scale, TikTok exceeds the end user and the business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 by a significant margin (i.e. 125 million end users and [$>10\,000$] business users in 2022).¹³⁹ The Commission recalls that it is incumbent on an undertaking seeking to rebut the presumptions laid down in Article 3(2) of Regulation (EU) 2022/1925 to produce convincing evidence that, even if its CPS exceeds the thresholds laid down in that provision by such a margin, that CPS is not an important gateway within the meaning of Article 3(1)(b) of Regulation (EU) 2022/1925.¹⁴⁰ The Commission considers, for the reasons set out in recitals (127) to (154) below, that ByteDance has failed to adduce such evidence.

(i) Alleged lack of an ecosystem and of significant network effects

(127) As a preliminary matter, ByteDance’s argument that, contrary to other undertakings operating online platforms, such as Meta or Alphabet, it lacks a wider ecosystem which it could leverage or significant network effects to lock in consumers and businesses¹⁴¹ relates to the ability of such incumbents to sell advertising on the strength of their ecosystems. However, the present assessment relates to ByteDance’s online social networking CPS TikTok, not its online advertising service, which belongs to a distinct category of CPS under Regulation (EU) 2022/1925.

(128) Article 2 of Regulation (EU) 2022/1925 provides that online advertising services constitute a distinct category of CPS. Recital (32) of the preamble to that Regulation specifies that, in its assessment of the evidence and arguments produced by an undertaking to rebut the presumptions laid down in Article 3(2) of that Regulation, the Commission should take into account *inter alia* the importance of the undertaking’s CPSs considering the overall scale of activities of the respective CPS. In the present case, therefore, the pertinent comparison is between the scale of

¹³⁸ Form GD, Annex 4, points 35-36.

¹³⁹ See Section 5.1.2.3 above.

¹⁴⁰ See recital (23) of the preamble to Regulation (EU) 2022/1925.

¹⁴¹ See recital (102) above.

ByteDance’s online social networking service TikTok and that of other providers of similar services, irrespective of the scale of their online advertising activities.

- (129) Consequently, it is irrelevant for the purposes of ByteDance’s own gateway position whether other undertakings have ecosystems and are vertically integrated and, as a result, might have advantages on the advertising side. In any event, ByteDance’s argument does not manifestly call into question the presumption set out in Article 3(2)(b) of that Regulation (EU) 2022/1925 for the following reasons.
- (130) First, contrary to ByteDance’s view,¹⁴² nothing in Regulation (EU) 2022/1925 suggests that having an ecosystem is an absolute pre-requisite to be an important gateway for business users to reach end users. The existence of vertical integration and of an ecosystem of different services are part of a non-exhaustive list of several elements referred to in recitals (2) and (3) of the preamble to Regulation (EU) 2022/1925 which contribute to explaining the reasons why the legislators laid down the conditions under which certain CPSs constitute an important gateway for business users to reach end users. Recital (3) of that Regulation, in particular, states that “[s]ome of those undertakings exercise control over whole platform ecosystems [...]”, which makes clear that not all gatekeepers have such control over an entire ecosystem of services in the Union. Moreover, the very notion of an “ecosystem” comprises various business models and therefore each ecosystem needs to be assessed on a case-by-case basis, taking account of the various benefits or the lack thereof derived from such way of operating, in particular those that may impact contestability.
- (131) Moreover, Regulation (EU) 2022/1925 explicitly acknowledges, in recital (32) of its preamble, the possibility that more than one gatekeeper may exist within a specific CPS category. Nothing in that Regulation suggests that the mere fact that certain gatekeepers might possibly be capable of monetising a service better than other gatekeepers would mean that the latter would no longer be an important gateway for business users (which in the case of TikTok are not the advertisers as such, but rather professional content providers) to reach end users in that CPS category.
- (132) Second, the Commission finds that ByteDance does in fact operate its own ecosystem consisting of highly popular video-editing services, enterprise software, advertising, news, and healthcare applications.¹⁴³ While the Commission does not contest ByteDance’s assertion that its attempts to export additional services outside China may not have always been successful,¹⁴⁴ the Commission notes that some of ByteDance’s services have nevertheless had remarkable success, including in the Union.¹⁴⁵

¹⁴² The Commission’s letter of 26 July 2023, subpoint (a).

¹⁴³ TikTok is a separate, internationalised version of ByteDance’s Douyin service, which was released on the Chinese market in September 2016, see, for instance, Catherine Shu “[TikTok, WeChat and the growing digital divide between the US and China](#)” (22 September 2020) last accessed on 9 August 2023 and “[TikTok, Hospitals And Tutoring Apps: The Many Tentacles Of Chinese Tech Giant ByteDance](#)” ([forbes.com](#)) (24 August 2022) last accessed on 10 August 2023.

¹⁴⁴ Form GD, Annex 4, fn. 37.

¹⁴⁵ For instance, ByteDance’s video-editing app CapCut was reportedly the fourth most downloaded app worldwide in 2022, with TikTok defending the top spot with 672 million downloads, see John Koetsier, “[10 Most Downloaded Apps Of 2022: Facebook Down, Spotify Up, TikTok Stable, CapCut Keeps Growing](#),” last accessed on 27 August 2023.

- (133) Third, and in any event, as mentioned in Table 1 above, TikTok managed to increase its end user numbers from [>45] million in 2020 to 125 million in 2022, and it already accounts for half the size of Facebook and Instagram, despite not having an ecosystem the size of Meta.
- (ii) Alleged multi-homing and absence of lock-in
- (134) With respect to ByteDance’s argument in relation to the prevalence of multi-homing,¹⁴⁶ the Commission does not dispute that there may indeed be a certain degree of multi-homing by end and business users between TikTok and other online social networks. However, this fact is insufficient to manifestly call into question the presumption laid down in Article 3(2)(b) of Regulation (EU) 2022/1925.
- (135) First, contrary to ByteDance’s assertion, while the absence of multi-homing may be a relevant element to assess the existence of a gateway position, the existence of multi-homing is not in itself an indication that a CPS does not constitute an important gateway for business users to reach end users within the meaning of Regulation (EU) 2022/1925. Indeed, the lack of multi-homing is just one of multiple elements referred to in recitals (2) and (3) of the preamble to Regulation (EU) 2022/1925 as characteristics that can be exploited by undertakings providing CPSs. Moreover, the relevance of the lack of multi-homing as a possible element to assess the existence of a gateway position may vary across different categories of CPSs and even within an individual category of CPS.
- (136) Similarly, contrary to ByteDance’s claim,¹⁴⁷ recital (13) of the preamble to Regulation (EU) 2022/1925 does not state or suggest *that “extensive user multi-homing demonstrates a manifest absence of lock-in”*. Recital (13) rather lists, in a non-exhaustive manner (*“in particular”*), some of the scenarios in which weak contestability and unfair practices are more frequent and pronounced in relation to digital services that mostly directly intermediate between business users and end users. These scenarios are alternative reasons that led the legislator to regulate gatekeepers, as the use of *“or”* in the second sentence of recital (13) makes clear. Therefore, the fact that there is (some degree of) multi-homing does not preclude the possibility of weak contestability and unfair practices that Regulation (EU) 2022/1925 aims to address.
- (137) Second, parallel use of different services does not imply equal use, and both business and end users can (and do) use one online social networking service asymmetrically to others they are active upon. In particular, multi-homing business users may adjust and tailor their content to the specific algorithm of the online social networking service to which they target the majority of their business or activity.
- (138) Consequently, as regards ByteDance’s examples of multi-homing by TikTok content creators (which may include end and business users of TikTok, see recital (86) above),¹⁴⁸ the mere fact that such content creators multi-home and [...] creates content exclusively for TikTok is insufficient to rebut the presumption stemming from Article 3(2)(b) of Regulation (EU) 2022/1925(135). The fact that content creators are present on different online social networking platforms does not give any indication of the relevance of each platform for business users in reaching end users.

¹⁴⁶ See recital (103)(103) above.

¹⁴⁷ Form GD, Annex 4, points 43-46.

¹⁴⁸ Form GD, Annex 4, points 43-46.

In particular, the degree of use of each platform might well be asymmetrical, e.g., with content creators mostly active on TikTok providing limited content on other platforms as “advertisement” for their main platform. Indeed, content creators have an incentive to increase their exposure to as wide an audience as possible and therefore multi-homing is an expected outcome, notwithstanding the fact that the different platforms may not be equally relevant to them. Moreover, to the extent that content creators focus most of their activities on one of the platforms on which they multi-home, this means that switching the focus of their activities from one platform to another one may still entail some switching costs, such as those associated with building an audience or adjusting content to the format and algorithm of different platforms.

- (139) In any event, even if some end or business users were similarly active on various online social networking services (which ByteDance does not demonstrate) does not mean that a specific online social networking service is not, individually, a gateway for business users to reach end users (e.g., certain end user demographics).
- (140) Third, ByteDance’s comparison of digital ad spend on TikTok, Alphabet and Meta properties to support its claim of multi-homing by TikTok business users¹⁴⁹ does not concern its online social networking CPS, but its online advertising service, for which the definition of active business users does not refer to advertisers.¹⁵⁰ For the reasons explained in recitals (127) to (129) above, such a comparison cannot rebut the presumption stemming from Article 3(2)(b) of Regulation (EU) 2022/1925 in relation to that CPS.
- (141) Fourth, as concerns the multi-homing overview provided by ByteDance indicating that [...] % of TikTok users also use Instagram and [...] % of TikTok users also use Facebook,¹⁵¹ the Commission notes that the evidentiary value of these figures for the purpose of establishing whether TikTok’s presumed gateway position in the context of Regulation (EU) 2022/1925 has been rebutted is limited. This is because Facebook and Instagram have a larger number of end users in the Union (with around 250 million each, about double the number of TikTok with 125 million) and were active in the Union before TikTok. Statistically, it can therefore be expected that there is a large number of Facebook and Instagram users that also use TikTok. Moreover, these figures fail to reflect the intensity of use of the various online social networks. Indeed, it has been repeatedly reported that TikTok has a significantly higher engagement rate than other online social networking services, with end users spending significantly more time on TikTok as compared to other online social networking services.¹⁵² This is particularly the case for younger end users.¹⁵³
- (142) Finally, ByteDance’s argument that TikTok, as a challenger, invests in interoperability and in facilitating multi-homing is made in support of ByteDance’s

¹⁴⁹ Recital (103) above.

¹⁵⁰ See the table in Section E of the Annex to Regulation (EU) 2022/1925.

¹⁵¹ Form GD, Annex 4, point 45 and Figure 5.

¹⁵² See, e.g., Chris Stokel-Walker, “How TikTok beat Instagram” (2 February 2023), available under <https://www.businessinsider.com/why-instagram-cant-compete-tiktok-videos-algorithm-influencers-engagement-2023-2?r=US&IR=T> last accessed on 9 August 2023; Brandon Doyle, “TikTok Statistics – Update August 2023” (7 August 2023), available at <https://wallaroomedia.com/blog/social-media/tiktok-statistics/> last accessed on 9 August 2023.

¹⁵³ Brandon Doyle, “TikTok Statistics – Update August 2023” (7 August 2023), available at <https://wallaroomedia.com/blog/social-media/tiktok-statistics/> accessed on 9 August 2023.

argument regarding multi-homing in general and is therefore to be rejected for the same considerations as those provided above.

(iii) TikTok's alleged smaller scale compared to incumbents

(143) ByteDance's argument that TikTok's business in the Union is smaller than that of ecosystem incumbents, in terms of revenues, monthly active users, and ARPU, also does not manifestly call into question the presumption laid down in Article 3(2)(b) of Regulation (EU) 2022/1925.

(144) First, as regards revenues as well as ARPU, ByteDance's argument appears to refer to advertising revenues. As already explained recitals (127) to (129) above, arguments to rebut the presumption that the online social network CPS TikTok is an important gateway should relate to that service, not another service which ByteDance provides. In any event, advertisers are not the relevant business users of an online social networking service according to Section E of the Annex to that Regulation and thus advertising revenues are not a relevant element in this context.

(145) In addition, the relative scale measured based on revenues and/or ARPU is not a good indicator to assess whether a particular CPS is an important gateway because, firstly, different business models monetise differently, and, secondly, the revenues themselves in isolation from other factors do not constitute a good indicator of a gateway position. For this reason, market capitalisation was chosen as the relevant threshold in line with the Union legislator's intention to capture the financial capacity of the undertaking concerned.

(146) Second, as regards the relative size of the different online social networks with respect to end users, the Commission recalls¹⁵⁴ that TikTok's absolute scale in terms of business and end user numbers significantly exceed the thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925. The data provided by ByteDance indicate that TikTok is not small in terms of relative scale. It is roughly half the size of Facebook and Instagram. The mere fact of being smaller in size than other providers of CPSs is insufficient on its own to rebut the presumption laid down in Article 3(2)(b). Moreover, TikTok's monthly end users in the Union have been growing in recent years despite the presence of the services of Meta and Alphabet: from [>45] million in 2020 to 125 million in 2022. Moreover, as mentioned in recital (141) above, TikTok has a much higher end user engagement than some of its peers,¹⁵⁵ particularly among younger users.

(iv) Advertisers' and registered business users' alleged [...] engagement

(147) ByteDance's argument relating to the percentage of advertisers that have [...] engagement on the online social networking CPS TikTok is irrelevant for the purpose of rebutting the presumption laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 in relation to the qualification of that CPS as an important gateway, since advertisers are not the relevant business users of online social networking services.

(148) In any event, while the Commission does not deny that certain advertisers on TikTok specifically, and on online social networking services more generally, may also meet

¹⁵⁴ See recital (126) above.

¹⁵⁵ See "[TikTok's engagement rate soars above the competition | Marketing Dive](#)", 23 February 2023, last accessed on 9 August 2023, as well as "[Did you Know TikTok Users Are the Most Engaged?? \(iconosquare.com\)](#)" last accessed on 9 August 2023, and "[37 Vital TikTok Stats to Inform Your Marketing Strategy \(influencermarketinghub.com\)](#)", 31 July 2023, last accessed on 9 August 2023.

the definition of a business user of online social networking services, it is necessary to consider all business users for the purpose of rebutting the presumption in Article 3(2) of Regulation (EU) 2022/1925, and not only those that are paid advertisers, because non-advertising business users may still rely on TikTok to gain visibility for their activity. Indeed, as explained in recital (58) above, TikTok facilitates communication and connection between business users and end users, as well as content discovery and sharing across multiple devices and in particular via chats, posts, videos and recommendations, with a view to enabling them to grow their businesses (e.g., via a variety of creative tools), scale their brand presence (e.g., via auto-messaging and post scheduler) and drive sales with business-friendly features (e.g., via link-in-bio, business contact information, and lead generation tools).

(149) Moreover, the engagement numbers of registered business users that were presented by ByteDance are not representative. As explained in recitals (83) to (87) above, the notion of “registered business accounts” has several shortcomings which prevents it from accurately and comprehensively representing the business users of TikTok and, thus, those users’ engagement levels. Furthermore, and in addition to these shortcomings, the data and evidence provided by ByteDance cover only some of the forms of user engagement on online social networking services that are referred to in Section E of Annex to Regulation (EU) 2022/1925. Finally, as ByteDance acknowledges itself, [...].¹⁵⁶

(v) Alleged large number of competitors, including incumbent ecosystems

(150) TikTok’s contention that it faces a large number of competitors in online advertising and video sharing is also irrelevant to rebut the presumption laid down in Article 3(2)(b) of Regulation (EU) 2022/1925, since the rebuttal at issue concerns ByteDance’s online social networking service TikTok and not its online advertising service.

(151) In any event, comparing the online advertising figures for Alphabet, Meta and Amazon with those of ByteDance is inappropriate, since the online advertising figures for those undertakings relate to a significantly wider scope of services on which advertising is being displayed than TikTok.

(152) In addition, as presented in Table 1 above, with 125 million end users in the Union, TikTok is already half the size of both Facebook and Instagram (each having approximately 250 million end users in the Union).¹⁵⁷ TikTok has been growing significantly since 2020, despite the presence of Meta and Alphabet, reaching higher end user engagement, particularly for a younger user demographic, even when compared to Facebook and Instagram.

(153) The same is true as regards TikTok’s business user numbers, as illustrated in recitals (88) to (93) above. In terms of self-identified EU business accounts, TikTok by far exceeds the threshold of 10 000 business users laid down in Article 3(2)(b) of Regulation (EU) 2022/1925, under both user counting methodologies relied on by ByteDance.¹⁵⁸ The increase in self-identified business user numbers over the last three years indicates that TikTok’s importance for business users has been growing since 2020.

¹⁵⁶ Form GD, paragraph 93; Form GD, Annex 4, paragraph 22.

¹⁵⁷ Form GD, Annex 4, point 66.

¹⁵⁸ See Table 3 above, second and third columns.

(154) This finding is further underpinned by the fact that the self-identification feature grants users access to business-specific functionalities, such as performance insights, creative tools, and exclusive account options.¹⁵⁹ The existence of those functionalities, which are aimed squarely at businesses, belies ByteDance’s claim that TikTok’s offering for business users is significantly underdeveloped and that TikTok as an online social networking service therefore does not constitute an important gateway for business users. On the contrary, the fact that TikTok invests in developing new functionalities for business users points to the fact that the online social networking CPS TikTok is an important service for business users, as evidenced by those users’ increasingly intense use of TikTok to reach end users.

5.1.3.2.3. Assessment of the arguments seeking to rebut the presumption laid down in Article 3(2)(c) of Regulation (EU) 2022/1925

(155) The Commission considers that the arguments submitted by ByteDance pursuant to Article 3(5), first subparagraph, of Regulation (EU) 2022/1925 are not sufficiently substantiated so as to manifestly call into question the presumption set out in Article 3(2)(c) of Regulation (EU) 2022/1925.

(156) First, by claiming that TikTok’s position is not unassailable, ByteDance in substance attempts to introduce a condition that goes well beyond the requirement of enjoying an entrenched and durable position laid down in Article 3(1)(c) of Regulation (EU) 2022/1925 for designation as a gatekeeper. Indeed, as confirmed by recital (21) of the preamble to that Regulation, Article 3(1)(c) does not refer to an “unassailable” position, but to an “entrenched and durable position”, which notably occurs where contestability is limited.

(157) Second, and in any event, recital (21) of the preamble to Regulation (EU) 2022/1925 explains that limited contestability is likely to exist where an undertaking has provided a CPS in at least three Member States to a very high number of end users and business users over a period of at least three years. The latter is clearly the case for TikTok. As reflected in Tables 1 and 3 above, TikTok had over 125 million monthly active end users and [$>10\ 000$] yearly active business in the Union in 2022.

(158) Third, TikTok’s significant scale and growth in terms of business and end user numbers over the recent years with an upward trajectory further supports the finding that that service enjoys an entrenched and durable position within the meaning of Article 3(1)(c) of Regulation (EU) 2022/1925. In light thereof, ByteDance’s argument that its economic significance would be affected by the [...] of users and advertisers to other online social networking services does not manifestly call into question the presumption stemming from Article 3(2)(c) of Regulation (EU) 2022/1925.

(159) Fourth, nothing in Regulation (EU) 2022/1925 suggests that an undertaking cannot be simultaneously a “challenger” to certain gatekeepers and a gatekeeper in its own right. To the contrary, from the perspective of the strongly growing business users of the service, TikTok has already grown to half the size of Facebook and Instagram

¹⁵⁹ See <https://www.tiktok.com/business/en/solutions/business-account> and <https://ads.tiktok.com/help/article/tiktok-business-account-features?lang=en> last accessed on 9 August 2023. Moreover, the self-identification feature enables users to grow their businesses, scale their brand presence, and drive sales with business-friendly features. See <https://www.tiktok.com/business/en/solutions/business-account> last accessed on 9 August 2023.

over the last three years and, as explained in recital (141) above, appears to be able to deliver a high engagement rate, in particular among young users.

(160) Finally, the fact that certain undertakings emulate successful features of other undertakings, as ByteDance claims Meta and Alphabet have done in relation to TikTok, is not uncommon in digital markets and is not capable as such of rebutting the presumption laid down in Article 3(1)(c) of Regulation (EU) 2022/1925.

5.1.3.2.4. Assessment of additional arguments seeking to rebut the presumption laid down in Article 3(2) of Regulation (EU) 2022/1925

(161) As clarified by recital (23) of the preamble to Regulation (EU) 2022/1925, in assessing the arguments and evidence submitted by an undertaking pursuant to Article 3(5) of Regulation (EU) 2022/1925, first subparagraph, the Commission can only take into account arguments directly relating to the quantitative thresholds laid down in Article 3(2) of that Regulation. Consequently, ByteDance's arguments summarised in Section 5.1.3.1.4 above, which do not refer to the quantitative thresholds, cannot be taken into account in this context.

(162) ByteDance's arguments related to the rebuttal procedure and its claim that the Commission is foreclosing the rebuttal process and denying ByteDance its rights under law are unfounded. Through its letter of 26 July 2023, the Commission informed ByteDance of its preliminary views regarding its possible designation as a gatekeeper pursuant to Article 3(4) of Regulation (EU) 2022/1925 and regarding ByteDance's rebuttal arguments, provided ByteDance with an opportunity to submit its views on the content of the letter and, thus, ensured ByteDance's right to be heard.

5.1.3.2.5. Conclusion on ByteDance's arguments seeking to rebut the presumption of Article 3(2) of Regulation (EU) 2022/1925

(163) For the reasons set above, the Commission concludes that the arguments submitted by ByteDance are not sufficiently substantiated to manifestly call into question the presumptions laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to the online social networking CPS TikTok.¹⁶⁰ Consequently, the Commission rejects those arguments pursuant to Article 3(5), second paragraph, of Regulation (EU) 2022/1925, without applying the procedure laid down in Article 17(3) of that Regulation.

5.1.4. *Conclusion for TikTok*

(164) For the reasons set out in recitals (38) to (66), (69), (72) to (73), and (81) to (95) above, the Commission concludes that TikTok constitutes an online social networking CPS within the meaning of Article 2, point (2), subpoint (c), of Regulation (EU) 2022/1925 and that ByteDance meets the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to the online social networking CPS TikTok. Consequently, ByteDance is to be designated as a gatekeeper pursuant to Article 3(4) of Regulation (EU) 2022/1925 in relation to its online social networking CPS TikTok.

¹⁶⁰ The Commission took note of ByteDance's submission in Form GD, Annex 11 on ByteDance's interpretation of the legal obligations of the Commission when assessing Article 3(5) of Regulation (EU) 2022/1925.

6. CONCLUSION

- (165) In light of the above, the Commission concludes, pursuant to Article 3 of Regulation (EU) 2022/1925, that ByteDance is to be designated as a gatekeeper and that the following CPS of ByteDance is individually an important gateway for business users to reach end users: (i) its online social networking CPS TikTok.
- (166) 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

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

Article 2

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

- (a) ByteDance's online social networking service TikTok.

Article 3

This Decision is addressed to ByteDance Ltd., C/O Vistra (Cayman) Limited, P.O. Box 31119 Grand Pavilion, Hibiscus Way, 802 West Bay Road, Grand Cayman, George Town, KY1-1205, Cayman Islands.

Done at Brussels, 5.9.2023

For the Commission
Margrethe VESTAGER
Executive Vice-President

