

Summary of Commission Decision
of 5 September 2023
relating to a decision pursuant to Article 3 of Regulation (EU) No 2022/1925

(CASE DMA.100038 – SAMSUNG – WEB BROWSERS)

(notified under document number C(2023) 6103 final)

(Only the English text is authentic)

On 05/09/2023, the Commission adopted a decision pursuant to Article 3 of Regulation (EU) No 2022/1925. In accordance with the provisions of Article 44 of Regulation (EU) No 2022/1925¹, the Commission herewith publishes the names of the parties and the main content of the decision, having regard to the legitimate interest of undertakings in the protection of their business secrets.

1. INTRODUCTION

- (1) The decision (“the Decision”) accepts the rebuttal request of Samsung in relation to its web browser core platform service Samsung Internet Browser (“SIB”) made pursuant to Article 3(5) of Regulation (EU) 2022/1925 (Digital Markets Act, “DMA”). While Samsung fulfils the presumptive thresholds in Article 3(2) DMA in relation to SIB, the analysis of the evidence showed that SIB does not individually constitute an important gateway for business users to reach end users as referred to in Article 3(1)(b) DMA and, by consequence, does not enjoy an entrenched and durable position pursuant to Article 3(1)(c) DMA.
- (2) Therefore, Samsung’s rebuttal request in relation to SIB should be accepted and Samsung should not be designated as gatekeeper pursuant to Article 3(2) DMA.

2. PROCEDURE

- (3) On 3 July, Samsung notified the Commission, pursuant to Article 3(3), first subparagraph, DMA, that it meets the thresholds laid down in Article 3(2) DMA in relation to its web browser SIB.
- (4) Together with its notification, Samsung presented a rebuttal request seeking to demonstrate that although SIB meets all the thresholds in Article 3(2) DMA, it does not satisfy the requirements listed in Article 3(1) DMA. Samsung’s arguments are sufficiently substantiated and demonstrate that although SIB meets the thresholds laid down in Article 3(2) DMA, it exceptionally does not satisfy

¹ 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), OJ L 265, 12.10.2022, p. 1–66.

the requirements listed in Article 3(1)(b) and (c) DMA due to the circumstances in which it operates.

3. LEGAL FRAMEWORK

- (5) The DMA establishes a set of narrowly defined objective criteria for qualifying a large online platform as a gatekeeper. Designation is to be made in relation to one or more CPSs provided by the undertaking that are an important gateway for business users to reach end users within the meaning of Article 3(1), point (b) DMA. In order to determine whether a service provided by an undertaking is a CPS that meets the requirement set out in Article 3(1), point (b) of the DMA, it is necessary, as a preliminary step, to qualify and delineate the respective service. A relevant criterion for qualifying and delineating CPSs is the purpose for which the service is used by either end users or business users or both.
- (6) According to Article 3(1) DMA, 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. Article 3(2) DMA lays down a presumption that those requirements are satisfied where certain quantitative thresholds are met, in particular regarding the company's turnover or market capitalisation as well as the end user and business user numbers of a particular CPS in each of the last three financial years.
- (7) Pursuant to Article 3(5), first subparagraph DMA, an undertaking that meets all the thresholds laid down in Article 3(2) DMA 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) DMA due to the circumstances in which the relevant CPS operates. Article 3(5), second subparagraph, DMA 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) DMA, the Commission may reject the arguments. By contrast, should the arguments be sufficiently substantiated, the Commission may open a market investigation pursuant to Article 17(3) DMA. In situations in which the Commission considers that the submitted evidence is sufficient to demonstrate that the requirements laid down in Article 3(1) DMA are not fulfilled, it may accept the rebuttal with or without opening a market investigation.

4. THE COMMISSION'S ASSESSMENT

- (8) Following the notification by Samsung, the Commission analysed the evidence and concludes in the Decision that SIB constitutes a web browser core platform service pursuant to Article 2 DMA.
- (9) Furthermore, the Decision accepts Samsung's rebuttal in relation to SIB for the following reasons:

- (10) First, based on the analysis of all available information, the Commission considers that SIB's absolute and relative scale of use in the web browser CPS category demonstrates that SIB is not a significant web browser and, therefore, not an important gateway for business users to reach end users. In the first place, SIB's absolute scale of usage by webpage views in Europe between 2020 and 2022 accounts for 3.67% of webpage views across all types of devices. In the second place, Google Chrome provided by Alphabet and Safari provided by Apple both vastly exceed SIB's usage scale across all devices (Chrome 60%, Safari 20%). In the third place, SIB's reduced overall scale as a web browser is further underlined by the fact that its share of webpage views in the Union has been declining consistently across all devices over the last three years, from 3.86% in 2020 to 3.37% in 2022. In the fourth place, SIB also exceeds the end user related presumptive thresholds in Article 3(2)(b) DMA only by a relatively small margin, taking into account the high overall usage of web browsers in the Union.
- (11) Second, SIB does not have its own browser engine but is rather dependent on Alphabet's Blink browser engine.
- (12) Third, while Samsung provides several services, including CPSs, in the Union, and is one of the leading OEMs with regard to mobile devices on which these CPSs can be accessed by end users, the Commission considers that the specific circumstances of Samsung's ecosystem of services do not indicate that SIB would constitute an important gateway for business users to reach end users. In the first place, none of the other CPSs provided by Samsung currently meets the thresholds in Article 3(2) DMA, nor is there any indication that they meet the requirements of Article 3(1) DMA. In the second place, Samsung devices run on the Google Android operating system. The latter enables the functioning of the software applications that run on them. Furthermore, Samsung displays a browser choice screen, and ships its smart mobile devices with an additional third party browser pre-installed.
- (13) Therefore, the Commission considers that SIB is not an important gateway for business users to reach end users within the meaning of DMA and that Samsung should not be a designated gatekeeper in relation to SIB.

5. CONCLUSION

- (14) For the reasons set out above, the Decision accepts the rebuttal arguments raised by Samsung in relation to SIB.