



EUROPEAN COMMISSION
Competition DG

***CASE AT.40823 - SAP ERP
AFTERMARKET SUPPORT
SERVICES***

(Only the English text is authentic)

**ANTITRUST PROCEDURE
Council Regulation (EC) No 1/2003**

Article 9 Regulation (EC) 1/2003

Date: 09/07/2026

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Brussels, 9.7.2026
C(2026) 4685 final

COMMISSION DECISION

of 9.7.2026

**relating to a proceeding under Article 102 of the Treaty on the Functioning of the
European Union (TFEU) and Article 54 of the EEA Agreement**

Case AT.40823 - SAP ERP aftermarket support services

(Only the English text is authentic)

(Text with EEA relevance)

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THE EUROPEAN COMMISSION,

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

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty ("Regulation 1/2003")¹, in particular Article 9(1) thereof,

Having regard to the Commission decision of 25 September 2025 to initiate proceedings in this case,

Having expressed concerns in the Preliminary Assessment of 25 September 2025,

Having given interested third parties the opportunity to submit their observations pursuant to Article 27(4) of Regulation (EC) No 1/2003 on the commitments offered to meet those concerns,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Having regard to the final report of the Hearing Officer,

Whereas:

1. SUBJECT MATTER

- (1) This Decision is addressed to SAP SE ("SAP") and concerns the secondary market for the provision of maintenance and support services ("M&S") for SAP on-premises ("OP") Enterprise Resource Planning ("ERP") software solutions.
- (2) In its Preliminary Assessment of 25 September 2025, the European Commission ("Commission") came to the preliminary conclusion that four closely interlinked practices implemented by SAP may constitute an infringement of Article 102 of the Treaty

¹ OJ L 1, 4.1.2003, p.1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union ("TFEU"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82, respectively, of the EC Treaty when where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market". Where the meaning remains unchanged, the terminology of the TFEU will be used throughout this Decision.

on the Functioning of the European Union (“TFEU”) and Article 54 of the Agreement on the European Economic Area (“EEA Agreement”).

- (3) The four practices concerned (together, the “Conduct”) involve: (i) SAP’s All-or-Nothing (“AoN”) policy, which obliges customers to obtain M&S from SAP for all their SAP OP ERP software at the same level if they choose to have SAP M&S for at least one of their SAP OP ERP software solution licences (“licences”); (ii) the inability for SAP’s customers to terminate M&S for “shelfware” (i.e. unused licences) due to the AoN policy; (iii) SAP’s extension of the initial term of licences, during which termination of SAP M&S is not possible and (iv) SAP’s reinstatement policy, which applies to customers who subscribe to SAP M&S after a period of absence. The Commission preliminarily considered, in its Preliminary Assessment, that the Conduct may produce (i) exclusionary effects on SAP M&S competitors and (ii) exploitative effects on SAP’s customers in the EEA.
- (4) In SAP’s Response to the Commission’s Preliminary Assessment of 31 October 2025, SAP disagreed with the preliminary conclusions reached by the Commission. Nevertheless, SAP has offered commitments under Article 9(1) of Regulation 1/2003 to resolve the preliminary concerns expressed by the Commission. This Decision finds that SAP’s commitments, which are without prejudice to SAP’s current or future obligations under other regulations, remove these preliminary concerns. Furthermore, this Decision makes those commitments binding on SAP.

2. THE UNDERTAKING CONCERNED

- (5) SAP is a Societas Europaea (“SE”) with its registered seat in Walldorf, Germany. SAP is active worldwide and develops, produces and markets enterprise application software (“EAS”) solutions². SAP is one of the global leaders in the ERP software market, a category of EAS that supports major business functions, such as managing corporate finances, human resources, and enterprise project management. In addition to software licences, SAP also provides M&S, which include regular updates and technical assistance for customers.
- (6) In 2025, SAP generated approx. EUR 36 800 million of worldwide revenues³.

3. PROCEDURAL STEPS UNDER REGULATION (EC) No 1/2003

- (7) On 25 September 2025, the Commission opened proceedings with a view to adopting a decision under Chapter III of Regulation (EC) No 1/2003. On the same day, the Commission adopted a Preliminary Assessment as referred to in Article 9(1) of Regulation (EC) No 1/2003 which set out the Commission’s preliminary competition concerns.
- (8) On 31 October 2025, SAP submitted its Response to the Preliminary Assessment and a commitments proposal (“the Initial Commitments”).
- (9) On 17 November 2025, a notice was published in the Official Journal (“OJ”) of the European Union (“EU”) pursuant to Article 27(4) of Regulation (EC) No 1/2003, summarising the case and the Initial Commitments and inviting interested third parties

² EAS is a suite of software solutions designed to help organisations and companies manage complex processes and meet their business needs. EAS solutions can be segmented in ERP, customer relationship management, supply chain management, product lifecycle management and business analytics.

³ See SAP Integrated Report 2025, page 123, available at <https://www.sap.com/integrated-reports/2025/en.html>.

to give their observations on the Initial Commitments within one month following publication.

- (10) On 16 February 2026, the Commission informed SAP of the observations received from interested third parties following the publication of the notice.
- (11) On 24 June 2026, SAP submitted an amended proposal for commitments (the “Final Commitments”).

4. THE PRODUCTS CONCERNED

4.1. Enterprise Resource Planning Software

- (12) ERP systems are suites of integrated software modules that a company can use to collect, store, manage and interpret data from many business activities. Each module supports a specific business function, e.g. Finance, Human Resources, or Procurement, and they all share a common database to ensure consistency and real-time data flow across an organisation. ERP systems can be deployed OP or through the cloud.
- (13) SAP’s main ERP offer includes SAP S/4HANA⁴, the latest generation of its ERP system and primarily designed for large companies, SAP ERP Central Component (“ECC”)⁵ and R/3⁶, older versions of OP ERP software (‘legacy software’), that many customers continue to use. In addition, SAP also offers OP ERP software solutions for small and medium-sized companies, such as SAP Business One⁷.
- (14) OP ERP software can be customised to respond to customers’ needs. Typically, the more complex the organisation of a customer, the greater the level of customisation. SAP’s customers typically buy perpetual licences and stay with the same OP ERP provider for decades. This is largely due to (i) the long lifecycle of ERP systems, which typically support core business processes over many years; (ii) the high level of customisation, (iii) and the high switching costs to change to another ERP provider.
- (15) ERP cloud products are typically sold as software as a service (‘SaaS’⁸) on a yearly subscription basis. M&S for cloud products is included in the yearly subscription price. In recent years, cloud-based software solutions have grown and ERP vendors like SAP are trying to move customers from OP products to cloud products.

⁴ SAP S/4HANA is a suite solution based on the High-Performance Analytic Appliance (“HANA”) in-memory database that allows companies to perform transactions and analyse business data in real time. It has the following modules/lines of business: SAP Finance, Logistics (including sourcing and placement, manufacturing, supply chain, asset management), Sales, R&D and Engineering. It also provides extensions geared to meet specific industry requirements like consumer industries, discrete industries, energy and natural resources, etc.

⁵ ECC is no longer commercialised but still used by 27 000 customers, according to SAP. See https://www.linkedin.com/posts/mjdnet_sap-sap-s4hana-activity-7199641110984486913-FcgO, visited on 22 July 2025.

⁶ Real-time, 3 tier architecture (“R/3”) is no longer commercialised but still used by certain customers.

⁷ SAP Business One is aimed at small and medium-size businesses with applications in finance, customer relationship management, production management, procurement, as well as reporting and analytics.

⁸ Software as a Service (SaaS) is a cloud computing model where users access software applications over the internet, typically through a subscription. The provider hosts, maintains, and updates the software, so users and/or companies do not need to install or manage it themselves.

- (16) According to market studies, the worldwide overall ERP software industry revenues reached USD 81.15 billion in 2024⁹. According to Gartner, in 2021, about 47% came from OP ERP offerings and 53% from cloud ERP offerings¹⁰.
- (17) Whilst, overall, the ERP market is gradually shifting to cloud-based solutions, the OP segment of the market will remain very relevant for those customers that need a higher degree of customisation of their ERP products, which is not available to the same extent in cloud solutions. Some of SAP's customers cannot or do not request to move to cloud-based products or can only move parts of their ERP software. The main reasons invoked, apart from the high switching costs that such a move would entail, are (i) confidentiality and security issues of data hosted in the cloud (especially if outside the EU); (ii) lack of certain key functionalities and (iii) underperformance and maturity. Companies have less control over the IT-operations they move to the cloud. This has led some businesses to either maintain their ERP products entirely OP or to maintain OP at least their more sensitive operations, while moving the other activities to the cloud.
- (18) All licences for SAP OP ERP software that a customer has purchased and installed under one or more contracts are identified by SAP as a "landscape"¹¹. A landscape is a commercial concept that may encompass multiple "technical installations"¹² and one or more "commercial installations". A commercial installation means a standalone combination of SAP software solutions and corresponding licences with all infrastructure required (e.g. hardware, storage systems, networking etc.) for a customer's business operations.
- (19) The price of each SAP OP ERP licence is normally based on a perpetual licence fee paid once upfront. It is often based on the number of users, modules, or servers¹³. A different scenario concerns the so-called single metric licence contracts. These contracts refer to OP ERP products for which a licence is granted based on one specific metric for the entire software package that the customer is purchasing under the same agreement. Examples of typical usable metrics include the number of employees or the customer's revenue. Unlike standard licence agreements, which typically do not have an end-date, single metric contracts are typically concluded for a defined period of time. A typical duration of a single metric contract is five years, but this may vary.

4.2. M&S for OP Enterprise Resource Planning Software

- (20) SAP's customers are typically required to separately procure M&S services for their OP ERP products. These can be procured either from the original ERP vendor (e.g. SAP, Oracle, Microsoft, Workday) or from third-party M&S providers. Alternatively, M&S can be carried out in-house, but only to a limited extent. When customers acquire

⁹ [Enterprise Resource Planning \[ERP\] Software Market Size, 2032](#).

¹⁰ Gartner Rankings of Cloud ERP for Product-centric Enterprises in 2022 (trginternational.com, last visited on 24 July 2025).

¹¹ SAP's submission of 21 June 2024 defines a landscape as follows: "*An SAP Landscape is a set of all licenses and corresponding systems that are jointly operated by a customer to cater for the complete or a part of a company*".

¹² A technical installation is the hardware, operating system and database required to install SAP software. See, for instance, the minutes of the interview with an SAP customer of 15 November 2024, paragraph 15.

¹³ If based on named users, a customer pays for a specific number of users. If based on concurrent users, a customer pays for the number of users that can be active at the same time. Finally, a customer can pay separately for different modules used in different functional areas (e.g., Finance, Inventory, CRM, HR, etc.).

an OP ERP software licence, they also usually enter into an annual M&S contract with their ERP vendor.

- (21) Usually, ERP *maintenance services* include (i) updates to the original software code, (ii) optimisation of the software to comply with local regulations, and (iii) any intervention that would allow the software to perform more efficiently. *Support services* for ERP solutions include (i) security patches¹⁴; (ii) customisation services and (iii) trouble shooting. Large and complex companies often have demanding requirements for support services, e.g. multi language requirements, 24/7 coverage, personalised support.
- (22) M&S is provided by SAP for its OP ERP products for yearly fees, which are calculated as a percentage of the relevant licence fees (the so called “maintenance base”). Customers can choose different support levels¹⁵ for which SAP applies different M&S fees i.e. Enterprise Support ([percentage]% of the licence fees), Standard Support ([percentage]% of the licence fees) or Product Support for Large Enterprises (“PSLE”) ([percentage]% of the licence fees). The M&S business is key to ERP vendors as they derive a large portion of their revenues from it.
- (23) In the past two decades, third party M&S providers (“3PMs”) companies, such as Rimini Street, Spinnaker and Support Revolution, have emerged in the ERP M&S market. The preliminary investigation has revealed that 3PMs are able to provide services of a comparable quality as SAP in those cases where access to the software source code is not required and/or where the products have a lower need for updates or upgrades. Customers indicate that this is the case especially for legacy products (ECC, R/3, etc.) which are more stable and do not need frequent updates, upgrades or security patches. Moreover, due to SAP’s policies to reduce or even discontinue the provision of updates and upgrades for the older version of its ERP software solutions, in many cases 3PMs are the only providers of M&S for customers unable or unwilling to move to the newer versions of those software solutions.

5. PRELIMINARY ASSESSMENT

- (24) This section is based on the Commission’s preliminary concerns as set out in the Preliminary Assessment, which the Commission continues to have at the time of adoption of the present Decision.
- (25) As set out below, in the Preliminary Assessment, the Commission reached the preliminary conclusion that SAP may have abused a dominant position (Section 5.2) on the aftermarket for the provision of M&S for SAP’s OP ERP software (Section 5.1) through the Conduct described in Recital (3) above, resulting in a potential breach of Article 102 TFEU (Section 5.3). The evidence on file suggests that SAP’s Conduct may produce (i) exclusionary effects on SAP M&S competitors and (ii) exploitative effects on SAP’s customers in the EEA (Section 5.4), is not objectively justified

¹⁴ Security patches can only be provided by the original ERP provider or an authorised vendor as they modify the source code, which is proprietary.

¹⁵ The three support levels tiers primarily differ in their access to advisory services and expert guidance, which becomes broader and more personalised at higher levels. They also vary in terms of mission-critical response times and the stringency of service level agreements (SLAs). Standard Support includes essential maintenance such as updates and error corrections. Enterprise Support adds proactive and optimisation services, as well as innovation support. At the top, Product Support for Large Enterprises (PSLE) provides the most comprehensive coverage, including strategic engineering engagement and faster response times. This highest tier is only available to customers meeting minimum thresholds: a licence base of at least EUR [EUR value] (the licence threshold) and an annual M&S expenditure of at least EUR [EUR value] (the maintenance threshold).

(Section 5.5), and is capable of having an appreciable effect on trade between Member States (Section 5.6).

5.1. Relevant markets

5.1.1. Principles

- (26) The concept of **relevant product market** presupposes that there is a sufficient degree of interchangeability between all the products or services forming part of the same market by reason of their characteristics, their prices and their intended use. An examination to that end must take into consideration not only the objective characteristics of the relevant products, but also the competitive conditions and the structure of supply and demand on the market¹⁶.
- (27) When the consumption of a product (primary product) leads to the consumption of another connected product (secondary product), an aftermarket may exist. In these circumstances, the competitive constraints imposed by market conditions in the connected markets need to be considered when defining the relevant markets for the primary and secondary products and/or in the competitive assessment¹⁷.
- (28) The Commission's Market Definition Notice¹⁸ distinguishes three possible ways to define relevant product markets in the case of aftermarkets: (i) a system market (i.e. a market comprising both the primary and the secondary products), (ii) multiple markets (i.e. a market for the primary product and separate markets for the secondary products associated with each brand of the primary product) or (iii) a dual market (i.e. a market for the primary product and a market for the secondary product).
- (29) A system market is defined if a sufficient number of consumers would switch to other primary products following a moderate price increase for the secondary product¹⁹. According to the Market Definition Notice, defining a system market may be more appropriate²⁰:
- (1) the more likely it is that customers take the whole-life costs into account when purchasing the primary product;
 - (2) the higher the expenditure on the secondary product(s) compared to the expenditure on the primary product;
 - (3) the higher the degree of substitutability between primary products and the lower the switching costs between primary products; and
 - (4) when there are no, or few suppliers specialised only in the secondary product(s).
- (30) When the conditions from the Market Definition Notice as interpreted by the EU Courts are not met, it may be more appropriate to define multiple (brand-specific) markets or dual markets. The decision to define more than one relevant market for the secondary product depends primarily on the degree of substitutability between the secondary products of the various suppliers. For instance, if secondary products from different suppliers are compatible with all or most of the primary products, the definition of dual markets may be more appropriate, whereas if customers of the

¹⁶ Commission Notice on the definition of relevant market for the purposes of Union competition law ("Market Definition Notice"), OJ C 1645, 22.02.2024, Section 1.3., paragraph 12a.

¹⁷ Market Definition Notice, paragraph 99.

¹⁸ Market Definition Notice, Section 4.5.

¹⁹ See Case T-427/08, *Confédération européenne des associations d'horlogers-réparateurs (CEAHR)*, EU:T:2010:517, paragraph 105. See also: Commission Decision of 13 December 2011 in Case COMP/AT.39692, *IBM*, paragraph 21.

²⁰ Market Definition Notice, paragraph 101.

primary product are locked-in to using only a restricted set of secondary products, the definition of multiple markets may be more appropriate²¹.

- (31) The **relevant geographic market** comprises the geographic area in which the undertakings concerned are involved in the supply and demand of the relevant products or services, in which area the conditions of competition are sufficiently homogeneous, and which can be distinguished from neighbouring areas because the prevailing conditions of competition are appreciably different in those areas²².

5.1.2. *Application to this case*

5.1.2.1. Relevant product market

- (32) In the Preliminary Assessment, the Commission preliminarily considered that this is an aftermarket case where the primary market consists of the supply of OP ERP software and the secondary market of the provision of M&S for SAP's OP ERP software.

5.1.2.1.1. The primary market for the supply of OP ERP software

- (33) In previous decisions, the Commission considered ERP software as a type of EAS solutions²³. OP ERP software is used to manage key parts of a company's operations. Within the primary market for the supply of ERP software, several segmentations may be considered (e.g. segmentations based on functionality and between high-function and mid-market solutions²⁴), but in past merger cases the Commission has left this sub-segmentation open. SAP itself does not consider that ERP sub-categories form separate product markets²⁵. In addition, SAP considers that cloud and OP currently differ in fundamental ways, suggesting that they may belong to separate product markets²⁶.
- (34) Accordingly, the Commission reached the preliminary conclusion that cloud and OP are not part of the same market. Therefore, for the purposes of this Decision, the Commission considers that the relevant primary market is the market for the supply of OP ERP software.

5.1.2.1.2. The secondary market for the provision of brand-specific M&S

- (35) OP ERP software is very complex and initially requires constant M&S to function properly. Maintenance services include updates to the original code, optimisation to comply with local regulations and interventions allowing the software to perform more efficiently²⁷. Support services include security and vulnerability management services, break, bug fixing and software update and patching services, customisation of systems and technology advisory services²⁸.

²¹ Market Definition Notice, paragraph 102.

²² See Commission Decisions in Case COMP/AT.37451, *Deutsche Telekom AG*, paragraphs 92 and 93; and Case COMP/AT.38233, *Wanadoo Interactive*, paragraph 205. See also Case C-27/76, *United Brands and United Brands Continental v Commission*, EU:C:1978:22, paragraph 44; Case C-322/81, *Michelin v Commission*, EU:C:1983:313, paragraph 26, Case C-247/86, *Alsattel v Novasam*, EU:C:1988:469, paragraph 15.

²³ See Commission decision of 11 February 2021 in Case COMP/M.10060, *Francisco Partners/Marlin EquityPartners/Conan Holdco*, paragraph 12.

²⁴ See Commission Decision in Case COMP/M.10709, *Partners Group / Forterro*, paragraph 21.

²⁵ See SAP's reply to RFI of 24 June 2022 to ERP vendors ("RFI to ERP vendors"), Q.6.

²⁶ See Compass Lexecon, "Relevant markets and dominance in ERP maintenance and support services", submitted by SAP on 21 June 2024, paragraph 2.20.

²⁷ See replies to RFI to support services providers of 24 June 2022 ("RFI to support services providers"), Q.2.

²⁸ See replies to RFI to support services providers, Q.2.

- (36) The preliminary investigation demonstrated that the conditions to identify a system market are likely not met. This applies for both the conditions established by the case law and those set out in the Market Definition Notice.
- (37) The relevant test from the case law²⁹ – i.e. whether customers’ purchasing behaviour on the primary market is influenced by moderate price increases in the secondary market (see Recital (29) above) – is not fulfilled. The specific characteristics of both the primary and secondary market in this case strongly reduce the relevance of any price increase at the secondary market level because customers in the primary market are normally locked in, given the very high switching costs. Customers have indicated that a change of their main OP ERP provider is burdensome and costly and is considered only in exceptional situations³⁰. When asked whether a price increase in M&S would lead them to change OP ERP providers, customers indicated that this would be possible “*only in case of an extreme price increase likely to justify the huge cost of a change*”³¹ and that “*a change would be realistic only if the costs for maintenance and support services were increased dramatically*”³². Consequently, even though the expenditure on the secondary product is relatively high compared to the expenditure on the primary product³³, it is unlikely that, in case of a moderate price increase for the secondary product, the number of customers that would switch to other primary products would be sufficient to make such an increase unprofitable.
- (38) The preliminary investigation further revealed that also the test described in the Market Definition Notice for identifying a system market is not met³⁴. Of the four circumstances mentioned in the Market Definition Notice that may justify identifying a system market, only one is met, i.e. the requirement that the expenditure on the secondary product is high compared to the expenditure on the primary product.
- (39) The three remaining circumstances are not present:
- (1) *customers do not take the whole-life costs into account when purchasing the primary product*: the preliminary investigation demonstrated that the primary and secondary market lack price transparency, in particular in the medium to long term. Consequently, customers cannot take the whole-life costs into account when purchasing SAP’s OP ERP software. In the short term, customers are aware that their initial purchase is a bundled offer of both licences and M&S at a certain price. In the case of an OP ERP software, lifecycle costs encompass not only the original licence price, but also additional licences and associated M&S fees over time. These last two elements are those for which customers report unforeseeable and hidden costs in the medium and long term, preventing them from considering the whole lifecycle costs upfront³⁵.

²⁹ See Case T-427/08, *Confédération européenne des associations d’horlogers-réparateurs (CEAHR) v Commission*, EU:T:2010:517, paragraphs 79, 95 and 108.

³⁰ More than 90% of SAP’s customers surveyed by means of RFIs (approximately 90 large companies active in various industries) reported that they have not switched ERP providers due to the high costs and burdensome nature of such process. See SAP’s customers’ replies to RFI to customers of 4 August 2022 (“RFI 1 to customers”), Q.19; and RFI of 11 December 2023 (“RFI 5 to customers”), Q.B.G.7 and Q.B.G.8.

³¹ See SAP’s customers’ replies to RFI 1 to customers, Q.21.1.

³² See SAP’s customers’ replies to RFI 1 to customers, Q.21.2.

³³ The M&S business represented ca. 29% of SAP total revenues in 2025. Support revenues amounted to 10 525 million in 2025. See, SAP Integrated Report 2025, page 53.

³⁴ Market Definition Notice, Section 4.5.

³⁵ The market investigation has shown that customers are unable to foresee the numbers of licences they will acquire throughout the ERP’s lifetime because they cannot anticipate their needs over a long period

- (2) One of the main causes of price uncertainty is SAP's method of calculating M&S fees based on the original licence value (the 'maintenance base'), which is often substantially discounted. This implies that - depending on the discount applied - each purchase of additional OP ERP licences can trigger an increase of the overall M&S fees compared to the original purchase. If a customer decides to terminate certain licences and therefore terminates the associated M&S payments³⁶, SAP reserves the right to re-calculate the customer's maintenance base and the corresponding M&S fees for the remaining licences³⁷. This mechanism, which is neither mentioned in SAP's General Terms and Conditions nor in the standard SAP Order Form³⁸, is not transparent for customers, as it links a recalculation of the price of M&S fees (one product) to the hypothetical price the customer would have paid for the reduced number of licences kept (another product). This recalculation mechanism, along with others that have similar effects, prevents customers from knowing in advance the consequences that their commercial decisions may have on M&S fees. This is confirmed by the fact that SAP can, and in many cases does, apply a substantial degree of flexibility in its pricing policies when it is necessary to achieve its financial or commercial objectives, or to discourage customers from switching to other OP ERP vendors³⁹. Customers resort therefore in many cases to specialised SAP licence management consultants to manage their SAP licences and costs⁴⁰. This would not be needed if costs were clear and transparent from the outset, and if the mechanism for calculating M&S fees did not leave SAP such broad discretion.
- (3) *the degree of substitutability between primary products is low and the switching costs between primary products are high*: during the preliminary investigation, customers widely reported on vendor lock-in in the primary market⁴¹. Apart

of time and SAP may unilaterally change some of the parameters (e.g. scope of the licence, metrics) impacting the licence costs. See SAP's customers' replies to RFI 1 to customers, Q.15.3. For instance, some customers were asked to purchase new licences to be able to use a new version of a product they had already licensed (interview with an SAP customer on 28 August 2024, paragraph 20). Customers reported that they have little visibility on the M&S fees despite the fact that M&S fees are a percentage of the licence fee. This is due to the fact that the additional licence costs on the primary market have a direct impact on the M&S fees and it is also the result of SAP's practices imposing unilateral changes. For example, some agreements with customers did not contain a Consumer Price Index (CPI) clause regarding price increases which was subsequently added to the agreement by SAP via an update of the Terms and Conditions on its website. This could not be anticipated or considered in lifecycle costs assessment by customers. See the minutes from the interview with an SAP customer on 9 October 2024, paragraph 27 and the minutes from the interview with an SAP customer on 22 August 2024, paragraph 15.

³⁶ See SAP's submissions of 21 June 2024, 26 July 2024, 27 November 2024 and 17 January 2025.

³⁷ See SAP's Technical Clarification Submission of 21 June 2024, points 115 to 117 in which SAP also clarifies that "*The calculation outcome will depend on the customer's specific situation and will give rise to applying standard volume list price discounts on the new landscape.*"

³⁸ SAP's standard order form only indicates among the effects of termination that: "*Customer shall not be entitled to any refund of any payments made by Customer.*"

³⁹ See the minutes from the interview with an SAP customer on 2 October 2024, paragraph 7.

⁴⁰ ERP consultants are professionals or firms that help organisations plan, implement, optimise, or maintain ERP systems. They act as strategic advisors, technical experts, and change facilitators, ensuring the ERP system aligns with business needs and delivers value. General advice on ERP can be provided by general consultancies such as Accenture, Deloitte, Capgemini, etc. or by specialised consultancies focusing on ERP products of one or more vendors.

⁴¹ See SAP's customers' reply to RFI 1 to customers, Q.39 and SAP's customers' reply to RFI 1 to customers, Q.17.1. An SAP customer confirmed in its reply to RFI 1 to customers, Q.21.2. that it would not consider switching OP ERP providers even if the prices for SAP M&S were to increase significantly

from the need to buy another perpetual ERP licence for the same product(s) in case of switching, these switching costs include, among others: (i) the costs to deactivate existing ERP software and the costs to integrate and customise the new software⁴²; (ii) the heavy investment in required training of employees⁴³; (iii) the duration⁴⁴ and complexity⁴⁵ of the switching process, and (iv) the resulting disruptions to customers' businesses. For example, an SAP customer said: "[t]he cost of switching and disruption to the business is far too high. It is not possible to switch out from current solutions"⁴⁶.

- (4) *ample suppliers are specialised only in the secondary product(s)*: there are multiple companies specialised only in the supply of secondary product(s)⁴⁷. This includes 3PMs such as Rimini Street, Spinnaker and Support Revolution⁴⁸.
- (40) On this basis, as three of the four criteria set out in the Market Definition Notice as potentially indicating a system market are not fulfilled, the Commission preliminarily concluded that also the test identified in the Market Definition Notice is not met and that, therefore, a secondary market separate from the primary market can be identified. This conclusion is not at odds with other case law mentioned by SAP⁴⁹, such as the *Contact Software* case⁵⁰. As explained in Section 5.1.1 above, any finding of a relevant market depends not only on the objective characteristics of the relevant products, but also the competitive conditions and the structure of supply and demand on the market.
- (41) Further, the preliminary investigation supported a brand-specific market definition in the secondary market. The evidence shows little to no substitutability between secondary products of the various OP ERP vendors. This is mainly due to the lock-in effect, customisation of M&S, compatibility requirements and need for brand-specific technical skills and training for different OP ERP software⁵¹. Therefore, the M&S tailored for one vendor's OP ERP product cannot be applied to products from another vendor. When customers acquire an OP ERP software licence, they usually conclude a M&S contract with their ERP vendor. M&S for SAP OP ERP software licences can be procured from SAP, from 3PMs such as Rimini Street, Spinnaker and Support Revolution or, to a more limited extent, they can be carried out in-house by the

because of the contractual agreement with SAP that they could only terminate the entirety of the licences. Furthermore, replacing SAP's OP ERP software would take many years, thus creating a contractual and factual lock-in effect.

⁴² See SAP customers' replies to RFI 1 to customers, Q.17.2.

⁴³ See SAP customer's reply to RFI 1 to customers, Q.17.2.

⁴⁴ In its reply to RFI 1 to customers, Q.21.1, an SAP's customer suggests that the process of switching could spread over 5-7 years.

⁴⁵ See SAP customers reply to RFI 1 to customers, Q.19.1.

⁴⁶ See SAP customers reply to RFI 1 to customers, Q.17.2.

⁴⁷ See SAP's reply to RFI to ERP vendors, Q.7: 3PMs "*are generally capable of providing support services for SAP software to an equally comprehensive extent as SAP itself*".

⁴⁸ Multiple companies also have a partnership with SAP to advise on M&S, such as system integrators assisting in the implementation of maintenance services (e.g. Sopra Steria) or consultancy companies (e.g. Deloitte).

⁴⁹ SAP response to the Preliminary Assessment, 31 October 2025, section 3.1.2.

⁵⁰ Case T-751/15, *Contact Software GmbH v European Commission*, EU:T:2017:602.

⁵¹ [Large majority of market participants] consider that M&S is brand specific. According to those respondents, M&S for each ERP software brand is specific and requires customers or experts working with them to acquire a set of specific technical skills. Thus, those specific technical skills require customers to invest in training specific to each brand. Replies to RFI 1 to customers, Q.7 and RFI to support services providers, Q.14.

customer. Throughout the preliminary investigation, both customers and 3PMs reported on strong vendor lock-in for M&S⁵².

- (42) Therefore, for the purposes of the present proceeding, the Commission preliminarily considered that the relevant product market is the secondary market for the provision of SAP OP ERP M&S.

5.1.2.2. Geographic market

- (43) Based on Commission precedents⁵³ and the market investigation, the Commission took the preliminary view that the market for the provision of SAP OP ERP M&S is at least EEA-wide, if not global. Some M&S - e.g. compliance with local regulations - may have a national or regional dimension and be provided by SAP's national representatives. Yet, as most multinational customers make centralised purchase decisions in the secondary market, the competitive conditions are still sufficiently homogeneous to establish an EEA-wide market.

5.2. Dominance in the secondary market

5.2.1. Principles

- (44) The dominant position referred to in Article 102 TFEU relates to a position of economic strength enjoyed by an undertaking, which enables it to prevent effective competition being maintained on the relevant market(s) by affording it the power to behave to an appreciable extent independently of its competitors, its customers and, ultimately, consumers⁵⁴.
- (45) The existence of a dominant position derives in general from a combination of several factors that, taken separately, are not necessarily determinative⁵⁵.
- (46) One important factor is the existence of very large market shares, which, save in exceptional circumstances, are in themselves evidence of the existence of a dominant position⁵⁶. An undertaking which holds a very large market share for some time, without smaller competitors being able to meet rapidly the demand from those who would like to break away from that undertaking, is by virtue of that share in a position of strength which makes it an unavoidable trading partner⁵⁷. A market share above 50% often constitutes evidence of the existence of a dominant position⁵⁸.
- (47) Another important factor when assessing dominance is the existence of barriers to entry or expansion, preventing either potential competitors from having access to the market or actual competitors from expanding their activities on the market⁵⁹. Such

⁵² See SAP's customers' replies to RFI 1 to customers, Q.39.

⁵³ See Cases COMP/M.3216, *Oracle/Peoplesoft* and COMP/M.10709, *Partners Group/Forterro*.

⁵⁴ Case C-27/76, *United Brands and United Brands Continental v Commission*, EU:C:1978:22, paragraph 65; Case C-85/76, *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 38; Case T-201/04, *Microsoft v Commission*, EU:T:2007:289, paragraph 229.

⁵⁵ Case C-27/76, *United Brands and United Brands Continental v Commission*, EU:C:1978:22, paragraph 66.

⁵⁶ Case C-85/76, *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 41; Case T-65/98, *Van den Bergh Foods v Commission*, EU:T:2003:281, paragraph 154.

⁵⁷ Case C-85/76, *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 41; Case T-139/98, *AAMS v Commission*, EU:T:2001:272, paragraph 51; Case T-65/98, *Van den Bergh Foods v Commission*, EU:T:2003:281, paragraph 154; Case T-336/07, *Telefónica SA v Commission*, EU:T:2012:172, paragraph 149.

⁵⁸ Case C-62/86, *Akzo v Commission*, EU:C:1991:286, paragraph 60; Case T-340/03, *France Télécom SA v Commission*, EU:T:2007:22, paragraph 100; Case T-336/07, *Telefónica SA v Commission*, EU:T:2012:172, paragraph 150.

⁵⁹ Case C-27/76, *United Brands and United Brands Continental v Commission*, EU:C:1978:22, paragraph 122, Case C-85/76, *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 48.

barriers may result from a number of factors, including exceptionally large capital investments that competitors would have to match, network externalities that would entail additional costs for attracting new customers, economies of scale from which newcomers to the market cannot derive any immediate benefit, and the actual costs of entry incurred in penetrating the market⁶⁰.

- (48) When aftermarkets are concerned, a two-step assessment needs to be carried out to establish dominance. First, as a pre-condition, the *EFIM* test⁶¹ is applied to determine whether there is a possibility of finding dominance on the secondary market or whether the interdependence with the primary market precludes any such finding.
- (49) The *EFIM* test is comprised of the four questions below:
- (1) Can customers make an informed choice, including lifecycle-pricing, between the various manufacturers in the primary market?
 - (2) Are they likely to make such choice accordingly?
- If prices were raised significantly in the aftermarket,
- (3) Would a sufficient number of customers adapt their purchasing behaviour at the level of the primary market?
 - (4) If so, would they adapt their purchasing behaviour within a reasonable time?
- (50) If the answer to all questions is ‘yes’, there is no possibility of finding dominance on the aftermarket. A negative answer to one of the questions means that it is possible to find dominance on the aftermarket but does not automatically equate to establishing dominance in the aftermarket, as the usual assessment of dominance still needs to be carried out, in line with the principles set out in Recitals (44) to (47) above.

5.2.2. *Application to this case*

- (51) First, the preliminary investigation suggests that the reply to the four questions of the *EFIM* test is negative.
- (52) For the reasons explained above in Recital (39), customers cannot make a correct estimate of the lifecycle costs of their ERP products and thus cannot make a fully informed decision when acquiring the primary product. Therefore, the answer to first two questions is negative.
- (53) Furthermore, the replies to the third and fourth questions are also negative. This is due to the high barriers to switching ERP software already described in Recital (39). When asked whether a price increase in M&S would lead them to change ERP providers, customers indicated that this would be possible “*only in case of an extreme price increase likely to justify the huge cost of a change*”⁶² and that “*a change would be realistic only if the costs for maintenance and support services were increased dramatically*”⁶³.
- (54) On this basis, the Commission preliminarily concluded that it is possible to establish dominance on the secondary market. The usual assessment of dominance can therefore be carried out.

⁶⁰ Case C-27/76, *United Brands and United Brands Continental v Commission*, EU:C:1978:22, paragraphs 91 and 122.

⁶¹ Case C-56/12 P, *European Federation of Ink and Ink Cartridge Manufacturers (EFIM) v Commission*, EU:C:2013:575, paragraph 12.

⁶² See SAP’s customer’s reply to RFI 1 to customers, Q.21.1.

⁶³ See SAP’s customer’s reply to RFI 1 to customers, Q. 21.2.

- (55) Second, the preliminary investigation showed that SAP holds a dominant position on the market for the provision of SAP OP ERP M&S for the following reasons.
- (56) In the first place, based on estimates, SAP's market share on the worldwide secondary market for the provision of SAP OP ERP M&S is ca. 90% by value, which, in line with the case-law, is indicative of an undertaking holding a dominant position. The market shares of 3PMs are very low even though they offer their services at a much lower price⁶⁴.
- (57) In the second place, the secondary market is characterised by high barriers to entry and expansion:
- (1) SAP has an established relationship with the customers on the primary market which provides an advantage compared to 3PMs.
 - (2) Only SAP can provide certain M&S directly, i.e. security patches and updates that require access to content protected by intellectual property rights. This leads customers to doubt whether 3PMs can provide services of the same quality as SAP or can guarantee the security and integrity of the ERP software in the same capacity⁶⁵. This is despite the fact that 3PMs can provide workaround solutions which they argue afford the same protection⁶⁶.
 - (3) Due to SAP's Conduct, customers are locked into SAP's ecosystem which makes it more difficult for rivals to compete effectively for the provision of M&S⁶⁷.
- (58) In the third place, the fact that the secondary market is unlikely to expand significantly in the future due to the shift towards cloud-based solutions increases the importance of the barriers to entry, given that it makes market entry relatively less attractive. M&S for OP ERP software will, however, remain relevant for many years to come given that many companies cannot or do not want to move to cloud based products, or, if they subscribe to cloud based products, this would only be for a part of their ERP software⁶⁸.

⁶⁴ [Market participant] estimates that it holds a market share below 5% in M&S for SAP OP ERP software worldwide. It would not be significantly different at EEA level. See [Market participant] reply to RFI to support services providers, Q.18. SAP's data also shows that between 2017 and 2024, customer switches to 3PM represented well below 0.5% of SAP M&S revenue annually in the EEA.

⁶⁵ See email sent by SAP to a customer: "*As discussed, ending the maintenance performed by SAP increases several operational risks, including the blocking of the upgrade to S4 HANA, please bear in mind that a continuous maintenance is necessary to leverage the right tools and patches to support the upgrade. We cannot stress enough the fact that the continuity of maintenance for On Premise environment is strongly recommended. We finally draw your attention that should you require in the future to reactivate the maintenance, in compliance with the contract, SAP shall be entitled to apply back-maintenance cost.*".

⁶⁶ See email of 15 April 2024 from a market participant: "*[The company] can supply support & maintenance services without providing security patches. We provide alternative security tooling which replaces SAP security patches. It is a "virtual patching" solution that places a virtual "fence" around a customers' Oracle or SAP systems. The vendor issues new rules (patches) as new vulnerabilities are found, and the customer applies the rules to the fence, and is then protected.*" See also the minutes from the interview with an SAP customer on 2 October 2024, paragraph 17.

⁶⁷ Almost all customers surveyed by means of RFIs say that switching to a 3PM is not easy (see replies to RFI 1 to customers, Q.25). Customers widely reported on this vendor lock-in during the market investigation, which is reinforced by SAP's practices.

⁶⁸ See an interview from 2022 with SAP's CEO who said: "[the company] still serves a massive on premise installed base of more than 30,000 ERP customers compared with nearly 5,000 S/4HANA cloud customers"; "[SAP] annual S/4HANA cloud revenue is just €1.1bn, 4 per cent of its total revenue" ([SAP's cloud investments dragging on profitability • The Register](#)).

- (59) In the fourth place, SAP's customers have insufficient bargaining power to countervail SAP's market power⁶⁹. SAP's customers are numerous⁷⁰ and none of them represents such an important percentage of demand that would enable it to enjoy substantial countervailing buyer power. In addition, notably as a result of SAP's Conduct, it is extremely difficult to switch M&S provider.
- (60) Based on the above, the Commission preliminarily concludes that SAP holds a dominant position in the secondary market for the provision of M&S of SAP OP ERP software.

5.3. Practices raising concerns (the Conduct)

- (61) The preliminary investigation focused on SAP's Conduct, which consisted of four practices: (i) the AoN policy, (ii) the inability for SAP's customers to partially terminate M&S for shelfware due to the AoN policy, (iii) SAP's extension of the initial term of licences, during which termination of SAP M&S is not possible and (iv) SAP's reinstatement policy.
- (62) The AoN policy and the reinstatement policy were first introduced in SAP's General Terms and Conditions ("GTC") for Germany in 1994⁷¹ and are still part of SAP's GTCs worldwide. Today, these policies are also included in SAP's contractual documents, such as SAP Support Schedules or Order Forms. They apply to all M&S contracts between SAP and its customers without exception, meaning that all SAP's customers on the M&S market are bound by these obligations.

5.3.1. All-or-nothing policy

- (63) SAP's AoN policy, which is included in its GTCs for SAP Software and Support states the following: *"Insofar as Customer is enrolled in SAP Support, all of Customer's Software, including SAP software previously licensed by Customer and any future SAP software licensed to the Customer (whether directly from SAP or through an SAP partner) ("Customer Software Estate") must be covered by SAP Support. SAP Support terms cover all licenses within the Customer Software Estate and therefore partial termination, or partial selection of SAP Support by Customer is strictly prohibited in respect of the Customer Software Estate"*⁷².
- (64) Moreover, SAP's List of Prices and Conditions establishes that *"selection to enrol in another type of SAP Support Services by Customer pursuant to Support Services provisions stated herein shall strictly apply to all of Customer's SAP software"*, and *"partial termination of [SAP's Standard Support/Enterprise Support/PSLE⁷³] or partial selection of any one type of SAP Support Services by Customer is strictly prohibited."*⁷⁴.
- (65) The AoN policy therefore consists of two legs:

⁶⁹ In their reply to RFI to customers of 24 February 2023 (RFI 3 to customers), Q.B.A.1 most customers said that they can only negotiate very limited parts of their terms and conditions, and mostly in regard to pricing/discounts. SAP is not open to negotiate standard contractual terms, such as the AoN and reinstatement policies.

⁷⁰ According to SAP's internal financial performance presentation from 21 January 2019, the top [percentage]% of SAP's customers correspond to more than [number of customers] customers.

⁷¹ See SAP's reply to RFI of 4 April 2024 (RFI 4 to SAP), Q.5.B and Q.8.

⁷² See SAP's reply to RFI of 20 July 2023 (RFI 3 to SAP), Annex 3 Global Template containing GTCs, paragraph 6.3.

⁷³ Product Support for Large Enterprises.

⁷⁴ See SAP's reply to RFI to ERP vendors, Annex 3, pages 213, 223 and 230.

- (1) customers cannot choose to purchase SAP M&S for only part of their SAP licences (all products need to be either supported by SAP or left out of SAP M&S); and
 - (2) customers must maintain the same level of SAP M&S for all their licences, i.e. Enterprise Support (22% of the licence fees), Standard Support (19% of the licence fees) or PSLE (17% of the licence fees).
- (66) The first leg of the AoN policy prevents SAP’s customers from "*mixing and matching*" and procuring M&S from 3PMs for some licences while at the same time maintaining SAP M&S for other licences. It also deprives customers of the flexibility to adapt the level of M&S to their business needs and forces customers to pay for M&S fees even for unused licences (also referred to as "*shelfware*"⁷⁵), including licences that are no longer supported by SAP and non-critical licences, leading to unnecessary costs⁷⁶. For example, a market participant explained that the AoN policy prevents SAP’s customers from taking the following actions⁷⁷:
- (1) a customer with three different ERP systems (or technical installations) from SAP, e.g. S/4HANA (the latest generation of its ERP system and primarily designed for large companies), ECC and R/3 (older versions of OP ERP software or “legacy software”) would not be able to stop SAP M&S for one of them and use 3PMs for e.g. ECC (where SAP will end mainstream M&S⁷⁸ in 2027) while staying on SAP for S/4HANA (given this is a new ERP system with new versions and updates);
 - (2) a customer cannot partially terminate SAP M&S and transition to a 3PM to receive M&S for certain products while continuing SAP M&S for a separate, more critical product set (e.g., SAP manufacturing system or human resources (“HR”) payroll); and
 - (3) a customer operating globally that has one ERP system by region would not be able to terminate SAP M&S or use a 3PM for the SAP OP ERP in e.g. Europe but remain with SAP for North America.
- (67) In addition, if a customer already has M&S from SAP for existing licences, it is obliged to also take M&S from SAP for any new licences. Should the customer not wish to do so, it would have to terminate all M&S from SAP for all licences (both existing and new ones). If the customer has M&S from a 3PM or is off support for existing licences but would like M&S from SAP for new licences, it will have to move all M&S on existing licences to SAP.
- (68) The second leg of the AoN policy deprives customers of the flexibility to adapt their level of M&S to their business needs by preventing them from moving part of their M&S from a higher level of M&S (Enterprise Support) to a lower level of M&S (Standard Support), e.g. for older or less essential parts of the ERP landscape⁷⁹.
- (69) During the preliminary investigation, SAP claimed that the AoN policy does not apply across different SAP landscapes, as it is technically feasible to have different M&S

⁷⁵ For a complete definition of shelfware, see below, Recital (71).

⁷⁶ In reply to RFI 1 to customers Q.30, SAP’s customers reported having to pay for outdated products that SAP no longer supports.

⁷⁷ See the minutes from the interview with a market participant of 22 April 2024, paragraph 6.

⁷⁸ See footnote 26 for the definition of mainstream maintenance.

⁷⁹ Customers reported being unable to tailor support levels to service criticality, as SAP requires all licences to match the highest support level. See SAP’s customers’ replies to RFI 3 to customers, Q.B.E.3.

providers and different level of support on different landscapes⁸⁰. However, evidence gathered suggests that SAP in fact applies the AoN policy also across different landscapes⁸¹. In other words, this means that, when customers seek to engage a 3PM for a product deployed in a separate landscape, SAP does not permit such an arrangement.

- (70) Furthermore, the preliminary investigation revealed that SAP strictly enforces the AoN policy. For example, in a letter sent to customers SAP clearly states the conditions for the termination of a M&S contract, i.e., the customer may either terminate the entire contract or must keep the entire contract in force. SAP does not accept any partial termination of the contract⁸².

5.3.2. *Inability for SAP's customers to partially terminate M&S for shelfware*

- (71) Over the years, SAP's customers typically accumulate shelfware, which is defined by SAP as “software that our customers purchased, but don't use or plan to use”, for various reasons⁸³. The evidence gathered suggests that having shelfware is common among OP ERP customers (as [percentage]% of customers have at least one shelfware product)⁸⁴. Due to the first leg of the AoN policy, which forces customers to take M&S from SAP for all their OP ERP products, customers are required to procure M&S and continue paying the corresponding fees, which increase annually, also for their shelfware products. In this context, SAP itself acknowledged that customers with stable legacy software may not require extensive M&S services or may not require them at all⁸⁵. This shows that M&S for shelfware, especially when attached to legacy products, may provide little to no value to certain customers. One of SAP's customers noted that as some SAP tools become obsolete or unused, being forced to maintain M&S for all software leads to unnecessary costs that no longer reflect the company's needs⁸⁶.
- (72) Customers cannot terminate M&S solely for their shelfware licences due to the AoN policy (i.e. partial termination of M&S not being allowed)⁸⁷. Instead, SAP offers the following options to customers to terminate undesired M&S:
- (1) *Full termination of all M&S*: SAP's customers can terminate all M&S for their entire SAP landscape (while keeping the licence usage rights)⁸⁸. In this case, customers are subject to SAP's back maintenance and reinstatement fees if they decide to return and conclude a M&S contract in the future with SAP (see also Section 5.3.4 below). This option does not allow customers to terminate only the

⁸⁰ See SAP's submission of 5 and 26 July 2024, section 2.1.3.

⁸¹ See SAP's internal email exchange ID5310-6768 and ID005386-030389.

⁸² See SAP's internal documents ID5277-1464 and ID5310-20203 from 2022.

⁸³ See the minutes from the interview with an SAP customer on 22 August 2024, paragraph 15. See also SAP's Technical Clarification Submission 21 June, 5 July and 26 July 2024, section 5. SAP attributes the presence of shelfware to evolving business requirements, including organisational growth or workforce reductions. In some cases, shelfware may also be acquired unnecessarily in order to benefit from higher volume-based licence discounts. Customers refer to shelfware, especially when they are required to pay fees for unused licences, including licences that are no longer supported by SAP and non-critical licences (thus rarely used or not used at all).

⁸⁴ See SAP's internal document ID5310-9615 from 2020.

⁸⁵ See SAP's reply to RFI 4 to SAP, Q.4.

⁸⁶ See SAP's customer's reply to RFI 3 to customers, Q.B.E.3.

⁸⁷ See SAP's customer's reply to RFI 3 to customers, Q.B.D.2; SAP's customer's reply to RFI 3 to customers, Q.C.E.3; SAP's customer's reply to RFI 1 to customers, Q.27.1 and SAP's internal document ID5310-6768.

⁸⁸ See SAP's Technical Clarification Submission of 21 June 2024, provided by SAP on 24 July 2024, paragraphs 104 -105.

unwanted M&S for shelfware. The preliminary investigation found that this option was not contractually available to all customers of SAP⁸⁹. As most customers need SAP M&S for new and/or critical software products (see Recital (94)), this option does not offer customers a real alternative to cut M&S costs.

- (2) *OP extension policy*: customers can partially terminate their OP licences and related M&S if they replace them with other SAP OP software and related M&S (i.e. replacement of certain licence usage rights by other solutions from SAP's OP portfolio). The extent of the exchange is subject to negotiation⁹⁰. But in all cases, the new maintenance base resulting from reallocation must, at a minimum, remain the same⁹¹.
 - (3) *Cloud extension policy*: customers can terminate part of their OP licences (such as for example shelfware), if they replace these with a subscription to SAP cloud-based products. SAP requires that new contracts have an annual revenue at least [threshold]⁹².
 - (4) *Pure partial termination*: customers can request to terminate part of their OP licences and stop the related M&S without replacing the terminated licences for OP licences or cloud subscriptions. In this case, a customer terminates part of the usage rights licences and requests a corresponding M&S termination. This request will trigger a recalculation of the customer's maintenance base, i.e. the total value of licences which is used as the calculation basis for the annual maintenance contract⁹³. However, if the revised maintenance base no longer qualifies for certain volume discounts, this recalculation may result in higher M&S fees for less services⁹⁴. To prevent this, SAP caps the new M&S fees at the same amount the customer was paying before executing the pure partial termination⁹⁵. Nevertheless, the full mechanism operates to the detriment of customers. Despite a reduction in their licence portfolio and the associated M&S, the customers continue to pay the same amount of M&S fees as before.
- (73) SAP does not allow customers to terminate only some M&S while keeping unused licence usage rights (i.e. shelfware), even if the licences were purchased on a perpetual basis and the customer may wish to use them again in the future⁹⁶.
- (74) The options set out in Recital (72) do not offer a useful solution for customers seeking to reduce costs of M&S for shelfware, as they require either cancelling SAP M&S for the entire SAP landscape, buying additional products or renouncing the licence rights acquired in perpetuity⁹⁷. Also, as a result of the options SAP provides, the maintenance base and M&S fees payable to SAP are in practice never reduced⁹⁸.

⁸⁹ See the minutes from the interview with a market participant on 26 August 2024, paragraph 15 and with SAP's customer on 12 September 2024, paragraph 19.

⁹⁰ See the minutes from the interview with an SAP customer on 9 October 2024, paragraph 15.

⁹¹ See SAP's Technical Clarification Submission 21 June 2024, paragraphs 107-111.

⁹² See SAP's internal document ID5310-33749 2019. See also the minutes from the interview with an SAP customer on 11 September 2024, paragraph 17.

⁹³ See SAP's Technical Clarification Submission 21 June 2024, paragraphs 115-117.

⁹⁴ See SAP's submission of 5 July 2024, page 11.

⁹⁵ See SAP's Technical Clarification Submission 21 June 2024, paragraph 117.

⁹⁶ See SAP's Technical Clarification Submission 21 June 2024, paragraph 107.

⁹⁷ See SAP's customer's reply to RFI sent in the context of the informal market test.

⁹⁸ See minutes from the interview with an SAP customer on 4 September 2024, paragraph 6.

(75) The preliminary investigation revealed that SAP has occasionally and exceptionally offered additional options to certain customers. However, these options are not generalised and remain unknown to most customers. In particular:

- (1) *Parking of licences*: under this option, SAP has allowed certain customers to put licences on “usage” hold and avoid paying M&S fees for such licences. Market participants⁹⁹ and SAP’s internal documents¹⁰⁰ indicate that some customers managed to reduce M&S costs and were able to “park licences” for (i) entire landscapes or (ii) some of the licences within a landscape (so called “partial parking”) for certain periods of time. Customers were able to activate and use the parked licences again while paying back maintenance and reinstatement fees¹⁰¹ (see Section 5.3.4).
- (2) *Single Metric Contracts*: SAP has also allowed some major customers to sign a single metric licensing agreement (“Single Metric Contract”). This contract is offered on an exceptional basis to customers whose licence fees surpass a specified threshold at the time of contract execution, which would not be lower than EUR 1 million. Under this contract both the licence and the M&S fees are calculated based on a metric which is not related to the actual usage of the software but for example on customer’s revenues or number of employees. For instance, if a customer’s gross revenues do not exceed EUR 2 billion per year, the customer will pay ‘x’ licence fees (and 17% of ‘x’ in M&S fees). The value of ‘x’ is determined by SAP based on the bundle of products falling under the scope of the single metric agreement. SAP’s customers report that the value of the reduction may be compromised by indexation of the M&S fees (the Consumer Price Index (“CPI”) increases)¹⁰². Single Metric Contracts generally have a standard duration of five years. M&S costs for shelfware appear less relevant for customers having Single Metric Contracts as the fees applied depend on the number of existing single metric units and are not related to the actual usage of the software. For example, in a scenario where the metric is the number of employees, fees would be adjusted on a yearly basis in case of a substantive reduction of workforce¹⁰³. The preliminary investigation indicated that SAP does also not show flexibility for customers on Single Metric Contracts when handling requests to reduce the M&S fees and/or remove shelfware¹⁰⁴.

5.3.3. *Extension of the initial term of licences*

(76) Termination of M&S contracts can only occur after the expiry of what SAP refers to as the “initial term”¹⁰⁵. This policy, which is included as a clause in SAP’s Order Forms, implies that customers cannot terminate M&S related to a specific licence and/or switch to 3PMs until the initial term period has ended. SAP has explained that

⁹⁹ See SAP’s customer’s reply to RFI 3 to customers, Q.B.F.3 and the minutes from the interview with an SAP customer on 2 October 2024, paragraphs 27-28, 33; SAP’s customer reply to RFI 3 to customers, Q.B.F.2, and SAP’s customer’s reply to RFI 3 to customers, Q.B.A.2.

¹⁰⁰ See SAP’s internal documents ID3343-000084; ID3343-000093; ID5385-054759; ID5310-027886; ID5309-005301.

¹⁰¹ See SAP’s internal documents ID5310-18411 and ID5309-21873 from 2022.

¹⁰² See the minutes from the interview with an SAP customer on 9 October 2024, paragraph 13.

¹⁰³ See the minutes from the interview with an SAP customer on 9 October 2024, paragraphs 12-13.

¹⁰⁴ See the minutes from the interview with an SAP customer on 15 November 2024, paragraph 22.

¹⁰⁵ According to SAP’s Technical Clarification Submission of 21 June 2024 “*termination of support and maintenance can occur by giving notice at least three months before the end of the calendar year, after the expiry of the initial term*” (page 20). The initial term consists of the running calendar year in which the maintenance contract starts, plus the full next calendar year, unless the maintenance contract starts on January 1 of a year, in which case the initial term is that full calendar year only.

the initial term only applies to the first purchase of licences in a given landscape¹⁰⁶. However, customers are continually purchasing new licences to account for changes in business needs or revenue growth (e.g. department expansion, new personnel, new modules or functionalities) and the evidence gathered has brought to light situations where SAP restarts automatically the initial term of user licences every time a new licence of the same product is purchased within a landscape¹⁰⁷. Since M&S cannot be partially terminated (due to the AoN policy), customers generally may not attempt termination at all, and therefore the initial term rarely becomes a point of negotiation. In cases where customers nevertheless try to terminate their M&S in some way, SAP invokes the “initial term” limitation as an additional argument to refuse termination. This makes it practically impossible for customers to terminate M&S and switch to 3PMs, as every new licence purchase triggers a new initial term.

5.3.4. Reinstatement policy

- (77) SAP requires customers to pay both back maintenance and reinstatement fees (together, “reinstatement policy”). These apply in two situations: (i) if a customer did not subscribe to SAP M&S when buying an ERP licence but later wants to subscribe; (ii) if a customer discontinued SAP M&S but later decides to re-subscribe¹⁰⁸. The reinstatement policy is integrated, by default, in every customer agreement¹⁰⁹.
- (78) The back maintenance fee is the full amount of fees the customer would have paid had it been procuring M&S from SAP during the period it was off (e.g. if the customer was off SAP support for 18 months, it would have to pay 18 months’ worth of M&S fees).
- (79) In practice, SAP applies the full amount of back maintenance fees only to customers off support for 23 months or less while it applies a cap of 12 months to customers having been off support for 24 months or more¹¹⁰. In addition, a special promotion has been in force since August 2022 reducing the amount of back maintenance fees to what the customer would have paid for six months of M&S¹¹¹.
- (80) Reinstatement fees are a one-time payment of 5% of the back-maintenance value charged by SAP (on top of the back maintenance fees) that the customer must pay when it returns to SAP’s support services¹¹². In case of reinstatement, Article 8 of SAP’s Support Schedule, states that “*SAP will invoice Licensee the accrued SAP Standard Support Fees [in case of a subscription to Standard Support level] associated with such time period plus a reinstatement fee*”¹¹³. Accordingly, customers are required to pay both a back maintenance fee and a reinstatement fee.
- (81) The preliminary investigation has shown that SAP may waive back maintenance and reinstatement fees for commercial reasons, for instance, if the customer commits to

¹⁰⁶ See SAP’s submission of 21 June 2024.

¹⁰⁷ See, SAP’s customer’s reply to RFI 3 to customers, Q.B.A.2 and the minutes from the interviews with an SAP customer on 22 August 2024, paragraph 10, and a market participant on 26 July 2024, paragraph 14.

¹⁰⁸ A third, less common scenario in which SAP requests back maintenance payments is when customers decide to unpark their licences (here, the reinstatement fee is not required), e.g. ID5321-14567. See also Recital (75)(1).

¹⁰⁹ See the clause 8 of SAPs Standard Support Schedule.

¹¹⁰ See SAP’s Technical Clarification Submission from 21 June 2024, paragraph 123.

¹¹¹ See SAP’s reply to RFI 4 to SAP, Annex 1, page 2 – SAP’s Support Reinstatement Program.

¹¹² See SAP’s internal document ID5469.

¹¹³ See Article 8 of the Schedules which are publicly available under the following link: https://www.sap.com/belgique/about/trust-center/agreements/on-premise/product-use-and-support-terms.html?sort=latest_desc&tag=agreements:product-use-support-terms/on-premise-software/support-terms.

buying additional new products¹¹⁴. Moreover, in the context of SAP's cloud extension policy and in order to incentivise "*Winback*" (i.e. convince customers off SAP support to re-subscribe to SAP M&S), SAP offers customers the option to terminate their entire licence landscape and re-buy the right-sized licence-landscape¹¹⁵. In most of these cases, customers end up paying an equal or higher amount in licence fees on the primary market and, as a result, higher M&S fees.

- (82) When customers explore the possibility of switching to 3PMs, SAP, in communications to customers, reminds them of the financial consequences of returning to SAP support. SAP informs customers that reinstating SAP maintenance at a later stage would require paying all maintenance fees accumulated during the lapse, plus an additional reinstatement charge of 5% of the maintenance base at the time support was terminated, in line with SAP's current price list. The same full reinstatement would apply if the customer were to purchase any new SAP on-premises product in the future¹¹⁶. SAP's customers have also reported receiving oral warnings from SAP¹¹⁷.

5.4. Legal Assessment

5.4.1. Principles on the notion of abuse

- (83) Article 102 TFEU prohibits, as incompatible with the internal market, any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it, insofar as it may affect trade between Member States.
- (84) The fact that an undertaking holds a dominant position is not in itself contrary to EU competition rules. However, dominant undertakings have a special responsibility not to impair, by engaging in conduct falling outside the scope of competition on the merits, genuine undistorted competition in the internal market¹¹⁸.
- (85) It follows from the nature of the obligations imposed by Article 102 TFEU that, in specific circumstances, undertakings in a dominant position may be deprived of the right to adopt a course of conduct or take measures which are not in themselves abuses and which would even be unobjectionable if adopted by non-dominant undertakings¹¹⁹. The actual scope of the special responsibility imposed on a dominant undertaking must be considered in light of the specific circumstances of each case which show that competition has been weakened¹²⁰.
- (86) Furthermore, Article 102 TFEU is aimed not only at practices which may cause prejudice to consumers directly, but also at those which are detrimental to them through their impact on an effective competition structure¹²¹.

¹¹⁴ See SAP's internal document ID4964-29201.

¹¹⁵ See SAP's internal document ID5310-34526, paragraph 11.

¹¹⁶ See SAP's internal document ID5310-20203, page 7.

¹¹⁷ See the minutes from the interview with an SAP customer on 16 July 2024, paragraph 11.

¹¹⁸ Case C-413/14 P – *Intel v Commission*, EU:C:2017:632, paragraph 135; Case C-377/20 – *Servizio Elettrico Nazionale and Others*, EU:C:2022:379, paragraphs 73 to 74; Case C-680/20 – *Unilever Italia Mkt. Operations*, EU:C:2023:33, paragraph 38.

¹¹⁹ Case C-322/81 – *Michelin v Commission*, EU:C:1983:313, paragraph 57; Case T-111/96 – *ITT Promedia v Commission*, EU:T:1998:183, paragraph 139; Case T-301/04 – *Clearstream v Commission*, EU:T:2009:317, paragraph 133.

¹²⁰ Case C-52/09 – *TeliaSonera Sverige*, EU:C:2011:83, paragraph 84 and the case-law cited; Case T-612/17 – *Google Shopping*, EU:T:2021:763, paragraph 165.

¹²¹ Case C-95/04 P – *British Airways v Commission*, EU:C:2007:166, paragraph 106; Case C-6-72 – *Europemballage and Continental Can*, EU:C:1973:22, paragraph 26; Case T-612/17 – *Google Shopping*, EU:T:2021:763, paragraph 153; Case C-680/20 – *Unilever Italia Mkt. Operations*, EU:C:2023:33,

5.4.2. Exclusionary abuse

5.4.2.1. Principles

- (87) Article 102 TFEU prohibits different types of abuses by dominant undertakings, including abusive exclusionary conduct, i.e. conduct by dominant undertakings that distorts effective competition by threatening to exclude the dominant undertaking's actual or potential competitors.
- (88) In the absence of a specific analytical framework, a conduct may constitute an exclusionary abuse if it departs from competition on the merits and it is capable of producing exclusionary effects. The General Court, in the *Google Android* judgment, clarified that the exclusionary effects of an abuse characterise situations in which the conduct of the dominant undertaking can hamper or eliminate effective access by actual or potential competitors to markets or to their components. This is considered an abuse as it allows that undertaking to negatively influence, to its own advantage and to the detriment of consumers, the various parameters of competition, such as price, production, innovation, variety or quality of goods or services¹²².
- (89) Dominant undertakings can reasonably protect their own commercial interests, but they must do so by using means which fall within the scope of competition on the merits¹²³. Several factors can be considered to show that the conduct of a dominant undertaking departs from competition on the merits. In particular, the assessment should consider whether the conduct of the dominant undertaking prevents consumers from exercising their choice based on the merits of the products, including product quality¹²⁴.
- (90) To establish an infringement of Article 102 TFEU, it is not necessary to demonstrate that the abuse in question had actual anticompetitive effects on the markets concerned¹²⁵. It is sufficient to demonstrate that the abusive conduct of the dominant undertaking is at least capable of having exclusionary effects¹²⁶. However, these effects cannot be purely hypothetical¹²⁷.
- (91) For certain categories of conduct, the Union courts have developed a specific analytical framework which incorporates already the general principles of Article 102 TFEU. In these cases, it is not necessary to analyse separately whether the conduct departs from competition on the merits and whether it is capable of having exclusionary effects to establish that a conduct distorts effective competition. Such

paragraph 36; Case C-377/20 – *Servizio Elettrico Nazionale and Others*, EU:C:2022:379, paragraphs 40-48.

¹²² Case T-604/18, *Google Android*, EU:T:2022:541, paragraph 281.

¹²³ Case T-111/96, *ITT Promedia v Commission*, EU:T:1998:183, paragraph 138; C-377/20, *Servizio Elettrico Nazionale and Others*, EU:C:2022:379, paragraph 75; C-209/10, *Post Danmark*, EU:C:2012:172, paragraph 24 and the case-law cited therein. See also C-62/86, *Akzo v Commission*, EU:C:1991:286, paragraph 70 and C-202/07 P, *France Telecom v Commission*, EU:T:2009:214, paragraph 106, which refer to the concept of “competition on the basis of quality” and C-377/20, *Servizio Elettrico Nazionale and Others*, EU:C:2022:379, paragraph 85.

¹²⁴ See T-201/04, *Microsoft v Commission*, EU:T:2007:289, paragraphs 1046-1047, 1057-1058 and 1069-1070. See also T-65/98, *Van den Bergh Foods v Commission*, EU:T:2003:281, paragraphs 148, 152 and 157.

¹²⁵ Case C-680/20 – *Unilever Italia Mkt. Operations*, EU:C:2023:33, paragraph 41.

¹²⁶ Case C-52/09, *TeliaSonera Sverige*, EU:C:2011:83, paragraph 77; Case C-549/10 P, *Tomra and Others v Commission*, EU:C:2012:221, paragraph 68; Case C-377/20, *Servizio Elettrico Nazionale and Others*, EU:C:2022:379, paragraph 50.

¹²⁷ Case C-23/14, *Post Danmark*, EU:C:2015:651, paragraph 65; Case C-377/20, *Servizio Elettrico Nazionale and Others*, EU:C:2022:379, paragraph 98; Case C-680/20, *Unilever Italia Mkt Operations*, EU:C:2023:33, paragraph 42.

specific analytical framework applies for instance to exclusive dealing¹²⁸. Exclusive dealing includes various forms of obligation to purchase or sell all or most of a customer or a supplier's requirements from/to the dominant undertaking, or incentive schemes that are conditional on a customer or a supplier purchasing or selling all or most of their requirements from/to the dominant undertaking. Exclusive dealing can stem from arrangements creating a formal exclusivity requirement, or from arrangements which do not explicitly, but *de facto* amount to exclusivity requirements, or from a mix of the two. Exclusive dealing intrinsically departs from competition on the merits¹²⁹. It is presumed to be capable of having exclusionary effects¹³⁰.

5.4.2.2. Application to the present case

5.4.2.2.1. Exclusive dealing

- (92) In the Preliminary Assessment, the Commission considered that the first leg of the AoN policy and the extension of the initial term may be qualified as exclusive dealing. In essence, the first leg of the AoN policy requires SAP's customers to procure all their M&S for SAP OP ERP from SAP if they wish to take any M&S from SAP. The prohibition on partial termination of SAP M&S is a logical consequence of the AoN policy's application(i). SAP therefore denies customers the possibility of "*mixing and matching*" M&S from different providers¹³¹. In addition, the extension of the initial term further strengthens the first leg of the AoN policy and obliges customers to remain tied to SAP M&S, making any type of termination of SAP M&S practically impossible (see Recital (72)).
- (93) Under SAP's policies, customers are in principle free not to take any M&S from SAP at all, but the preliminary investigation showed that this choice is rarely taken, given that SAP M&S is essential for certain products, especially new software releases which benefit from upgrades and updates at the beginning of their lifecycle. In fact, customers who opt out from SAP M&S and switch entirely to a 3PM usually only own legacy SAP products or decide not use SAP OP ERP for their most strategic business functions¹³².
- (94) SAP's customers reported that they might need M&S from SAP (e.g. security patches, updates and upgrades) for certain new components of the software or for those which are critical for the business continuity¹³³. In these situations, the customers may wish to contract M&S from SAP only for those products. However, the AoN policy, reinforced by the extension of the initial term, prevents them from getting M&S for all other remaining products from 3PMs. SAP further influences the choice of its customers by sending threatening letters that highlight not only the risks of moving to a 3PM, but also the imposition of back maintenance and reinstatement fees.

¹²⁸ Case C-85/76, *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraphs 89- 90; C-413/14 P, *Intel v Commission*, EU:C:2017:632, paragraph 137; T-286/09 RENV, *Intel Corp. v Commission*, EU:T:2022:19, paragraph 124; C-680/20, *Unilever Italia Mkt Operations*, EU:C:2023:33, paragraph 46.

¹²⁹ Judgment of 9 September 2010, *Tomra Systems and Others v Commission*, T-155/06, EU:T:2010:370, paragraphs 209-210; and judgment of 19 January 2023, *Unilever Italia Mkt Operations*, C-680/20, EU:C:2023:33, paragraphs 46 and 49, regarding the "intrinsic" capacity of the conduct to restrict competition. See, relatedly, judgment of 13 February 1979, *Hoffmann-La Roche v Commission*, C-85/76, EU:C:1979:36, paragraph, 90 *in fine*.

¹³⁰ Judgment of 26 January 2022, *Intel v Commission*, T-286/09 RENV, EU:T:2022:19, paragraph 124.

¹³¹ See the minutes from the interview with an SAP customer on 2 October 2024, paragraphs 14-18.

¹³² See SAP's customers' replies to RFI 1 to customers, Q.D.2.31. See also the minutes from the interview with an SAP customer on 21 August 2024, paragraph 11.

¹³³ See the minutes from the interview with an SAP customer on 31 July 2024, paragraph 2 and email shared by an SAP customer.

- (95) Moreover, the preliminary investigation indicated that 3PMs are fully capable to meet a wide range of business requirements, demonstrating that customers could effectively rely on alternative M&S if given the freedom to choose. They often offer M&S that better corresponds to a customer needs or M&S at a lower price.
- (96) In practice, therefore, most SAP customers are contractually and *de facto* obliged to take all their M&S requirements for SAP's OP ERP licences from SAP. Once a customer chooses SAP M&S for one licence, it has to source its M&S requirements exclusively from SAP¹³⁴. 3PMs are prevented from providing their M&S to SAP's customers, as once customers choose SAP M&S for one product, they are locked into SAP M&S for all their SAP OP ERP products¹³⁵.
- (97) Given that both the first leg of the AoN policy and the extension of the initial term may be qualified as exclusive dealing, which may be reinforced by the reinstatement policy, the Commission preliminarily considered in its Preliminary Assessment, that, in the circumstances at hand, such conduct by SAP is intrinsically capable of having exclusionary effects.

5.4.2.2.2. General framework of analysis for exclusionary abuses under Article 102 TFEU

- (98) The Commission also preliminarily considered that the practices identified in Section 5.3 could be analysed under the general framework of analysis for exclusionary abuses of Article 102 TFEU: namely, that the Conduct (i) departs from competition on the merits and (ii) is capable of having exclusionary effects.
- (99) In the Preliminary Assessment, the Commission found that the AoN policy, reinforced by the extension of the initial term, forecloses 3PMs from opportunities to provide M&S for all or part of SAP's customers' software, restricts customer choice, and effectively locks customers into SAP M&S. The lock-in effect into SAP M&S is further reinforced by the reinstatement policy, which disincentivises customers from leaving SAP M&S. This burdens customers with unnecessary costs, and guarantees SAP a steady and predictable flow of M&S revenues. Such conduct does not constitute competition on the merits, as customers' reliance on SAP M&S relies on contractual restrictions rather than customer's choice, cost efficiency, service quality or innovation.
- (100) The preliminary investigation has provided strong evidence that SAP's policies are capable of effectively excluding actual or potential competitors, mainly because:
- (1) SAP has a longstanding relationship with its customers and continuous very high market shares in the secondary market for SAP OP ERP M&S (above 90%) while Rimini Street, Spinnaker and Support Revolution remain below 5%.
 - (2) The coverage of the contractual policies is substantial, given that they are included in all the M&S contracts between SAP and its customers, meaning that all SAP's customers on the M&S market are bound by these obligations.
 - (3) The policies do not have an expiry date. They are binding as long as the M&S agreement with SAP is in place and apply even to unused licences or licences for which SAP provides little or no M&S.
 - (4) 3PMs constitute a credible competitive threat in the sense that: (i) with some exceptions, SAP's ERP system is designed as an "open system" which enables

¹³⁴ See, by analogy, Case T-334/19, *Google and Alphabet v Commission* (Google AdSense for Search), EU:T:2024:634, paragraph 414.

¹³⁵ See in this regard Case T-334/19, *Google and Alphabet v Commission* (Google AdSense for Search), EU:T:2024:634, paragraphs 582-583.

3PMs on behalf of their customers to perform M&S on the SAP software¹³⁶, (ii) 3PMs can provide M&S at a much lower price and may provide M&S that better addresses customers' needs in terms of price and quality of the service (especially for legacy solutions, like R/3 or ECC)¹³⁷, and (iii) SAP itself considers 3PMs as a threat¹³⁸. Therefore, SAP closely monitors potential and actual losses of customers to 3PMs in order to take actions to prevent this switch¹³⁹, which reveals a strategy to exclude competitors in this aftermarket.

- (101) The policies at stake hinder the development of 3PMs as they significantly contribute to vendor lock-in on the market for the provision of SAP OP ERP M&S and prevent, or highly disincentivise, customers from switching all or part of their M&S to 3PMs:
- (1) The first leg of the AoN policy, reinforced by the extension of the initial term, prevents customers from switching all or part of their licences to a 3PM. SAP's customers reported that the AoN makes it very difficult to switch to cheaper providers¹⁴⁰. One customer noted that partial termination was not allowed, which they described as the main obstacle to engaging an alternative provider, especially given their mix of old and new products and the need to retain updates for the newer ones¹⁴¹. Furthermore, SAP in its internal documents confirmed it as having an exclusionary intent¹⁴².
 - (2) SAP's termination policies exclude the option of partial termination of M&S unless the customer also terminates the product licences acquired in perpetuity (see Recital (72)). This means that SAP's customers cannot terminate M&S for specific licences and switch to a 3PM for those parts.
 - (3) Because of the initial term being triggered by every new licence purchase, neither full termination of all M&S nor pure partial termination (see Recital (72)) would be in fact possible as most SAP customers acquire new licences regularly. This would therefore continuously prevent them from switching to a 3PM.
 - (4) The back maintenance and reinstatement fees enable SAP to discourage customers from switching to 3PMs and to safeguard support revenue, as outlined in an internal email where SAP explains that the fees are clearly meant to dissuade customers from believing they can leave SAP and come back without paying¹⁴³.
- (102) Based on the above, the Commission preliminarily concluded that SAP's practices depart from competition on the merits and are capable of excluding actual and potential competitors.

5.4.3. *Exploitative abuse*

5.4.3.1. Principles

- (103) Under Article 102(a) TFEU, the direct or indirect imposition by an undertaking in a dominant position of unfair trading conditions constitutes an abuse of that position.

¹³⁶ See SAP's reply to RFI to ERP vendors, Q.7.

¹³⁷ See, SAP's internal document ID5309-3401 explaining the lower prices of 3PMs. See also the minutes from the interview with an SAP customer on 2 October 2024, paragraphs 14-18.

¹³⁸ See SAP's internal document ID4915-16504, page 27.

¹³⁹ See SAP's internal documents ID5309-3401, ID5310-7903, ID5310-21649.

¹⁴⁰ See SAP's customer's reply to RFI 3 to customers, Q. B.A.2.

¹⁴¹ See SAP's customer's reply to RFI 1 to customers, Q.27.1.

¹⁴² See ID5310-6451 – SAP's internal email 05.10.2020-, ID5310-6768 – SAP's internal email 18.12.2020, SAP's internal email 18.12.2020 and SAP's internal email 01.12.2020.

¹⁴³ See ID5321-2355 SAP internal email from 8 June 2019.

- (104) Trading conditions are qualified as unfair under Article 102(a) TFEU if they are:
- (1) imposed by a dominant undertaking on its trading partners¹⁴⁴;
 - (2) unfavourable or detrimental to the interests of that undertaking's trading partners or of third parties, including consumers, that are affected by the trading conditions imposed by the dominant undertaking¹⁴⁵; and
 - (3) not necessary for the achievement of a legitimate objective or, in any event, not proportionate for that purpose, in that they go beyond what is strictly necessary to achieve it¹⁴⁶.
- (105) A finding that a dominant undertaking imposes unfair trading conditions is sufficient to establish an abuse of a dominant position pursuant to Article 102(a) TFEU. It is sufficient that the trading conditions in question affect parameters of competition such as price, choice, quality or innovation to the detriment of the interests of the dominant undertaking's trading partners or third parties, including consumers.

5.4.3.2. Application to the present case

- (106) In the Preliminary Assessment, the Commission took the view that both legs of the AoN policy, the inability to terminate shelfware together with the SAP M&S termination policies, the extension of the initial term, and the reinstatement policy constitute exploitative conduct that can be qualified as unfair trading conditions under Article 102(a) TFEU.

5.4.3.2.1. SAP unilaterally imposes the policies and the implementation practices on its customers

- (107) The preliminary investigation has shown that SAP unilaterally defines the GTCs, the Support Schedules and other contractual policies and imposes them on its customers. These are contracts of adhesion, pre-determined by SAP and, as a rule, they are not open for negotiation. Therefore, customers have no other choice than accepting and abiding by SAP's rules in order to purchase M&S from SAP. SAP's customers have widely reported this unilateral imposition of conditions and the significant imbalance in the relationship with SAP during the preliminary investigation¹⁴⁷.

5.4.3.2.2. The conditions are unfavourable or detrimental to the interests of SAP's trading partners

- (108) The preliminary investigation has shown that SAP's practices are unfavourable and/or detrimental to SAP's trading partners, i.e. SAP's customers, as they do not allow them to freely choose alternative M&S providers, which might offer lower prices and/or better quality. Furthermore, SAP's conduct prevents customers from reducing M&S costs associated with unused licences or services (for instance, paying Enterprise Support fees even when only Standard Support is needed or paying M&S for shelfware), which leads to customers facing unnecessary costs for M&S.

¹⁴⁴ For the imposition criterion see Case C-127/73, *BRT v SABAM*, EU:C:1974:25, paragraph 15; Case C - 247/86, *Alsattel v Novasam*, EU:1988:469, paragraph 10.

¹⁴⁵ See to that effect Case C-27/76, *United Brands*, EU:C:1978:22, paragraphs 156-159. See also Case C-66/86, *Ahmed Saeed Flugreisen and Others v Zentrale zur Bekämpfung unlauteren Wettbewerbs*, EU:C:1989:140, paragraphs 42 and 46.

¹⁴⁶ Case T-139/98, *AAMS*, EU:T:2001:272, paragraph 79 ; see also Case COMP/AT.40437 – *Apple - App Store Practices (music streaming)*, recital 529; Case COMP/AT.40684 *Facebook Marketplace*, recitals 1270.

¹⁴⁷ See SAP's customers' replies to RFI 3 to customers, Q.B.A.1.

- (109) First, the first leg of the AoN policy prevents customers from partially switching to a 3PM and forces them to pay SAP M&S for their entire landscape(s). Many customers raised concerns about this policy, considering in particular that it deprives customers of the flexibility to adapt the M&S to their business needs and forces customers to choose SAP M&S at higher prices than 3PMs even for unused licences, non-critical licences or for licences that are outdated and thus no longer supported by SAP¹⁴⁸. This leads to unnecessary costs for SAP's customers¹⁴⁹.
- (110) Second, the second leg of the AoN policy also deprives customers of the choice to adapt their level of M&S to their needs by preventing them from moving part of their M&S to a lower (and cheaper) level of SAP M&S or to 3PMs M&S, e.g. for older or less essential software. Customers reported that this policy is highly disadvantageous for them, especially considering that many commonly used SAP OP products are in a late stage of their lifecycle, and therefore are not receiving continued updating. A large number of users still operate SAP ECC 6.0 as a legacy system, where Standard Support is usually enough given the minimal ongoing development. Nevertheless, even when enhanced support (Enterprise or Extended) is necessary for just part of their SAP products, SAP obliges customers to apply that higher support level across their entire licence portfolio, effectively upgrading everything although only a small fraction, around 20%, actually needs it¹⁵⁰. Therefore, the customers cannot reduce their costs by moving lower-priority licences to a more economical support option¹⁵¹. Therefore, this policy benefits SAP exclusively and disadvantages SAP's customers, as it increases the unnecessary costs for SAP's customers.
- (111) Third, because of the AoN policy and SAP M&S termination policies, it is generally not possible to terminate M&S for shelfware, for which customers are required to pay annual fees¹⁵² unless, as explained by an SAP's customer, the termination of support for certain licences happens alongside a new deal that ensures SAP's revenue continues to increase¹⁵³. In this context, an SAP customer reported that SAP uses the fact that customers have shelfware to try and force them to purchase S/4HANA licences or buy new products in the cloud¹⁵⁴. Even when downsizing or divesting parts of the business, SAP's customers explained that they cannot simply cancel licences. Partial termination is only allowed on a one-for-one basis, meaning the customer must either buy the same number of new licences to offset the termination or start a cloud migration of equivalent annual value^{155,156}. Annual CPI increases further worsen the situation, as M&S fees for shelfware continue to rise despite the licences remaining unused¹⁵⁷. Therefore, the AoN policy and the termination policies benefit SAP exclusively and disadvantage SAP's customers, as they further increase the unnecessary costs for SAP's customers with shelfware.

¹⁴⁸ See the minutes from the interview with a market participant on 9 September 2024, paragraph 9 and 15, and SAP's customer's reply to RFI 3 to customers, Q.B.D.2.

¹⁴⁹ See SAP's customer's reply to RFI 3 to customers, Q.B.E.3 and SAP's customer's reply to RFI 3 to customers, Q.C.E.3.

¹⁵⁰ See SAP's customer's reply to RFI 3 to customers, Q.B.E.3.

¹⁵¹ See SAP's customer's reply to RFI 3 to customers, Q.B.E.3.

¹⁵² See the minutes from the interview with an SAP customer on 22 August 2024, paragraph 15.

¹⁵³ See SAP's customer's reply to RFI 3 to customers, Q.B.E.5.

¹⁵⁴ See the minutes from the interview with an SAP customer on 22 August 2024, paragraph 17.

¹⁵⁵ See the minutes from the interview with an SAP customer on 15 November 2024, paragraph 21: the licences of divested companies were not transferred and therefore became a shelfware.

¹⁵⁶ See the minutes from the interview with an SAP customer from 18 July 2024.

¹⁵⁷ See the minutes from the interview with an SAP customer on 22 August 2024, paragraph 15.

- (112) Fourth, the extension of the initial term of every user licence following the purchase of new user licences corresponding to the same product also prevents SAP's customers from terminating and switching their M&S provider for all or part of their licences¹⁵⁸. Due to this policy, the existing termination policies which could result in a change of M&S provider - full termination of all M&S and pure partial termination - are rendered ineffective, given that customers periodically acquire new licences, which reinitiates the initial term¹⁵⁹. Therefore, this policy benefits SAP exclusively and disadvantages SAP's customers, as it further increases customer lock-in to SAP M&S and leads to unnecessary costs of M&S for SAP's customers.
- (113) Finally, the reinstatement policy excessively penalises customers wishing to return to or reactivate SAP M&S after a period off support, and therefore increases the lock-in effect by making it too risky for customers to contract with 3PMs. Customers would pay SAP more if they left SAP M&S (for less than 24 months) and later returned to it than if they had remained, despite receiving no service while being off SAP support¹⁶⁰. Several of SAP's customers¹⁶¹ perceive this as a way for SAP to lock-in customers and maintain SAP's steady flow of M&S revenues.
- 5.4.3.2.3. SAP's practices are not necessary for the achievement of a legitimate objective or, in any event, not proportionate for that purpose
- (114) The preliminary investigation does not support a finding that the practices are necessary and proportionate to achieve a legitimate objective.
- (115) As regards the AoN policy, SAP claims that this policy is necessary to ensure the proper functioning of the software and to prevent liability concerns and free-riding in case of procurement of SAP M&S alongside 3PM services within the same SAP landscape. In particular, SAP argues that:
- (1) the application of the AoN policy is necessary within a landscape, as parallel interventions (from SAP and 3PMs) resulting from the coexistence of SAP M&S and 3PM M&S would jeopardise the performance and proper functioning of the software;
 - (2) combining its M&S with those of a 3PM creates liability risks, as technical issues arising in such a scenario would make it difficult to determine which provider is responsible;
 - (3) it would be exposed to free riding on its M&S in case of coexistence of SAP M&S and 3PM M&S within an integrated landscape. According to SAP, within a landscape, M&S has to be provided for all licences, even when part of the landscape is maintained by a 3PM. As a result, SAP would not be entitled to remuneration for that portion of M&S, allowing customers to free ride on SAP's services¹⁶². In addition, SAP claims that it cannot restrict M&S and customer's access to the SAP Support Portal¹⁶³ to specific parts of the landscape (for instance, only for certain products or user licences)¹⁶⁴.

¹⁵⁸ See the minutes from the interview with a market participant on 9 September 2024, paragraph 16.

¹⁵⁹ See the minutes from the interview with an SAP customer on 22 August 2024, paragraph 10.

¹⁶⁰ SAP's customer's reply to RFI 1 to customers, Q.D.1.30.

¹⁶¹ SAP's customers' replies to RFI 3 to customers, Q.B.F.3 and to RFI to customers of 11 December 2023 (RFI 4 to customers), Q.C.F.3.

¹⁶² See SAP's submission on 26 July 2024, paragraph 61.

¹⁶³ The SAP Support Portal is SAP's official online platform where customers can access support-related services and resources. The portal is available to SAP's customers with valid M&S contracts.

¹⁶⁴ See SAP's submission on 26 July 2024, paragraphs 56, 62 and 68.

- (116) The preliminary investigation has revealed that SAP's arguments do not hold, for the following reasons:
- (1) First, the preliminary investigation showed that M&S can be handled separately by 3PMs for certain SAP solutions¹⁶⁵, such as, for instance, the HR module¹⁶⁶, CRM¹⁶⁷, SAP Business all-in-one, SAP Business Objects¹⁶⁸, SYBASE, SAP Business One, SAP Hana database¹⁶⁹. Furthermore, there are situations where SAP products are bundled in one single landscape only for business reasons rather than for technical necessity, which suggests that, in practice, M&S for these products could have been handled by different providers. For instance, legacy solutions, such as ECC, may be bundled into a single landscape with the newer solution, such as S/4HANA,¹⁷⁰ primarily for pricing considerations, rather than due to any technical integration requirement. By bundling the products, SAP precludes the possibility that M&S for these products could be sold separated and managed by different providers. SAP's customers, competitors, and independent ERP experts widely agree that bundling the legacy solutions such as the ECC and/or R/3 within a single landscape with S/4HANA for pricing purposes does not imply that M&S must also be bundled. In fact, they consider that separating M&S should be permissible, especially for legacy products, where continued investment and innovation by SAP are not provided anymore or are significantly limited¹⁷¹. They also consider that certain other SAP solutions, which are not central to core business operations and are not tightly integrated with the rest of the landscape (such as for example HR with Supply Chain Management modules), could be separated and their M&S managed by 3PMs¹⁷².
 - (2) Second, as for the alleged difficulties in assigning liability in cases of parallel interventions, the preliminary investigation has shown that there are already instances where SAP's software coexists with software and databases from third parties without any reported liability concerns¹⁷³. In contrast, market participants explained that, when a customer relies on more than one M&S provider, those providers cooperate to resolve issues affecting integrated modules. Customers face such situations regularly and having two M&S providers does not hinder their ability to resolve technical incidents. This demonstrates that such cooperation is already a reality and that practical mechanisms exist for various M&S providers to work together. Market participants have also confirmed that liability concerns would not even arise in the case of separate landscapes, since

¹⁶⁵ See the minutes from the interview with an SAP customer on 9 September 2024, paragraph 13. See also the minutes from the interview with a market participant on 3 July 2024, paragraph 3.

¹⁶⁶ See SAP's responses to the Commission's questions on SAP's submission of 21 June 2024, page 5.

¹⁶⁷ See the minutes from the interview with a market participant on 3 July 2024, paragraphs 8-9 and with SAP's customer on 12 September 2024, paragraph 17.

¹⁶⁸ See the minutes from the interview with a market participant on 3 July 2024, paragraph 8.

¹⁶⁹ See SAP's reply to RFI 4 to SAP, Annex 3 – Mixed Support Landscape, page 4.

¹⁷⁰ See SAP's internal document ID005386-030389.

¹⁷¹ See the minutes from the interview with an SAP customer on 2 October 2024, paragraphs 15-18. See also minutes from the interview with an SAP customer on 4 September 2024, paragraph 3, the minutes from the interview with a market participant on 3 July, paragraphs 3, 8, 12, 13, and the minutes from the interview with an SAP customer on 12 September 2024, paragraph 13.

¹⁷² See the minutes from the interview with a market participant on 9 September 2024, paragraphs 6-7. See also market participant's reply on 25 November 2024, paragraphs 1-2 and the minutes from the interview with an SAP customer on 15 November 2024, paragraphs 9-12.

¹⁷³ See the minutes from the interview with a market participant on 9 September 2024, paragraph 7.

incidents occurring in one landscape generally do not impact another¹⁷⁴. Finally, to prevent or mitigate the liability concerns in both situations, integrated or independent systems, SAP could contractually limit its responsibility in case of parallel interventions by 3PMs¹⁷⁵ and collaborate with 3PMs to address issues affecting its products, particularly those that are integrated.

- (3) Third, as regards free-riding, the preliminary investigation revealed that free-riding on M&S is unlikely, especially for products that are no longer supported, and could be prevented or mitigated by SAP through technical (for instance, by restricting access to its support portal¹⁷⁶) and legal means such as contractual provisions or legal actions for breach of intellectual property rights. In practice, the unsupported and supported products already receive different levels of support, even when they are placed within the same landscape¹⁷⁷. In addition, SAP has tools in place to monitor effective usage of licences¹⁷⁸, especially via its audits and customer self-declarations¹⁷⁹. Moreover, the preliminary investigation showed that upgrades and updates are released per product rather than for entire landscapes, and SAP can check the right usage of its support notes and security patches¹⁸⁰. One market participant explained that the technical integration of different SAP OP ERP versions does not, in itself, prevent multiple providers from delivering M&S. The products are distinct, as each has separate installation numbers and its own codebase. Therefore, a patch developed for one version cannot typically be applied to another, for example, an ECC patch cannot be used for S/4HANA¹⁸¹. Moreover, one of the customers noted that access to patches or upgrades is not technically restricted, but such downloads are of no practical use unless the customer has purchased the corresponding M&S licence. In other words, free-riding is not possible¹⁸². Regarding free-riding specifically on different levels of support within the same landscape, one of SAP's customers noted that if an issue arises, SAP is able to determine whether it relates to a product covered by higher or lower level of support¹⁸³. Therefore, it is unlikely that customers would free-ride on the different levels of support within a landscape. That is even more unlikely regarding free riding on different levels of M&S for different landscapes. In that context, SAP explained that it is possible for a customer to have different levels of M&S for different landscapes (although this may entail additional costs)¹⁸⁴. However, this possibility is rarely explained to customers and the preliminary investigation revealed that SAP

¹⁷⁴ See the minutes from the interview from market participant of 3 July 2024, paragraph 10. See also the minutes from the interview with a market participant on 9 September 2024, paragraph 7 and the market participant's reply on 25 November 2024, paragraph 2.

¹⁷⁵ See the minutes from the interview with an SAP customer of 4 September 2024, paragraph 4.

¹⁷⁶ See minutes from interviews with an SAP customer on 22 August 2024, paragraphs 23-27, with a market participant on 9 September 2024, paragraphs 3-4, or with an SAP customer on 21 August 2024, paragraphs 23-26.

¹⁷⁷ See the minutes from the interview with a market participant on 9 September 2024, paragraph 20.

¹⁷⁸ See SAP internal document ID5385-82848.

¹⁷⁹ Self-declarations on licence usage are typically prepared with the help of licence management software or, alternatively, by outsourcing the task to third parties who identify unused licences. See minutes from interview with a market participant on 26 August 2024, paragraph 18.

¹⁸⁰ See minutes from the interviews with an SAP customer on 22 August 2024, paragraph 12. See also the minutes from the interview with a market participant on 9 September 2024, paragraph 5.

¹⁸¹ See the minutes from the interview with a market participant on 3 July 2024, paragraph 3.

¹⁸² See the minutes from the interview with an SAP customer on 12 September 2024, paragraph 20.

¹⁸³ See the minutes from the interview with an SAP customer on 21 August 2024, paragraph 21.

¹⁸⁴ See SAP's submission of 5 and 26 July 2024, Section 2 and the following paragraphs.

applies the AoN policy even across different landscapes¹⁸⁵, absent any technical justification. Finally, the fact that 3PMs offer M&S in addition to those provided by SAP clearly demonstrates that SAP M&S for one solution cannot be applied across others¹⁸⁶. Otherwise, SAP's customers would have no incentive to engage 3PMs for M&S of legacy solutions, as they could simply rely on the M&S already provided by SAP for newer products, thus potentially free riding on those services.

- (117) With respect to the impossibility to terminate M&S for shelfware, SAP argues that: (i) customers acquire shelfware on purpose in view of business expansion or to obtain volume discounts; (ii) customers must pay M&S for shelfware as they may start using it at any time; (iii) monitoring the actual use of licences is burdensome; and (iv) customers already have options to get rid of shelfware (for instance, benefiting from the extension policies and acquiring new OP or cloud licences).
- (118) However, the preliminary investigation revealed that SAP's arguments should be rejected. In particular:
- (1) SAP's customers accumulate shelfware in justified and/or unforeseen situations, such as, for instance, in case of downsizing of personnel, divestiture, decommissioning of a product, and other objectively justified situations¹⁸⁷.
 - (2) In such cases, it is unlikely that the licences becoming shelfware would be used again. SAP's customers in these situations are therefore paying M&S fees for licences which will remain unused indefinitely.
 - (3) SAP is fully aware of the scope of its customers' shelfware¹⁸⁸, as it monitors the usage of those licences too.
 - (4) As explained above in Section 5.3.2, SAP termination policies do not offer customers the possibility to reduce M&S costs without renouncing the licence usage rights (see Recital (73)). Instead, if customers want to terminate shelfware, they must buy new products (see the extension policies in Recital (72)). Numerous customers reported that the only way they have found to address shelfware is by purchasing additional licences, which results in maintained, or increased M&S expenses¹⁸⁹. SAP's termination policies and reasoning appear inconsistent, as the purchase of new licences effectively also constitutes a form of partial termination of a part of the overall customer's licences, i.e. the unused licences. In practice, it amounts to exchanging unused licences for new, functional ones (which the customer may not necessarily need). This illustrates that the transaction is purely commercial in nature and not subject to any

¹⁸⁵ Customers were prevented from independently terminating M&S for products placed on separate landscapes – see the minutes from the interview with an SAP customer of 12 September 2024, paragraph 8; See also SAP's internal e-mail exchange in December 2020, ID5310-6768. See also SAP's internal e-mail exchange in March 2022, ID5386-30389.

¹⁸⁶ See the minutes from the interview with an SAP customer on 4 September 2024: Customers may purchase M&S from 3PM in addition to SAP M&S, because SAP does not deliver sufficient regulatory updates. See also the minutes from the interview with a market participant on 9 September 2024, paragraph 15 or with a market participant on 3 July 2024, paragraph 8.

¹⁸⁷ See, in particular, the minutes from the interviews with an SAP customer on 18 July 2024, paragraph 6, an SAP customer on 4 September 2024, paragraph 2, an SAP customer on 22 August 2024, paragraph 15, an SAP customer on 15 November 2024, paragraph 18 and an SAP customer on 12 September 2024, paragraph 18.

¹⁸⁸ See SAP's internal email from 8 April 2015, ID4964-9377.

¹⁸⁹ See the minutes from the interview with an SAP customer on 4 September 2024, paragraph 2.

technical constraints. This means that SAP's customers should be able to terminate shelfware.

- (119) As regards the reinstatement policy, SAP argues that the fees are justified because (i) when returning to SAP, customers have access to the accumulated maintenance and releases made available during the off-support period; and (ii) it prevents free riding by customers, who could opportunistically leave SAP M&S and return.
- (120) With respect to the first argument, the preliminary investigation revealed that there is no direct connection between the additional costs generated by the reintegration of the customer into SAP's support and the amounts charged by SAP.
- (1) On the one hand, numerous market participants consider that SAP's current reinstatement policy is not justified, as SAP does not provide any M&S during off-support period¹⁹⁰; does not assist the customer with installing patches or upgrades that were missed; and refuses to fix any issue deriving from the interventions made by customers during the off-support period to customise the software to their needs¹⁹¹. It is also worth mentioning that SAP mainstream maintenance for R3 and ECC will end in 2027¹⁹², hence, in the near future SAP's customers would also not receive any added value for legacy products if they would reinstate them.
 - (2) On the other hand, SAP applies the reinstatement policy inconsistently by applying higher fees to customers who have been off support for less than 24 months, while charging lower fees to those off support for more than 24 months¹⁹³. This policy is contradictory, as systems are likely to be more outdated and/or more customised - and therefore presumably more costly to update - the longer a customer remains without SAP M&S.
 - (3) In addition, the preliminary investigation further showed that SAP may also waive these fees, and that it grants concessions on a discretionary basis, for commercial reasons. For instance, when it is informed about customers considering a switch to a 3PM or when a customer commits to buying additional products, providing SAP with additional revenues for the future¹⁹⁴.
- (121) With respect to SAP's second argument, about its customers behaving opportunistically by free riding on SAP's updates and innovation in the absence of the reinstatement policy, one of SAP's internal documents reveals that, in comparison with 3PMs, SAP's M&S provides little beyond the basic updates for its installed-base customers, with no real innovation being delivered¹⁹⁵. This indicates that SAP's customers are not obtaining significant innovative value without paying. Rather, they

¹⁹⁰ Off-support period means (i) for licences previously covered under maintenance and support from SAP, the period between the termination date of the maintenance and support contract with SAP (typically at the end of a calendar year) and the start date of the new maintenance and support contract with SAP, and (ii) for licences initially purchased without maintenance and support from SAP, the period from the purchase date of the licence.

¹⁹¹ See SAP's customer's reply to RFI from 16 June 2025 as part of the informal market test. See also market participant's reply on 17 October 2024, the minutes from the interview with a market participant on 3 July 2024, paragraph 16, the minutes from the interview with a market participant on 9 September 2024, paragraph 21, the minutes from the interview with a market participant on 26 August 2024, paragraphs 9 and 24 (as confirmed by SAP's customer in their email from 31 July 2025), and the minutes from the interview with a market participant on 15 November 2014, paragraph 25.

¹⁹² See the minutes from the interview with a market participant on 9 September 2024, paragraph 23.

¹⁹³ See SAP's Technical Clarification submission from 21 June 2024, pages 23 and 24.

¹⁹⁴ See minutes from the interview with a market participant on 11 September 2024, paragraph 10. See also Recital (81).

¹⁹⁵ See SAP's internal documents ID5310-10321.

are only receiving limited maintenance services that SAP itself provides at a reduced scope. Therefore, the concerns about free riding in the absence of the reinstatement fees are largely unfounded. Moreover, SAP's customers confirmed that, due to practical considerations - such as business continuity, contractual, financial, technical and timing constraints - it is commercially unrealistic to move in and out of SAP M&S solely to benefit from the latest upgrades and software developments. SAP also did not provide any evidence supporting the presence of a concrete risks in this respect or any real examples of customers' opportunistic behaviour from the past.

- (122) Based on the above, the Commission preliminarily concluded that SAP's practices are not necessary for the achievement of any legitimate objective nor proportionate.

5.4.3.3. Conclusion on exploitative abuse

- (123) On the basis of the above, the Commission preliminarily concluded that SAP's Conduct constitutes an exploitative abuse of a dominant position as they are imposed on customers, detrimental for their interests and not proportionate nor necessary for the achievement of any legitimate objective.

5.5. No objective justification

- (124) From the evidence gathered during the preliminary investigation, the Commission preliminarily concluded that SAP's Conduct constitutes commercial decisions that could not be objectively justified based on legal or technical criteria¹⁹⁶. SAP's arguments concerning objective justifications are analysed in detail in Section 5.4.3.2.3 above.

5.6. Substantial part of the internal market and effect on trade between Member States

- (125) In the Preliminary Assessment, the Commission found that the market in which SAP holds a dominant position and in which the Conduct took place is at least EEA-wide, if not global (see Section 5.1.2.2 above). The Conduct has thus been taking place in a substantial part of the internal market.
- (126) In addition, the Conduct has an appreciable effect on trade between Member States as SAP's economic activities relate to software services for professional use which are, by their very nature, cross-border in scope. Moreover, SAP's Conduct affects the competitive structure of the internal market by eliminating or threatening to eliminate competitors operating within the territory of the EEA as the Conduct has been implemented in the territories of all Contracting Parties to the EEA Agreement.

5.7. Conclusions on presence of an abuse

- (127) In view of the considerations summarised in Sections 5.4 and 5.6, the Commission reached the preliminary view that the SAP's Conduct is capable of producing exclusionary and/or exploitative effects infringing Article 102 TFEU and Article 54 of the EEA Agreement.

6. PROPOSED COMMITMENTS

6.1. The Initial Commitments

- (128) On 31 October 2025, SAP submitted the Initial Commitments. The Initial Commitments contained measures that sought to remedy the concerns identified with regard to all four limbs of the Conduct.

¹⁹⁶ Case T-671/19. *Qualcomm, Inc. v Commission*, EU:T:2024:626, paragraph 599.

6.1.1. *The All-or-Nothing policy and the inability for SAP's customers to partially terminate M&S for shelfware*

6.1.1.1. Possibility to split landscapes

- (129) SAP proposed to explain how customers can split their SAP landscape into several Commercial Installations¹⁹⁷. SAP would clarify that customers would have the option to have different SAP support levels, different M&S providers, or terminate M&S for their Commercial Installations¹⁹⁸.
- (130) SAP proposed to clarify the types of products or installations which SAP considers are not technically integrated and for which splitting an SAP landscape should not usually be an issue, ensuring that each resulting Commercial Installation remains a consistent entity capable of independently operating business functions, with a complete alignment of licences and technical systems. To assist customers in determining whether their SAP landscapes can be split, SAP proposed to provide¹⁹⁹:
- (1) a non-exhaustive list of products or installations that are not tightly integrated and thus suitable for separation²⁰⁰; and
 - (2) non-binding guidelines as to what SAP usually considers to be technically integrated systems²⁰¹.
- (131) SAP confirmed that the splitting of a landscape or terminating SAP M&S for a Commercial Installation would not trigger the recalculation of the customer's maintenance base²⁰².
- (132) SAP proposed that the requests to split an SAP landscape would be treated within six months of the request. Provided that all conditions would be met and confirmed by SAP, such split would come into effect on the next January 1st, following the end of the six-month period²⁰³.

6.1.1.2. Wider prevalence of Single Metric Contracts

- (133) SAP further proposed to make Single Metric Contracts (see Recital (75)(2)) more prevalent by making good faith proposals to customers who request such contracts and where the fees payable under the contract are more than EUR 500 000 at the time of contract closing. Previously, such contracts were offered on an exceptional basis to customers whose licence fee surpassed a specified threshold at the time of contract execution, which would not be lower than EUR 1 million. In case of underutilisation under a Single Metric Contract, SAP would reduce the maintenance base used to calculate SAP M&S fees up to a maximum of 10% per year of the SAP M&S fees²⁰⁴.

¹⁹⁷ For the purposes of the Initial Commitments, "Commercial Installation" means a set of SAP software solutions and associated licences, which is installed on a technical landscape that comprises at least one production system and one corresponding non-production system (i.e. a development system), as well as technical components, such as databases, operating systems, and other required components. Each Commercial Installation is identified by its own installation number. A customer's SAP OP ERP landscape (i.e. the entirety of SAP OP ERP software purchased by a customer) can consist of one or more Commercial Installations, each with a distinct installation number.

¹⁹⁸ Initial Commitments, paragraph 8.

¹⁹⁹ Initial Commitments, paragraph 11.

²⁰⁰ Annex 2 to Initial Commitments.

²⁰¹ Annex 3 to Initial Commitments.

²⁰² Initial Commitments, paragraph 14.

²⁰³ Initial Commitments, paragraph 15.

²⁰⁴ Initial Commitments, paragraphs 22-23.

6.1.1.3. More transparent partial termination policies

- (134) SAP proposed to make its policies for partial terminations more transparent to customers, namely via more visible links on its website and less ambiguous wording²⁰⁵.

6.1.2. Clarifications as regards the initial term of licences

- (135) SAP proposed to clarify that (i) the initial term for M&S does not restart at every additional licence purchase – whether these are additional licences for previously licensed software products or new products, and (ii) a Commercial Installation split does not trigger a new initial term²⁰⁶.

6.1.3. Waiving the reinstatement fee and introduction of a cap on back maintenance fees

- (136) SAP proposed to fully waive the reinstatement fee and introduce a cap on the back maintenance fee²⁰⁷. Payment of the back maintenance fee would be limited to the lower of (i) 50% of the maintenance fees that would have been due during the off-support period or (ii) six months' worth of maintenance fees.
- (137) Additionally, SAP proposed to fully waive the back maintenance fee for customers reinstating support for outdated "dedicated licences"²⁰⁸.

6.1.4. Proposals for the implementation of the Commitments

- (138) To implement the Initial Commitments, SAP proposed to (i) update the relevant policies and contracts within three months of the Effective Date²⁰⁹, (ii) communicate the changes to customers and relevant stakeholders²¹⁰ within five business days of the Effective Date and (iii) train its employees within six months of the Effective Date²¹¹.
- (139) SAP proposed the Initial Commitments would remain in force for a period of 10 years starting from the Effective Date and would apply to all customers worldwide²¹².
- (140) SAP offered that an independent monitoring trustee would monitor its compliance with the Initial Commitments throughout their duration ("Monitoring Trustee")²¹³.
- (141) SAP also proposed a non-circumvention clause²¹⁴, a non-retaliation clause²¹⁵ and a review clause²¹⁶.

6.2. Commission Notice Pursuant to Article 27(4)

- (142) Following the publication on 17 November May 2025 of the Article 27(4) Notice, the Commission received 42 responses from third parties (individually called a "Respondent" and together the "Respondents"), consisting of competitors, SAP user

²⁰⁵ Initial Commitments, paragraphs 19-20.

²⁰⁶ Initial Commitments, paragraphs 17-18.

²⁰⁷ Initial Commitments, paragraphs 4-5.

²⁰⁸ Annex 1 to Initial Commitments contains the list of SAP's outdated products. This list would be updated at least once per year to reflect the evolution of SAP's product portfolio. For the purposes of the Initial Commitments, "dedicated licence" means a licence for a specific SAP product version or release, as opposed to a cross-product version or release licence which provides access to multiple SAP product versions or releases.

²⁰⁹ "Effective Date" means the date upon which SAP would receive formal notification of this Decision by which the Commission makes the commitments binding on SAP.

²¹⁰ Annex 5 to Initial Commitments.

²¹¹ Initial Commitments, paragraph 25.

²¹² Initial Commitments, paragraphs 45-46.

²¹³ Initial Commitments, paragraphs 26-42.

²¹⁴ Initial Commitments, paragraph 43.

²¹⁵ Initial Commitments, paragraph 44.

²¹⁶ Initial Commitments, paragraph 48.

associations and customers, providing feedback on the Initial Commitments (the “Market Test”).

- (143) The Respondents generally welcomed a commitment solution in this case. However, they also raised certain issues regarding specific aspects of the Initial Commitments. The Commission assessed the Initial Commitments in light of the main observations submitted by the Respondents in the Market Test (see Section 6.3). In response to the observations received pursuant to the Article 27(4) Notice, SAP submitted the Final Commitments (see Section 6.4), which the Commission assesses in Section 6.

6.3. Assessment of the Initial Commitments in light of the comments of Respondents to the Market Test

6.3.1. Possibility to split landscapes

- (144) Overall, Respondents welcomed the possibility for customers to split their SAP landscapes as they considered that this offers more flexibility as regards customers’ choice of M&S level and providers. In turn, this would allow them to reduce unnecessary costs as customers could opt to no longer subscribe to M&S or to a lower level of M&S for Commercial Installations that are older or for which less M&S is needed. Respondents remarked that it should be sufficiently clear that customers have discretion to request such a split.
- (145) However, Respondents considered the split’s entry into effect would be too long (up to 18 months). In addition, some Respondents commented that the definition of a Commercial Installation and/or the requirements to conduct a split were unclear or too restrictive. Respondents also proposed further clarifications to make clear that in case they would have to purchase additional licences to create a separate Commercial Installation, they would obtain the same discounts as originally agreed.
- (146) Several Respondents argued that the possibility to split landscapes would not offer a solution for terminating M&S for shelfware as it is not always feasible to separate shelfware from active licences. In this regard, customers notably pointed at situations involving the downsizing of personnel, such as divestments and staff layoffs. In such cases, customers may wish to continue using some of their licences, which therefore remain active, while terminating the licences that become shelfware because they were previously assigned to employees who have since left the company. Customers considered the creation of a Commercial Installation for the termination of M&S related to shelfware in those situations artificial and administratively burdensome. Customers also viewed the requirement to split landscapes for the sole purpose of later terminating M&S for the commercial installation containing shelfware as an artificial hurdle. Finally, customers questioned the need to continue to pay M&S costs even for products for which SAP offers no updates or support.
- (147) The Commission assessed the proposal and the concerns expressed by the Respondents and concluded that the changes proposed to the AoN policy would provide more flexibility for SAP’s customers, who can split their landscapes to choose different M&S providers (e.g. SAP and a 3PM), different levels of SAP M&S (e.g. Enterprise or Standard support) and/or leave some Commercial Installations unsupported.
- (148) However, the Commission agreed with the Respondents that there are neither technical nor commercial reasons for the split to enter into effect only once per year, in particular taking into account the pressure that SAP puts on its customers to switch to cloud, thus, progressively reducing the scope of the market for OP products. The Commission also agreed that the wording of this section of the Initial Commitments could be further

clarified. Finally, the Commission considered that the option to split landscapes would not sufficiently remedy the concerns of customers with shelfware.

6.3.2. *Wider prevalence of Single Metric Contracts*

- (149) Respondents were positive about the proposal to make the availability of Single Metric Contracts more prevalent but considered the application of the 10% downwards cap when the relevant usage metric decreases as insufficient. Respondents pointed at the fact SAP does not apply a similar cap when usage rises and that SAP can annually increase fees in line with the CPI. Respondents also underlined that the Initial Commitments appeared to give SAP full discretion as to the metric to adopt and feared that SAP would be able to unilaterally change the metric.
- (150) The Commission assessed the proposal and concluded that the wider availability of Single Metric Contracts provides more flexibility for customers. For customers with shelfware, the proposal would only bring limited relief due to the low level of the downwards cap.

6.3.3. *More transparent partial termination policies*

- (151) Many Respondents expressed their unawareness of SAP's different partial termination policies. They provided examples of how their shelfware did not result from overbuying licences in attempts to get higher discounts, but rather resulted from unforeseen events, such as (mass) redundancies, bankruptcy and the failed implementation of SAP OP ERP projects. Respondents also mentioned situations in which licences could not be transferred to the new owner of a divested business or where additional licences were purchased ahead of divestitures that later appeared redundant.
- (152) Respondents considered that the possibility to split landscapes and the wider prevalence of Single Metric Contracts would not in all those circumstances allow them to partially terminate M&S for this shelfware. The Commission therefore considered that the proposed measures did not sufficiently remedy the concerns expressed by customers.

6.3.4. *Clarifications as regards the initial term of licences*

- (153) The Commission concluded that, with the implementation of the Initial Commitments, SAP would no longer be able to restart automatically the initial term of user licences every time a new licence of the same product is purchased. Respondents also welcomed SAP's proposal to end the systematic reset of the term with each additional licence purchase.

6.3.5. *Waiving the reinstatement fee and introduction of a cap on back maintenance fees*

- (154) As regards the waiving of the reinstatement fee for all customers, Respondents expressed a positive view.
- (155) However, on the back maintenance fee, some Respondents considered that SAP should not charge a back maintenance fee at all or should at maximum charge three months' worth of payments. Other Respondents considered that some fees may be justified as SAP may need to assess the landscape to which the customer returns.
- (156) The Commission assessed the measures proposed in the Initial Commitments to remedy the concerns raised in regard of the reinstatement policy and concluded that they would significantly reduce the harm on customers and the lock-in effect created by the previous policy. A further reduction of the back maintenance fee would not contribute significantly to the remediation of the key competition concerns identified

in the Preliminary Assessment. Therefore, the Commission concluded that the proposed measures would be sufficient to remedy the concerns related to the reinstatement policy.

6.3.6. Proposals for the implementation of the Commitments

(157) Several Respondents indicated that SAP has an opaque communications policy. They mentioned the complicated structure of the terms, conditions and policies that SAP applies and highlighted how SAP representatives add to this complication in their communications with customers. Respondents stressed how important it is for all customers to take note of the commitments and their implementation. Some Respondents also made practical suggestions as to how SAP could improve the definitions and other wordings used in the commitments.

(158) The Commission assessed overall the proposals for implementation of the Initial Commitments and concluded that for the commitments to be effective it is important that all customers (current and potential) have access to the information surrounding the commitments. The Commission also agreed with most of the Respondents' requests for further clarification of the commitments.

6.3.7. Conclusion on the assessment of the Initial Commitments

(159) In view of the above, the Commission considers that certain improvements to the Initial Commitments were necessary.

6.4. The Final Commitments

(160) In response to the comments and suggestions received pursuant to the Article 27(4) Notice, SAP modified its Initial Commitments with a revised proposal on 24 June 2026 (the "Final Commitments"). The Final Commitments modified the Initial Commitments in the following ways:

6.4.1. Possibility to split landscapes

(161) In the Final Commitments, SAP proposed that the split of Commercial Installations would come into effect four times per year²¹⁷, instead of once a year²¹⁸. SAP also proposed several clarifications to the text, including about the availability of previously awarded discounts in case customers create a new Commercial Installation. SAP further clarified that even though certain products and modules may be deeply integrated or dependent (as set out in Annex 3 to the Final Commitments), customers remain free to proceed with a split.

6.4.2. Wider prevalence of Single Metric Contracts

(162) In the Final Commitments, SAP proposed to increase the cap associated to Single Metric Contracts to 20%, meaning that M&S fees can be decreased up to a maximum of 20% per year because of a decrease in the agreed metrics²¹⁹. According to SAP, this reduction is an additional option for Single Metric Contracts without prejudice to standard options such as pure partial termination or full termination under the agreed contractual terms. SAP also clarified that the single metric is mutually agreed between a customer and SAP and cannot be imposed or changed unilaterally.

²¹⁷ On the next January 1, April 1, July 1, or October 1, following the earlier of the end of the six-month period or the completion of SAP's processing of the request.

²¹⁸ Final Commitments, paragraph 15.

²¹⁹ Final Commitments, paragraph 28.

6.4.3. *More transparent and broader partial termination policies*

- (163) In the Final Commitments, SAP included express references to its existing partial termination policies.
- (164) In addition, SAP proposed to allow pure partial termination of licences under the agreed contractual terms without recalculation of the customer's maintenance base in three additional scenarios, namely²²⁰:
- (1) for products for which customer specific maintenance ("CSM")²²¹ is the only available maintenance phase;
 - (2) for failed implementation projects²²²; and
 - (3) in case of customer's insolvency or bankruptcy.
- (165) In addition, SAP proposed to allow customers to terminate up to 10% of their licences every two years if their workforce was reduced by at least 10% during those two years. This applies retroactively as of 1 January 2025²²³.
- (166) Moreover, SAP proposed that customers who divest a business would be permitted to reduce their respective licences, without limiting the number of licences or recalculating the customer's maintenance base²²⁴.
- (167) Finally, SAP confirmed that there will be a single information point where customers can find the links to the policies describing all partial termination options available to customers.

6.4.4. *Proposals for the implementation of the commitments*

- (168) SAP proposed to (i) redraft the policies and clarify the relevant contractual provisions to present the options and their conditions in a less ambiguous way and (ii) align with the Commission to ensure coordinated, consistent, and extensive communication on the Final Commitments and promote their effectiveness. Moreover, SAP proposed to make the existing solutions more prevalent and disseminate information about new solutions via a targeted and multi-channel communication strategy.
- (169) Finally, SAP proposed to create an internal clearing structure which customers may utilise where they contend that SAP is not applying its Final Commitments in their specific case. The SAP employees in the clearing structure would not (i) be part of, or report to members of, SAP's sales organisation, (ii) have been involved in SAP's prior dealing with the customer's request and (iii) be remunerated or incentivised on the basis of OP ERP licence or M&S sales²²⁵.

²²⁰ Final Commitments, paragraphs 20-21.

²²¹ CSM is the final M&S stage in which SAP provides reduced M&S.

²²² "Failed implementation" means for the purposes of the Final Commitments that (i) the relevant SAP software product does not go-live (meaning it does not become part of a Production System); (ii) SAP and the customer have jointly agreed that the no go-live is attributable to either: (a) SAP software product errors (bugs) or failures which are documented by customer incidents and which have not been solved by SAP, or (b) SAP software product functionality contractually committed by SAP does not function as described in the relevant documentation or does not exist, or (c) SAP has not delivered the professional services determined by the relevant implementation (professional services) contract with the customer; and (iii) the no go-live is not the result of a decision by the customer to change its priorities or project timelines.

²²³ Final Commitments, paragraphs 20-21.

²²⁴ Final Commitments, paragraphs 23-25. The termination of the licences will be implemented at the latest on the next January 1, April 1, July 1, or October 1, following completion of the relevant transaction.

²²⁵ Final Commitments, paragraphs 30-31.

7. EFFECTIVENESS AND PROPORTIONALITY OF THE FINAL COMMITMENTS

7.1. Principles

- (170) The principle of proportionality requires that the measures adopted by institutions of the Union must be suitable and not exceed what is appropriate and necessary for attaining the objective pursued²²⁶.
- (171) In the context of Article 9 of Regulation No 1/2003, application of the principle of proportionality entails, first, that the commitments in question address the concerns expressed by the Commission in its Preliminary Assessment and, second, that the undertakings concerned have not offered less onerous commitments that also address those concerns adequately²²⁷. When carrying out that assessment, the Commission must take into consideration the interests of third parties²²⁸.

7.2. Application in this case

- (172) The Final Commitments offered by SAP effectively address the concerns identified by the Commission in its Preliminary Assessment.

7.2.1. The Final Commitments remove the exclusionary concerns

- (173) The Commission considered in its Preliminary Assessment that SAP's Conduct, and in particular, the first leg of the AoN policy and the extension of the initial term may be qualified as exclusive dealing. Alternatively, the Commission considered that the AoN policy and the extension of the initial term depart from competition on the merits and are capable of excluding actual and potential competitors. In both cases, the Commission considered that the reinstatement policy further reinforced the effects of those two policies.
- (174) In the Final Commitments, SAP addressed the Commission's concerns about its exclusionary behaviour by offering commitments targeting all following three elements of its policies.
- (175) As regards the AoN policy, SAP has undertaken to clarify and expand the rules governing how customers can split their SAP landscapes into multiple Commercial Installations, each with its own M&S arrangements. This proposal makes it clear that the application of the AoN policy is confined to each Commercial Installation in which the SAP landscape can be divided and offers various alternatives for the M&S applied to each Commercial Installation. Customers are therefore explicitly allowed to turn to M&S by 3PMs for a specific Commercial Installation without affecting other Commercial Installations.
- (176) As regards the initial term, the Final Commitments make it unequivocally clear that the term during which customers cannot terminate SAP M&S does not restart at every additional licence purchase. Upon expiration of the initial term, customers are therefore free to contract M&S from 3PMs for their entire SAP landscape or for separate Commercial Installations.
- (177) As regards the reinstatement policy, SAP's customers will no longer have to pay reinstatement fees if they subscribe to SAP M&S after a period of absence. Customers also can benefit from a cap on the back maintenance fee in such situations. SAP will, in addition, be far less able to use the disincentivising effect of its reinstatement policy

²²⁶ See for instance, Case T-260/94, *Air Inter v. Commission*, EU:T:1997:89, paragraph 144 and Case T-65/98, *Van den Bergh Foods v. Commission*, EU:T:2003:281, paragraph 201.

²²⁷ Case C-441/07 P *Commission v Alrosa*, EU:C:2010:377, paragraph 41.

²²⁸ Ibid.

towards customers that are considering to subscribe to 3PMs M&S. The fact that customers now have the possibility to split Commercial Installations and concentrate in a separate one the licences for which they prefer not to have SAP support widely reduces, if not eliminates, the likelihood they might subsequently need to reinstate SAP M&S for those licences. This in turn further strongly reduces if not eliminates any lock-in effect that the reinstatement policy might produce.

- (178) Taken together, the Final Commitments, including the possibility to split landscapes, the clarifications as regards the initial term, and the waiving of the reinstatement fee and the introduction of a cap on back maintenance fees should serve to eliminate or reduce the lock-in effect on SAP's OP ERP customers.
- (179) The Final Commitments are also proportionate as they do not go beyond what is necessary to achieve the elimination or reduction of the lock-in effects. The additional dates on which the landscape split can be implemented ensures that customers have several possibilities during the year to benefit from the flexibility the landscape split policy offers. As the landscape split policy will make a return to SAP M&S less likely, it was proportionate to not demand the full elimination of the back maintenance fees, also considering that those fees are only one part of the reinstatement policy and this policy served only as a reinforcing factor of the main concerns related to the AoN policy.
- (180) On this basis, the Commission concludes that the Final Commitments adequately and proportionately address the exclusionary concerns expressed in the Preliminary Assessment since customers will now have more flexibility to move part of their M&S needs to a 3PM.

7.2.2. *Final Commitments remove the exploitative concerns*

- (181) The Commission considered in its Preliminary Assessment that the AoN policy, the inability to terminate shelfware, together with SAP's M&S termination policies, the extension of the initial term and the reinstatement policy constituted exploitative conduct that can be qualified as unfair trading conditions.
- (182) In the Final Commitments, SAP addressed the concerns regarding the AoN policy and the inability to terminate shelfware by offering a range of measures that give more flexibility for customers to adapt the level of M&S to their business needs (including terminate M&S for shelfware) and/or to choose alternative M&S providers. In particular, following the proposal to change the AoN policy, customers will now be able to opt for different support levels for each Commercial Installation, to terminate M&S entirely for a specific Commercial Installation or to turn to a 3PM, without affecting the costs of other licences.
- (183) The Final Commitments also provide customers where the fees payable under the contract are more than EUR 500 000 with a wider opportunity to use Single Metric Contracts. This solution allows customers who are willing to enter into Single Metric Contracts to reduce their M&S costs for shelfware as the fees applied depend on the number of existing single metric units and are not related to the actual usage of the software.
- (184) The Market Test revealed residual concerns regarding the ability to terminate shelfware that were not fully remedied with the introduction of the landscape split policy and the wider availability of Single Metric Contracts. These concerns related to the inability of SAP's customers to partially terminate M&S for shelfware, in particular, because: (i) it is not always feasible to separate shelfware from active licences (e.g. where licences relating to the same product are partly in use and partly

unused) and (ii) the 10% cap to the reduction of the maintenance base in Single Metric Contracts was considered insufficient to benefit customers who rely on such contracts to reduce M&S costs.

- (185) In response to these concerns, SAP proposed in the Final Commitments additional measures, namely: (i) allowing customers to further reduce shelfware without the recalculation of the customer's maintenance base in several scenarios (see Recitals (164) to (166)); (ii) increasing the cap associated to Single Metric Contracts to 20% (see Recital (162)) and (iii) allowing customers to terminate licences when little M&S is provided (see Recital (164)(1)).
- (186) The Final Commitments therefore offer additional flexibility to customers who have accumulated shelfware as a result of downsizing of personnel, insolvency and bankruptcy, and because of failed implementation projects. In addition, the Final Commitments offer customers flexibility to terminate licences in case it concerns legacy products which are in CSM and where SAP offers greatly reduced M&S or no M&S at all.
- (187) In addition, under the Final Commitments, SAP explicitly allows customers who are faced with divestitures to agree on the allocation of existing user licences to the divested business without extra cost or recalculation of the maintenance base. In addition, in case the buyer is not interested in obtaining those licences, SAP's customers can opt for a termination without extra cost or recalculation of the maintenance base. This proposal would therefore limit the recurrence of new shelfware resulting from situations where a buyer already had its own OP ERP software or was for other reasons not interested in taking over the SAP licences.
- (188) The alternatives offered by SAP will also be more accessible to customers given that, in the Final Commitments, SAP commits to provide more transparency in the way to access its policies by customers. Customers will thus be better informed of their possibilities and be able to make use of the most adequate option.
- (189) As regards the initial term, as explained in Recital (176), the proposal in the Final Commitments makes clear that the initial term during which customers cannot terminate SAP M&S does not restart at every additional licence purchase also reduces the lock-in effect on SAP's OP ERP customers and therefore increases the ability of customers to contract M&S from 3PMs after the end of the initial term.
- (190) Finally, as regards the reinstatement policy, as explained in Recitals (177) and (178), the proposal included in the Final Commitments to waive the reinstatement fee and introduce of a cap on back maintenance fees will eliminate or reduce the lock-in effect on SAP's OP ERP customers, in particular when seen in conjunction with the other measures.
- (191) The impact of the measures proposed by SAP in the Final Commitments must be evaluated in their totality as regards the landscape splits; the clarifications on the initial term of licences; waiving the reinstatement fee, and the introduction of a cap on back maintenance fees. Together with the remaining amendments introduced in the Final Commitments, these measures appropriately address the exploitative concerns identified in Section 5.4.3.2, notably the lack of free choice and possibilities to reduce costs. In particular, they also have the effect of reducing the lock-in effect on SAP's OP ERP customers and of ensuring that customers have at their disposal a range of tools to reduce and, in some cases, avoid the creation of residual shelfware.

(192) On this basis, the Commission concludes that the Final Commitments adequately and proportionately address the exploitative concerns expressed in the Preliminary Assessment.

7.2.3. The other provisions in the Final Commitments support the effectiveness of the commitments as a whole

(193) The Final Commitments also include provisions on non-circumvention, non-retaliation, and monitoring their implementation by a Monitoring Trustee. This gives the necessary assurance that the measures included in the Final Commitments will be effectively implemented and that any hypothetical deviation will be likely detected and dealt with.

(194) In addition, the creation of a clearing structure will facilitate and expedite the resolution of any disagreement between customers and SAP regarding the application of the Final Commitments.

7.2.4. Scope and duration of the Final Commitments

(195) The Final Commitments apply equally to all customers worldwide during 10 years from the Effective Date. This will allow consistency to be maintained throughout the Final Commitments and is proportionate and sufficiently long to address the Commission's concerns identified in the Preliminary Assessment, set out in Section 5.3 above. This is because most of the SAP OP ERP software is likely to move, during this period, to the cloud.

7.2.5. Conclusion on the effectiveness and proportionality of the Final Commitments

(196) On the basis of the assessment in Sections 7.2.1 to 7.2.4, the Commission concludes that the Final Commitments offered by SAP effectively address the concerns identified in the Preliminary Assessment. Given that SAP has not offered less onerous commitments that also address those concerns adequately, the Commission concludes that the Final Commitments comply with the principle of proportionality.

(197) In this assessment, the Commission has taken into consideration the interests of third parties, including those of the interested third parties who have responded to the Article 27(4) Notice.

8. CONCLUSION

(198) By adopting a decision pursuant to Article 9(1) of Regulation (EC) No 1/2003, the Commission makes commitments, offered by the undertakings concerned to meet the Commission's concerns expressed in its preliminary assessment, binding upon them. In line with recital 13 of the Preamble to the Regulation (EC) No 1/2003, this decision does not conclude whether or not there has been or still is an infringement.

(199) The Commission's assessment of whether the commitments offered are sufficient to meet its concerns is based on its preliminary assessment, representing the preliminary view of the Commission based on the underlying investigation and analysis, and the observations received from third parties following the publication of a notice pursuant to Article 27(4) of Regulation (EC) No 1/2003.

(200) In the light of the Final Commitments offered, the Commission considers that there are no longer grounds for action on its part and, without prejudice to Article 9(2) of Regulation (EC) No 1/2003, the proceedings in this case should therefore be brought to an end.

(201) The Commission retains full discretion to investigate and open proceedings under Article 102 of the Treaty and Article 54 of the EEA Agreement as regards practices that are not the subject matter of this Decision.

HAS ADOPTED THIS DECISION:

Article 1

The Final Commitments as listed in the Annex to this Decision shall be binding on SAP SE for 10 years from the date of the notification of this Decision to SAP SE.

Article 2

It is hereby concluded that there are no longer grounds for action in this case as regards the Conduct covered by this Decision.

Article 3

This Decision is addressed to:

SAP SE, Dietmar-Hopp-Allee 16, 69190 Walldorf, Germany.

Done at Brussels, 9.7.2026

For the Commission

(Signed)

*Teresa RIBERA
Executive Vice-President*