



EUROPEAN COMMISSION

***CASE DMA.100075 – Alphabet – Online
Intermediation Services – app stores –
Google Play – Art. 5(4)***

(Only the English text is authentic)

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

Article 29(1), point (a), 30(1), point (a), and 31(1), point (h)
Regulation (EU) 2022/1925

Date: 23/07/2026

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Brussels, 23.7.2026
C(2026) 5346 final

COMMISSION IMPLEMENTING DECISION

of 23.7.2026

pursuant to 29(1), point (a), 30(1), point (a), and 31(1), point (h) of Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector

Case DMA.100075 – Alphabet – Online Intermediation Services – app stores – Google Play – Art. 5(4)

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Case DMA.100075 – Alphabet – Online Intermediation Services – app stores – Google Play – Art. 5(4)

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THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act),¹ and, in particular, Article 29(1), point (a), Article 30(1), point (a), and Article 31(1), point (h), thereof,

After consulting the Digital Markets Advisory Committee,²

Whereas:

1. INTRODUCTION

- (1) This Decision, adopted pursuant to Articles 29(1), point (a), 30(1), point (a), and 31(1), point (h) of Regulation (EU) 2022/1925, is addressed to Alphabet Inc., together with all the legal entities directly or indirectly controlled by it (hereinafter referred to as “Alphabet”). Alphabet is a publicly traded company founded in 2015 through a restructuring of Google Inc. It is headquartered in Mountain View, California, United States of America. Google Ireland Ltd is an Alphabet subsidiary established in Ireland. It is a direct subsidiary of Google Europe, Middle East and Africa Unlimited Company, also established in Ireland, and an indirect wholly owned subsidiary of Google LLC, which is based in the United States of America. Alphabet is a global technology company, specialised in internet-related services and products that include online advertising technology, search, cloud computing, software and hardware. The company operates various services in the Union.
- (2) This Decision finds that Alphabet does not comply with Article 5(4) of Regulation (EU) 2022/1925 in relation to its Google Play core platform service (“CPS”). Under that provision, gatekeepers must allow business users, free of charge, to communicate and promote offers to end users acquired via its CPS or through other

¹ OJ L 265, 12.10.2022, p. 1.

² The opinion of the Digital Markets Advisory Committee can be found on the Commission’s Comitology Register under meeting code CMTD(2026)1229: <https://ec.europa.eu/transparency/comitology-register/screen/committees/C114400/consult?lang=en>.

channels, and to conclude contracts with those end users, regardless of whether, for that purpose, they use the CPSs of the gatekeeper. As explained in this Decision, Alphabet limits the ability of app developers (used interchangeably with “developers” in the present Decision) distributing software applications (“apps”) on Alphabet’s CPS Google Play to direct end users acquired via that CPS or through other channels (“acquired users”) to offers within or outside of their apps (“steer” or “steering”) in order to conclude contracts within or outside of their apps following that steering (“steered transactions”). Alphabet also charges a fee in relation to steered transactions that goes beyond the possible remuneration for the initial acquisition of that end user facilitated by Alphabet.

(3) This Decision is structured as follows:

- Section 2 summarises the procedure leading to the adoption of this Decision;
- Section 3 sets out the legal framework for the assessment of Alphabet’s compliance with Article 5(4) of Regulation (EU) 2022/1925 in relation to the Google Play CPS;
- Section 4 describes Alphabet’s business terms and conditions relevant for assessing compliance with Article 5(4) of Regulation (EU) 2022/1925 in relation to its Google Play CPS;
- Section 5 concludes that Alphabet has not complied with Article 5(4) of Regulation (EU) 2022/1925 in relation to the Google Play CPS;
- Section 6 rebuts Alphabet’s allegations of procedural shortcomings;
- Section 7 determines the duration of the non-compliance with Article 5(4) of Regulation (EU) 2022/1925;
- Section 8 identifies the addressees of this Decision;
- Section 9 explains the methodology for setting the fine and the amount of the fine imposed;
- Section 10 outlines the cease and desist order imposed by this Decision and the requirement for Alphabet to provide explanations on how it plans to comply with this Decision;
- Section 11 describes the periodic penalty payments necessary to compel Alphabet to bring the non-compliance with Article 5(4) of Regulation (EU) 2022/1925 effectively to an end.

2. PROCEDURE

(4) On 5 September 2023, the Commission adopted a decision designating Alphabet as a gatekeeper pursuant to Article 3(4) of Regulation (EU) 2022/1925 (the “Alphabet designation decision”) and listing the following CPS that are provided by Alphabet and which individually constitute an important gateway for business users to reach end users: (i) its online intermediation service Google Shopping; (ii) its online intermediation service Google Play; (iii) its online intermediation service Google Maps; (iv) its online search engine Google Search; (v) its video-sharing platform

service YouTube; (vi) its operating system Google Android; (vii) its web browser Google Chrome; and (viii) its online advertising services.³

- (5) Pursuant to Article 3(10) of Regulation (EU) 2022/1925, Alphabet has had to comply, since 7 March 2024, with the obligations laid down *inter alia* in Article 5(4) of Regulation (EU) 2022/1925 in relation to the CPSs listed in the Alphabet designation decision, notably in relation to the online intermediation service Google Play.
- (6) On 7 March 2024, Alphabet submitted to the Commission a compliance report pursuant to Article 11(1) of Regulation (EU) 2022/1925 (the “2024 Alphabet Compliance Report”).⁴ The Commission has analysed the 2024 Alphabet Compliance Report to determine whether the measures implemented by Alphabet ensure and demonstrate compliance as required by Article 8 of Regulation (EU) 2022/1925, as of 7 March 2024, with the obligations laid down in Article 5(4) of Regulation (EU) 2022/1925 in relation to its Google Play CPS, alone or in conjunction with Article 13(6) of that Regulation.
- (7) On 25 March 2024, the Commission adopted a decision opening proceedings pursuant to Article 20(1) of Regulation (EU) 2022/1925 with a view to the possible adoption of a decision pursuant to Articles 29 and 30 of that Regulation in relation to Alphabet’s compliance with Article 5(4) of Regulation (EU) 2022/1925.⁵
- (8) In the context of these proceedings, the Commission sent five requests for information (“RFIs”) to Alphabet (on 17 April 2024, on 2 July 2024, on 30 July 2024, on 30 August 2024, on 18 September 2024, on 28 October 2025, and on 16 February 2026). Alphabet responded to the RFI of 17 April 2024 on 21 May 2024; to the RFI of 2 July 2024 on 9 August 2024; to the RFI of 30 July 2024 on 26 August 2024; to the RFI of 30 August 2024 on 15 September 2024; to the RFI of 18 September 2024 in two instalments on 7 October 2024 and 21 October 2024; to the RFI of 28 October 2025 on 7 November 2025; and to the RFI of 16 February 2026 on 20 February 2026.
- (9) On 4 April 2024, the Commission held a virtual state of play meeting with Alphabet in relation to the Commission decision opening proceedings referred to in recital (7) of this Decision.
- (10) On 17 April 2024, the Commission sent an RFI to eleven original equipment manufacturers (“OEMs”) of smartphones for sale in the European Union (“EU”).
- (11) On 3 May 2024 and 6 June 2024, virtual meetings took place, at Alphabet’s request, between Alphabet and the Commission, for Alphabet to provide an update on its compliance with Article 5(4) of Regulation (EU) 2022/1925.
- (12) On 20 June 2024, a virtual meeting took place, at Alphabet’s request, between Alphabet and the Commission to discuss the Commission’s interpretation of Article 5(4) of Regulation (EU) 2022/1925.
- (13) On 22 August 2024, a virtual meeting took place, at Alphabet’s request, between Alphabet and the Commission to discuss Apple’s announcement of 8 August 2024 on “*Alternative payment options on the App Store in the European Union*” and its

³ Decision C(2023) 6101 final.

⁴ Alphabet Compliance Report, 7 March 2024, [...], Annex Google Play, [...].

⁵ Decision C(2024) 2055 final.

meaning for Alphabet’s compliance efforts under Article 5(4) of Regulation (EU) 2022/1925.⁶

- (14) On 25 September 2024, a meeting took place, at Alphabet’s request, between Alphabet and the Commission to discuss Alphabet’s ongoing compliance efforts in respect of Article 5(4) of Regulation (EU) 2022/1925.
- (15) On 6 March 2025, Alphabet submitted to the Commission its second annual compliance report pursuant to Article 11(1) of Regulation (EU) 2022/1925 (the “2025 Alphabet Compliance Report”). In this report, Alphabet maintains that the compliance measures it had already put in place on 7 March 2024, as detailed in the 2024 Alphabet Compliance Report, comply with Article 5(4) of Regulation (EU) 2022/1925.⁷ The 2025 Alphabet Compliance Report does not describe any changes to these compliance measures.
- (16) On 19 March 2025, the Commission adopted preliminary findings pursuant to Article 29(3) of Regulation (EU) 2022/1925 in the context of the proceedings referred to in recital (7) of this Decision (the “Preliminary Findings” or “PFs”).⁸ In the Preliminary Findings, the Commission reached the preliminary conclusion that Alphabet’s External Offers Program, that together with Alphabet’s General Business Terms govern its relationship with business users using Google Play, i.e., app developers, does not comply with Article 5(4) of Regulation (EU) 2022/1925. Alphabet had adopted the External Offers Program with a view to comply with Regulation (EU) 2022/1925, most notably Article 5(4) thereof.⁹
- (17) On 20 March 2025, Alphabet’s external legal counsel requested, on behalf of Alphabet, access to the documents referenced in the Preliminary Findings in accordance with Article 8(1) and (2) of Implementing Regulation (EU) 2023/814, as well as full access to all documents contained in the Commission’s file, in accordance with Article 8(3) of Implementing Regulation (EU) 2023/814.
- (18) On 21 March 2025, the Commission provided Alphabet’s external legal counsel, with non-confidential versions of all documents referenced and relied upon in the Preliminary Findings, as well as a file index.
- (19) Alphabet’s external legal counsel and external economic advisors were granted full access to the Commission’s file at the Commission’s premises via a data room that took place between 24 March 2025 and 7 April 2025 (the “Data Room”) pursuant to the terms of disclosure as laid down in the Commission’s decision of 21 March 2025 (the “Terms of Disclosure”).¹⁰ On 7 April 2025, the Commission approved the report drafted by Alphabet’s external legal counsel summarising its findings and conclusions regarding the content of (and documents in) the Commission’s file (the “Data Room Report”)¹¹, which could thus be shared with Alphabet.

⁶ Apple, “Alternative payment options on the App Store in the European Union”, <https://developer.apple.com/support/alternative-payment-options-on-the-app-store-in-the-eu/>, (accessed on 16 October 2024), [...].

⁷ 2025 Alphabet Compliance Report, 6 March 2025, Google Play Chapter, [...], Section V. Art. 5(4), paragraph 11.

⁸ C(2025) 1795 final.

⁹ 2024 Alphabet Compliance Report, Google Play Chapter, IV. Art. 5(4), [...], paragraph 37.

¹⁰ Decision C(2025) 1879 final.

¹¹ Alphabet’s data room report on documentary evidence and meeting minutes, [...].

- (20) On 9 April 2025, a meeting took place between Alphabet and the Commission, at Alphabet's request, to discuss the Preliminary Findings.
- (21) On 9 May 2025, Alphabet responded to the Preliminary Findings.¹²
- (22) On 19 August 2025, Alphabet announced a Revised External Offers Program in relation to its compliance with Article 5(4) of Regulation (EU) 2022/1925.¹³ The following changes, which form part of the Revised External Offers Program, were implemented following the announcement on 19 August 2025:¹⁴
- (1) App developers can show links that lead users to external offers for the purchase of in-app digital items and subscriptions in a web view, in an already installed app store on the device or on a browser. Transactions following such links would be subject to External Offer Program fees.¹⁵
 - (2) Changes to the user experience which include introducing a user opt out from the information prompt shown for external offers.
 - (3) The implementation of a reduced "initial acquisition fee" of 3% over a period of six months after a user installs an app from Google Play.¹⁶
- (23) The announcement on 19 August 2025 of the Revised External Offers Program contained a new fee structure, whereby in addition to the reduced "initial acquisition fee" (see recital (22)), app developers offering the possibility to steer are subject to an updated "Ongoing Services Fee" which is split into a mandatory "tier 1" "ongoing services fee" of 10% and an optional "tier 2" "ongoing services fee" of 10%, while the app is receiving Google Play services. In addition, where a developer links to downloads of their apps, a fixed ongoing services fee applies per user country and app category, for each install.
- (24) On 9 December 2025, Alphabet fully rolled out the Revised External Offers Program. The following below changes, which had been announced on 19 August 2025, were implemented:¹⁷
- (1) App developers can show links that enable the user to download developers' own apps subject to complying with updated program requirements and APIs. Apps including links and app downloads as well as destinations promoted via links, are subject to a review for compliance with Google Play's updated Program terms.¹⁸

¹² Alphabet's response to the Preliminary Findings, [...].

¹³ Alphabet, Changes to the external offers program for users in the EEA, accessible at <https://support.google.com/googleplay/android-developer/answer/16505463> (accessed on 4 March 2026), [...].

¹⁴ Alphabet's response to the Commission's RFI of 20 February 2026, submitted on 16 February 2026, paragraph 5, [...].

¹⁵ Alphabet's response to the Commission's RFI of 28 October 2025, submitted on 7 November 2025, paragraph 12(b), [...].

¹⁶ Alphabet's response to the Commission's RFI of 20 February 2026, submitted on 16 February 2026, paragraph 5 a) i), [...].

¹⁷ Alphabet's response to the Commission's RFI of 16 February 2026, submitted on 20 February 2026, paragraph 5, [...].

¹⁸ Alphabet's response to the Commission's RFI of 16 February 2026, submitted on 20 February 2026, paragraph 6, as further outlined in the 19 August 2025 Alphabet announcement [Changes to the external offers program for users in the EEA - Play Console Help](#) (accessed on 4 March 2026), [...], which describes: "Security review. Apps including links and app downloads as well as destinations promoted

- (2) App developers can select the Ongoing Service tier (tier 1 or tier 2) applied as part of the Program terms when steering users.
 - (3) App developers can dynamically provide links that contain additional parameters, including Personally Identifiable Information, provided this is encrypted.
 - (4) Changes to the wording of the information prompt.
- (25) On 4 June 2026 Alphabet publicly announced the roll-out of further changes to the External Offers Program.¹⁹ The following changes were implemented on 4 June 2026:²⁰
- (1) The reduction of the initial acquisition fee to 0%.
 - (2) The removal of the distinction between tier 1 and tier 2 ongoing services, charging a single rate for the Google Play Ongoing Services Fee. The Ongoing Services Fee amounts to 10% for recurring transactions and for developer's first USD 1 million (EUR 859 100²¹) in annual earnings, 15% for apps and games that participate in Alphabet's new "Apps Experience" and updated "Level Up" programs²² and 20% for non-participating developers.
 - (3) The introduction of a EUR 1.20 fee charged for every download of an app following a Google Play app link-out.
- (26) For the purposes of this Decision, the Commission has established that the infringement period began on 7 March 2024 the date by which Alphabet was required to comply with Article 5(4) of Regulation (EU) 2022/1925 and continued at least until 8 December 2025, the day before the Revised External Offers Program was fully rolled out. In this context, the Commission takes note of the introduction of changes included in the Revised External Offers Program as outlined above in recitals (22), (23) and (24) which were rolled out between the announcement on 19 August 2025 and 8 December 2025, and acknowledges the changes introduced as described in recital (25).
- (27) This Decision does not assess Alphabet's Revised External Offers Program or the additional changes rolled out on 4 June 2026 and their impact on Alphabet's compliance with the obligations laid down in Article 5(4) of Regulation (EU)

via links, will be reviewed for compliance with our updated Program terms. This includes reviews against our Play Developer Policies to ensure linked content is free from harmful and illicit material. While Play will review content, we cannot ensure the safety of this content to the same extent as that in Play Distributed apps."

¹⁹ Google Play Play Console Help "Enroll your app in the external offers program", version of 4 June 2026, accessible at: <https://support.google.com/googleplay/android-developer/answer/14372887> (accessed on 17 June 2026), [...].

²⁰ Alphabet's E-Mail to the Commission of 3 June 2026, [...]; Alphabet's submission of 6 March 2026, [...]. Annex 2 to Alphabet's submission of 11 April 2026, Term Sheet for Google's External Offers Program (EOP) Art. 5(4) Compliance Solution, [...]; Google Play Play Console Help "Enroll your app in the external offers program", version of 4 June 2026, accessible at: <https://support.google.com/googleplay/android-developer/answer/14372887> (accessed on 17 June 2026), [...].

²¹ The ECB exchange rate on 4 June 2026 was on average USD 1 = EUR 0.8591, [...].

²² The Level Up and App Experience Programs are global Alphabet app programs. Participation in these programs is subject to criteria related to app quality and user experience; Alphabet's submission of 19 March 2026, Term Sheet for Google's External Offers Program (EOP) Art. 5(4) Compliance Solution, [...].

2022/1925. This limitation of the scope of this Decision is without prejudice to the Commission's ability to investigate Alphabet's Revised External Offers Program, the changes rolled out on 4 June 2026, or any further changes to its app store offering, and to assess their compliance with Regulation (EU) 2022/1925 at a later stage.

3. RELEVANT LEGAL FRAMEWORK

- (28) Pursuant to Article 29(1), point (a), of Regulation (EU) 2022/1925, where the Commission finds that a gatekeeper does not comply with any of the obligations laid down in Articles 5, 6 or 7 of that Regulation, it shall adopt an implementing act setting out its finding of non-compliance (the “non-compliance decision”). In such a non-compliance decision, the Commission shall, pursuant to Article 29(5) of Regulation (EU) 2022/1925, order the gatekeeper to cease and desist with the non-compliance and to provide explanations on how it plans to comply with that decision. The Commission may also impose a fine, pursuant to Article 30(1), point (a), of Regulation (EU) 2022/1925, and impose periodic penalty payments, pursuant to Article 31(1), point (h) of that Regulation, to compel a gatekeeper to comply with such a non-compliance decision.
- (29) Pursuant to Article 5(4) of Regulation (EU) 2022/1925, a gatekeeper shall allow business users, free of charge, to communicate and promote offers, including under different conditions, to end users acquired via its CPS or through other channels, and to conclude contracts with those end users, regardless of whether, for that purpose, they use the CPSs of the gatekeeper.
- (30) In relation to Article 5(4) of Regulation (EU) 2022/1925, recital 40 of that Regulation explains that “[t]he business users of those gatekeepers should be free to promote and choose the distribution channel that they consider most appropriate for the purpose of interacting with any end users that those business users have already acquired through core platform services provided by the gatekeeper or through other channels. This should apply to the promotion of offers, including through a software application of the business user, and any form of communication and conclusion of contracts between business users and end users. An acquired end user is an end user who has already entered into a commercial relationship with the business user and, where applicable, the gatekeeper has been directly or indirectly remunerated by the business user for facilitating the initial acquisition of the end user by the business user. Such commercial relationships can be on either a paid or a free basis, such as free trials or free service tiers, and can have been entered into either on the core platform service of the gatekeeper or through any other channel.”
- (31) Where the CPS at issue is a software application store (“app store”), business users of that CPS are the developers of apps that make their apps and digital goods and services available to end users through the gatekeeper’s app store (“app developers”). In that context, it follows from Article 5(4) of Regulation (EU) 2022/1925 that gatekeepers should allow app developers that distribute their app(s) through the gatekeeper’s app store to steer acquired end users and to subsequently conclude contracts with them (either within or outside the app), i.e., steered transactions, without the gatekeeper charging any fee besides, where applicable, the remuneration due to the gatekeeper for facilitating the initial acquisition by the business user of the end user (i.e., the matchmaking).

- (32) For the purposes of this Decision²³, the communication or the promotion of an offer by the app developer to an acquired end user, within an app downloaded from Google Play is considered steering. The conclusion of a contract, within or outside the app downloaded from Google Play, following steering is a steered transaction. For the purposes of this Decision, “within the app” means that steering and steered transactions take place via any form of technology that is not Alphabet’s app store payment service (“Google Play Billing”), for instance through web view²⁴, without the user leaving the app. Conversely, “outside the app” means that the user is steered to a destination outside the app such as a website in order to conclude the steered transaction. As made clear by the wording of Article 5(4) of Regulation (EU) 2022/1925, steering and steered transactions, within and outside the app, should be allowed free of charge.
- (33) Pursuant to Article 8(1) of Regulation (EU) 2022/1925, the gatekeeper shall ensure and demonstrate compliance with the obligations laid down in Articles 5, 6 and 7 of that Regulation. Moreover, the measures implemented by the gatekeeper to ensure compliance with that obligation shall be effective in achieving the objectives of that Regulation and of the relevant obligation.
- (34) Pursuant to Article 13(6) of Regulation (EU) 2022/1925, the gatekeeper shall not degrade the conditions or quality of any of the CPSs provided to business users or end users who avail themselves of the rights or choices laid down in Articles 5, 6 and 7, or make the exercise of those rights or choices unduly difficult, including by offering choices to the end-user in a non-neutral manner, or by subverting end users’ or business users’ autonomy, decision-making, or free choice via the structure, design, function or manner of operation of a user interface or a part thereof.
- 4. ALPHABET’S BUSINESS TERMS AND CONDITIONS RELEVANT FOR ASSESSING COMPLIANCE WITH ARTICLE 5(4) OF REGULATION (EU) 2022/1925 IN RELATION TO THE GOOGLE PLAY CPS**
- (35) According to Alphabet, Google Play is a digital distribution platform that allows business users to distribute and end users to find, install, and manage apps and other digital content.
- (36) As set out in recital 60 of the Alphabet designation decision, Google Play constitutes an online intermediation service (“OIS”) within the meaning of Article 2, point (5), of Regulation (EU) 2022/1925 as well as a software application store (“app store”) within the meaning of Article 2, point (14), of that Regulation. Furthermore, as set out in recital 56 of the Alphabet designation decision, Google Play constitutes a single OIS CPS, irrespective of the device through which that service can be accessed (e.g., smartphones, tablets, laptops, smart TVs) and of the different types of digital content available through that service (e.g., software applications and other types of digital content, or different categories thereof).

²³ For the avoidance of doubt, this Decision is without prejudice to Alphabet charging a fee for the services provided through Google Play Billing.

²⁴ Web view is a functionality that allows apps to display web content more easily and directly within the app and, depending on the specific web view tool used, it can be defined as a view, system application, component, element, or application programming interface (“API”) that allows app developers to render web pages within an app.

- (37) As established above in Section 2, this Decision concerns Alphabet’s compliance with Article 5(4) of Regulation (EU) 2022/1925 during the period from 7 March 2024 until 8 December 2025 under the terms outlined below.
- (38) Alphabet currently has two sets of business terms and conditions that govern its relationship with business users, i.e., app developers, using Google Play and that are relevant for assessing Alphabet’s compliance with Article 5(4) of Regulation (EU) 2022/1925, namely:
- (a) the General Business Terms²⁵ laid down mainly in (a) the Google Play Developer Distribution Agreement (the “DDA”)²⁶ and (b) Google Play’s Payments Policy,²⁷ as well as
 - (b) the terms under the External Offers Program (“the External Offers Program” or “New Business Terms”) consisting of (i) the Developer Terms of Service for External Offers Program²⁸, and (ii) the requirements set out in the External Offers Program webpage.²⁹
- (39) Every app developer using Google Play is subject to the General Business Terms. In addition, app developers who wanted to participate in the External Offers Program had to meet the requirements set out in the External Offers Program and opt into and agree to the Developer Terms of Service for External Offers Program. In such a case, the terms of the External Offers Program apply in addition to the General Business Terms. The External Offers Program prevails in case of conflict.³⁰
- (40) The Revised External Offers Programme, which was fully rolled out on 9 December 2025, as noted in recital (22), (23), and (24), and the changes rolled out on 4 June 2026, as noted in recital (25), (26) and (27), are not assessed in this Decision. The following sections therefore describe and assess the terms applicable during the period under examination which substantively consisted of the General Business Terms and the External Offers Program that governed the relationship with the relevant business users in the period from 7 March 2024 to 8 December 2025.

4.1. The General Business Terms

- (41) The General Business Terms are mainly laid down in the DDA and Google Play’s Payments Policy.

²⁵ Google Play Developer Distribution Agreement, version of 5 February 2024, accessible at: <https://play.google/developer-distribution-agreement.html> (accessed on 16 October 2024), [...].

²⁶ Google Play Developer Distribution Agreement, version of 5 February 2024, accessible at: <https://play.google/developer-distribution-agreement.html> (accessed on 16 October 2024), [...].

²⁷ Available at <https://support.google.com/googleplay/android-developer/answer/9858738> (last accessed on 10 December 2024), [...], and <https://support.google.com/googleplay/android-developer/answer/10281818#zippy=%2Ccan-i-communicate-with-my-users-about-alternative-ways-to-pay> (accessed on 11 December 2024), [...].

²⁸ Developer Terms of Service for External Offers Program, version of 6 March 2024, accessible at: [DEVELOPER TERMS OF SERVICE FOR EXTERNAL OFFERS PROGRAM - Play Console Help \(google.com\)](https://play.google.com/terms/service/external-offers-program) (accessed on 10 December 2024), [...].

²⁹ Enrolling in the external offers program, accessible at: [Enrolling in the external offers program - Play Console Help \(google.com\)](https://play.google.com/terms/service/external-offers-program) (accessed on 10 December 2024), [...].

³⁰ Developer Terms of Service for External Offers Program, version of 6 March 2024, accessible at: [DEVELOPER TERMS OF SERVICE FOR EXTERNAL OFFERS PROGRAM - Play Console Help \(google.com\)](https://play.google.com/terms/service/external-offers-program) (accessed on 10 December 2024), [...], pre paragraph 1.

- (42) According to Google Play's Payments Policy:³¹
- (43) “[..]apps may not lead users to a payment method other than Google Play's billing system. This prohibition includes, but is not limited to, leading users to other payment methods via:
- An app's listing in Google Play;
 - In-app promotions related to purchasable content;
 - In-app web view, buttons, links, messaging, advertisements, or other calls to action; and
 - In-app user interface flows, including account creation or sign-up flows, that lead users from an app to a payment method other than Google Play's billing system as part of those flows.”
- (44) Furthermore, according to Google Play's Payments Policy:³²
- “Within an app, developers may not lead users to a payment method other than Google Play's billing system unless permitted by the Payments policy. This includes directly linking to a webpage that could lead to an alternate payment method or using language that encourages a user to purchase the digital item outside of the app.” (emphasis added)
- (45) While app developers are allowed to communicate with users outside their app, for example by using email communications or ads, within the app they can display communications and promotions for offers outside the app only if they use a consumption-only app, i.e. if their app does not provide for the possibility to make in-app purchases.³³ In other words, in order to be able to communicate and promote offers available outside the app, developers are required to forego the possibility to allow for in-app purchases.
- (46) According to Google Play's Payments Policy:³⁴
- “For services and products that are consumption only (apps that do not enable users to purchase access to digital goods or services from within the app), developers may choose to provide additional information about purchasing options without direct links, including using language like:*
- *You can purchase this book directly on our website*
 - *Go to our website to upgrade your subscription to Premium*
 - *This movie isn't available to rent in the app. However, any movie you rent through our website.com will be immediately available to view in the app*
 - *Need extra lives? Head to our website to purchase more”*

³¹ Available at: <https://support.google.com/googleplay/android-developer/answer/9858738> (accessed on 10 December 2024), [...].

³² Available at: <https://support.google.com/googleplay/android-developer/answer/10281818#zippy=%2Ccan-i-communicate-with-my-users-about-alternative-ways-to-pay> (accessed on 11 December 2024), [...].

³³ Alphabet's response to the Commission's RFI of 30 July 2024, submitted on 26 August 2024, [...], paragraph 9 in conjunction with paragraphs 6-8.

³⁴ Available at: <https://support.google.com/googleplay/android-developer/answer/10281818#zippy=%2Ccan-i-communicate-with-my-users-about-alternative-ways-to-pay> (accessed on 11 December 2024), [...].

- (47) According to Alphabet’s DDA, apps and in-app products sold through Google Play’s billing system (“Google Play Billing”) in accordance with the Payments policy are subject to a service fee (hereafter “Google Play’s standard fee model”).³⁵ This service fee amounts to 30% for earnings in excess of \$1M (USD) revenue earned by the developer each year or 15% for the first \$1M (USD) revenue earned by the developer each year (for eligible developers enrolled in Alphabet’s “15% service fee tier”).³⁶ Furthermore, the service fee amounts to 15% for automatically renewing subscription products purchased by subscribers, regardless of revenue earned by the developer each year and to 15% or lower for eligible developers who qualify under programs such as the Play Media Experience Program.³⁷

4.2. The terms under the External Offers Program

- (48) As outlined in the 2024 Alphabet Compliance Report as well as the 2025 Alphabet Compliance Report, Alphabet adopted the External Offers Program with a view to comply with Regulation (EU) 2022/1925.³⁸ The relationship of the External Offers Program with the DDA is further explained in recitals (38) and (39) above.

- (49) To ensure compliance with Article 5(4) of Regulation (EU) 2022/1925, Alphabet has implemented the main compliance measures listed in Sections 4.2.1 and 4.2.2 below.³⁹

4.2.1. Alphabet’s steering modalities under the External Offers Program

- (50) The External Offers Program allows app developers that distribute their apps through Google Play to include, in their apps, hyperlinks (“external links”) which lead users in the European Economic Area (EEA) to a destination outside the app where users can conclude contracts (“external transactions”),⁴⁰ including to promote offers for in-app features and services.⁴¹
- (51) While this has not been explicitly reflected in the External Offers Program, Alphabet has indicated that:
- (a) the External Offers Program does not restrict the number of link-outs that app developers can show in any app distributed through Google Play.⁴²

³⁵ Google Play Developer Distribution Agreement, version of 5 February 2024, accessible at: <https://play.google/developer-distribution-agreement.html>, accessed on 16 October 2024, [...], Section 3.4; and Alphabet’s description of the Service Fee available at <https://support.google.com/googleplay/android-developer/answer/112622?hl=en>, (accessed on 20 November 2024), [...].

³⁶ Alphabet’s description of the Service Fee available at: <https://support.google.com/googleplay/android-developer/answer/112622?hl=en>, (accessed on 18 November 2024), [...].

³⁷ Alphabet’s description of the Service Fee available at: <https://support.google.com/googleplay/android-developer/answer/112622?hl=en>, (accessed on 18 November 2024), [...].

³⁸ 2024 Alphabet Compliance Report, Google Play Chapter, IV. Art. 5(4), [...], paragraph 37; 2025 Alphabet Compliance Report, 6 March 2025, Google Play Chapter, [...], Section V. Art. 5(4), paragraph 11.

³⁹ 2024 Alphabet Compliance Report, Google Play Chapter, IV. Art. 5(4), [...], paragraph 37-42.

⁴⁰ 2024 Alphabet Compliance Report, Google Play Chapter, IV. Art. 5(4), [...], paragraph 37; Alphabet’s response to the Commission’s RFI of 30 July 2024, submitted on 26 August 2024, [...], paragraph 9b.

⁴¹ Enrolling in the external offers program, accessible at: [Enrolling in the external offers program - Play Console Help \(google.com\)](https://support.google.com/googleplay/android-developer/answer/112622?hl=en) (accessed on 10 December 2024), [...]; 2024 Alphabet Compliance Report, Google Play Chapter, IV. Art. 5(4), [...], paragraph 38.

⁴² Alphabet’s response to the Commission’s RFI of 30 August 2024, submitted on 15 September 2024, [...], paragraph 5.

- (b) under the External Offers Program, developers also have broad freedom to design the wording of their in-app promotional messages as they wish, including the price of their offers, explanations or instructions to end users about how to subscribe outside an app and calls to actions in their app, either through external links or through non-link promotions and communications.⁴³
- (52) An app developer's participation in the External Offers Program is subject to Alphabet's approval. According to the External Offers Program, Alphabet may deny or revoke an app developer's participation in the External Offers Program "*at its reasonable discretion*".⁴⁴ Alphabet argues that this means that Alphabet may make use of this possibility in cases of serious violations of Google Play's External Offers Program.⁴⁵
- (53) In addition, the External Offers Program imposes, in particular, the following requirements on app developers that wish to make use of link-outs:
- (a) First, the external offers must only direct end users to the app developer's own digital content or items associated with the app, i.e., to digital content or items associated with the app that can be purchased on the developer's website and that can subsequently be consumed within the developer's app distributed through Google Play. The External Offers Program does not allow link-outs to destinations for something other than digital content or items associated with the app. This also includes destinations where the user can purchase products or services provided by third parties as well as destinations where apps can be downloaded outside of Google Play.⁴⁶
- (b) Second, every time an end user follows an external link, the app developer must inform the end user in a prominent manner and using clear, intelligible language prior to the transaction that the app developer is the merchant in any follow-up external transaction and will bear sole responsibility.⁴⁷ For this purpose, Alphabet provides the following "*Google Linkout Prompt*" via an API.⁴⁸

⁴³ Alphabet's response to the Commission's RFI of 30 July 2024, submitted on 26 August 2024, [...], paragraphs 59-62 et seq.

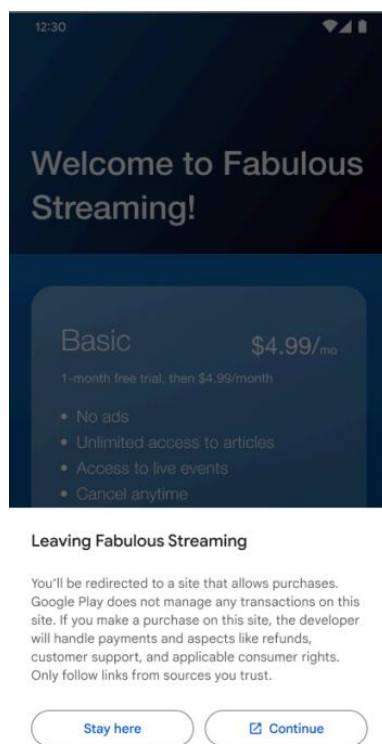
⁴⁴ Developer Terms of Service for External Offers Program, version of 6 March 2024, accessible at: [DEVELOPER TERMS OF SERVICE FOR EXTERNAL OFFERS PROGRAM - Play Console Help \(google.com\)](#) (accessed on 10 December 2024), [...], paragraph 2.1.

⁴⁵ Alphabet's response to the Commission's RFI of 30 August 2024, submitted on 15 September 2024, [...], paragraph 6 et seq.

⁴⁶ Alphabet's response to the Commission's RFI of 30 July 2024, submitted on 26 August 2024, [...], paragraph 12 et seq.; Developer Terms of Service for External Offers Program, version of 6 March 2024, accessible at: [DEVELOPER TERMS OF SERVICE FOR EXTERNAL OFFERS PROGRAM - Play Console Help \(google.com\)](#) (accessed on 10 December 2024), [...], paragraph 3.1.a., in conjunction with Enrolling in the external offers program, accessible at: [Enrolling in the external offers program - Play Console Help \(google.com\)](#) (accessed on 10 December 2024), [...].

⁴⁷ 2024 Alphabet Compliance Report, Google Play Chapter, IV. Art. 5(4), [...], paragraph 40.

⁴⁸ Developer Terms of Service for External Offers Program, version of 6 March 2024, accessible at: [DEVELOPER TERMS OF SERVICE FOR EXTERNAL OFFERS PROGRAM - Play Console Help \(google.com\)](#) (accessed on 10 December 2024), [...], paragraphs 2.2.a. and 3.1.a., in conjunction with External Offers APIs, accessible at: [External offers APIs | Google Play's billing system | Android Developers](#) (accessed on 16 October 2024), [...].



- (c) Third, app developers must not pass additional parameters in the external link's URL or pre-populate fields on the destination page with end users' personal data (e.g., their payment or account details) from the app.⁴⁹ According to Alphabet, the transfer of data via URL parameters is insecure and without this restriction, end users' sensitive personal data would be exposed to misappropriation (e.g., data leakage risks).

4.2.2. *Alphabet's fee structure under the External Offers Program*

- (54) The External Offers Program establishes a new fee structure for those app developers that opt into this program, consisting of two types of fees: (i) an initial acquisition fee ("Initial Acquisition Fee") and (ii) an ongoing services fee ("Ongoing Services Fee").⁵⁰ Both fees are commission fees on any revenues generated with external transactions between an end user and an app developer relating to digital content or items associated with the app.⁵¹ Both fees are triggered by, and apply from, the end user's first "external transaction" onwards.⁵² Developers who do not opt into the External Offers Program continue to be subject to Google Play's standard fee model under the General Business Terms as explained in recitals (38) and (39) of this

⁴⁹ Developer Terms of Service for External Offers Program, version of 6 March 2024, accessible at: [DEVELOPER TERMS OF SERVICE FOR EXTERNAL OFFERS PROGRAM - Play Console Help \(google.com\)](#) (accessed on 10 December 2024), [...], paragraph 3.1.a., in conjunction with Enrolling in the external offers program, accessible at: [Enrolling in the external offers program - Play Console Help \(google.com\)](#) (accessed on 10 December 2024), [...].

⁵⁰ Developer Terms of Service for External Offers Program, version of 6 March 2024, accessible at: [DEVELOPER TERMS OF SERVICE FOR EXTERNAL OFFERS PROGRAM - Play Console Help \(google.com\)](#) (accessed on 10 December 2024), [...], paragraph 3.1.c.

⁵¹ 2024 Alphabet Compliance Report, Google Play Chapter, IV. Art. 5(4), [...], paragraph 41 (a); Alphabet's response to the Commission's RFI of 30 August 2024, submitted on 15 September 2024, [...], paragraph 11.

⁵² Enrolling in the external offers program, accessible at: [Enrolling in the external offers program - Play Console Help \(google.com\)](#) (accessed on 10 December 2024), [...].

Decision. Furthermore, where the developer has opted into the External Offers Program, the developer may use Google Play Billing and promote external offers.⁵³ In such cases, Google Play’s standard fee model applies if a user chooses to conclude a transaction within the app using Google Play Billing, and the fee structure under the External Offers Program applies to external transactions.

- (55) Alphabet defines an “external transaction” as any purchase, or the reversal, refund, or chargeback of any purchase, of an app developer’s products or services (including in-app features and services or subscriptions and the associated auto-renewals) completed via an external link.⁵⁴ The first external transaction occurs once an end user first completes a transaction within 120 hours after clicking on an external link in the app.⁵⁵ If an end user first completes a transaction after that 120-hour period, no fee is applied by Alphabet to that transaction.
- (56) Despite being called “Initial Acquisition Fee”, under the fee concept referred to in the recital (54) above, Alphabet charges fees to both the first external transaction, as well as to all digital content that can be consumed within the app subsequently purchased on an external website, irrespective of any time window after the initial download of an app by an end user. The same rules apply to the “Ongoing Services Fee”.
- (57) As regards the modalities and the amount of the fees charged, Alphabet introduced different rules for the Initial Acquisition Fee and the Ongoing Services Fee.
- (58) The Initial Acquisition Fee amounts to 5% on transactions for auto-renewing subscriptions and 10% for purchases of other offers of digital in-app content (including subscriptions that are not auto-renewed).⁵⁶ It applies for two years following an end user’s first steered transaction.⁵⁷
- (59) The Ongoing Services Fee amounts to 7% on transactions for auto-renewing subscriptions and 17% for purchases of other offers of digital in-app content (including subscriptions that are not auto-renewed).⁵⁸ It is not limited in time.
- (60) Initially, app developers could opt out from Google Play’s ongoing services and thus from paying the ongoing services fee as from two years after the first external

⁵³ Enrolling in the external offers program, accessible at: [Enrolling in the external offers program - Play Console Help \(google.com\)](#) (accessed on 10 December 2024), [...].

⁵⁴ Developer Terms of Service for External Offers Program, version of 6 March 2024, accessible at: [DEVELOPER TERMS OF SERVICE FOR EXTERNAL OFFERS PROGRAM - Play Console Help \(google.com\)](#) (accessed on 10 December 2024), [...], paragraph 1.

⁵⁵ Enrolling in the external offers program, accessible at: [Enrolling in the external offers program - Play Console Help \(google.com\)](#) (accessed on 10 December 2024), [...]; Alphabet’s response to the Commission’s RFI of 30 July 2024, submitted on 26 August 2024, [...], paragraph 56. For the avoidance of doubt, the Commission understands that the term “external offers” referred to by Alphabet in the requirements set out on the External Offers Program webpage has the same meaning as the term “External Link” in the Developer Terms of Service for External Offers Program.

⁵⁶ Developer Terms of Service for External Offers Program, version of 6 March 2024, accessible at: [DEVELOPER TERMS OF SERVICE FOR EXTERNAL OFFERS PROGRAM - Play Console Help \(google.com\)](#) (accessed on 10 December 2024), [...], paragraph 3.1.c.i.

⁵⁷ Developer Terms of Service for External Offers Program, version of 6 March 2024, accessible at: [DEVELOPER TERMS OF SERVICE FOR EXTERNAL OFFERS PROGRAM - Play Console Help \(google.com\)](#) (accessed on 10 December 2024), [...], paragraph 3.1.c.i.

⁵⁸ Developer Terms of Service for External Offers Program, version of 6 March 2024, accessible at: [DEVELOPER TERMS OF SERVICE FOR EXTERNAL OFFERS PROGRAM - Play Console Help \(google.com\)](#) (accessed on 10 December 2024), [...], paragraph 3.1.c.ii.

transaction, provided that the end user consents.⁵⁹ On 21 May 2024, Alphabet indicated to the Commission that [description of Google’s potential policy plans].⁶⁰ This [description of Google’s potential policy plans] has not yet been introduced in the External Offers Program.⁶¹ Opting out of Google Play’s ongoing services allows developers to transfer the provision of ongoing support to an alternative source.⁶²

- (61) According to Alphabet, the ongoing services fee covers ongoing support offered by Google Play to app developers such as security and safety vetting, providing technologies as APIs which protect installed apps from potential security risks, the delivery of updates, ongoing testing of updates, tools for ongoing interaction with existing users, ongoing analytics and app management.⁶³
- (62) While Alphabet permits apps to use web view⁶⁴ and in-app browser technologies, including apps that use steering under the External Offers Program, transactions that take place via web view and in-app browsing technologies after a user uses a link out are treated as in-app purchases and are therefore subject to the standard charges under Google Play’s standard fee model under the General Business Terms as explained in recitals (42), (43) and (47) of this Decision.⁶⁵

5. ASSESSMENT UNDER ARTICLE 29 OF REGULATION (EU) 2022/1925

5.1. Preliminary remarks

- (63) The Commission considers that Alphabet’s General Business Terms, by themselves, do not comply with Article 5(4) of Regulation (EU) 2022/1925 as they do not allow for steering by app developers, as set out above in recitals (41) to (46). This is not contested by Alphabet.
- (64) In assessing Alphabet’s compliance with Article 5(4) of Regulation (EU) 2022/1925, this Decision considers the terms applied under the General Business Terms and the External Offers Program during the period under examination, ending on 8 December 2025. As outlined above in recitals (22) to (27) the Commission observes that Alphabet introduced certain modifications to its business terms governing the relationship with app developers for steering, substantively those formalised in the Revised External Offers Program, which were partially rolled out by 19 August and fully rolled out by 9 December 2025 as well as the changes rolled out on 4 June 2026.

⁵⁹ See e.g. Alphabet’s response to the Commission’s RFI of 17 April 2024, submitted on 21 May 2024, [...], paragraph 5.

⁶⁰ See e.g. Alphabet’s response to the Commission’s RFI of 17 April 2024, submitted on 21 May 2024, [...], paragraph 5 and 138.

⁶¹ Developer Terms of Service for External Offers Program, version of 6 March 2024, accessible at: [DEVELOPER TERMS OF SERVICE FOR EXTERNAL OFFERS PROGRAM - Play Console Help \(google.com\)](https://play.google.com/terms/service/external-offers-program) (accessed on 10 December 2024), [...], paragraph 3.1.c.ii.

⁶² Alphabet’s response to the Commission’s RFI of 17 April 2024, submitted on 21 May 2024, [...], paragraph 137.

⁶³ Alphabet’s submission “Play’s Fee Model For Its External Offers Program Value and Options”, submitted on 21 May 2024, [...], paragraphs 126 et seq.

⁶⁴ Web view is a functionality that allows apps to display web content more easily, and directly within the app and, depending on the specific web view tool used, it can be defined as a view, system application, component, element, or application programming interface (“API”) that allows app developers to render web pages within an app.

⁶⁵ Alphabet’s response to the Commission’s RFI of 30 July 2024, submitted on 26 August 2024, [...], paragraph 47.

- (65) Further, Alphabet’s combined business terms in the examination period, consisting of Alphabet’s External Offers Program read in combination with Alphabet’s General Business terms, do not comply either with Article 5(4) of Regulation (EU) 2022/1925 for each of the two reasons set out below.
- (66) First, the External Offers Program restricts the app developers’ possibility to communicate and promote offers within the app and conclude contracts within and outside of the app.
- (67) Second, the External Offers Program does not allow app developers to conclude contracts “free of charge” but imposes fees for steering that go beyond merely seeking remuneration for facilitating the initial acquisition of the end user by the app developer.
- (68) The Commission’s reasoning in support of each of these findings is set out in the sections below. Sections 5.2.1 and 5.2.2 show that Alphabet does not allow business users to communicate, promote offers and conclude contracts following steering regardless of the distribution channels and section 5.2.3 shows that Alphabet does not allow app developers to communicate, promote offers and conclude contracts following steering “free of charge”. Section 5.2.4 concludes on Alphabet’s restrictions to steering and conclusion of contracts following steering.

5.2. Alphabet’s External Offers Program does not comply with Article 5(4) of Regulation (EU) 2022/1925

5.2.1. Alphabet does not allow business users to communicate, promote offers and conclude contracts regardless of the distribution channels

5.2.1.1. The Commission’s position

- (69) The Commission considers that Alphabet’s requirement, as described in recital (53)(a), according to which steering must only direct end users to the app developer’s own digital content or items associated with the app and must therefore not lead to other offers, including third party offers, amounts to non-compliance with Article 5(4) of Regulation (EU) 2022/1925 for the reasons set out below
- (70) First, Article 5(4) of Regulation (EU) 2022/1925 obliges gatekeepers to allow business users, free of charge, to communicate and promote offers to end users acquired via its CPS or through other channels, and to conclude contracts with those end users, regardless of whether, for that purpose, they use the CPS of the gatekeeper or not.
- (71) Recital 40 of Regulation (EU) 2022/1925 clarifies, in this respect, that app developers must be free to promote and choose the distribution channel that they consider most appropriate for the purpose of interacting with end users, to promote offers and to engage in “any form of communication and conclusion of contracts” with end users. Steering to any types of offers, including to offers of third parties, is one of the many forms of communication, in addition to first-party websites and first-party app stores⁶⁶, through which app developers can engage and conclude steered transactions with end users.

⁶⁶ First-party websites and app stores are those websites and app stores operated by the developer and to which that developer steers end users via its own app distributed via Google Play (as opposed to third-party websites and app stores which are not operated by that developer).

- (72) Based on Article 5(4), as clarified by recital 40 of Regulation (EU) 2022/1925, app developers distributing their apps through Google Play should therefore be free to decide how they communicate with end users and inform them about alternative offers, including under different conditions, and to choose the channel they consider most appropriate for that purpose.
- (73) In addition, based on Article 5(4) of Regulation (EU) 2022/1925, the Commission is of the view that this provision does not distinguish between communications and promotions of offers and conclusion of contracts taking place inside or outside the app. Therefore, gatekeepers should allow such communications, promotions, and conclusion of contracts, free of charge, irrespective of where they take place, including, for instance, within the app, e.g., via web view. This is supported by the fact that Article 5(4) of Regulation (EU) 2022/1925 requires the gatekeeper to allow its business users to communicate, promote, and conclude contracts “*regardless of whether, for that purpose, they use the core platform services of the gatekeeper*”. This is further confirmed by recital 40 of that Regulation, which specifically refers to the “*promotion of offers, including through a software application of the business user, and any form of communication and conclusion of contracts between business users and end users*”, thus indicating that end users should be free to communicate and enter into contracts with app developers either through the CPS of the gatekeeper or from a direct channel of the app developer or another indirect channel that such developer uses.
- (74) Second, unless a channel or form of communication is explicitly excluded from the scope of Article 5(4) of Regulation (EU) 2022/1925, gatekeepers must allow app developers to use that channel or form of communication to engage with end users. There is nothing in Article 5(4) of Regulation (EU) 2022/1925 that would allow the gatekeeper to restrict steering to any types of offers, including to offers of third parties and third-party app stores.
- (75) Third, insofar as Alphabet attempts to justify any of the aforementioned restrictions by reference to security concerns⁶⁷, it should be noted that Article 5(4) of Regulation (EU) 2022/1925, in contrast to certain other provisions of that Regulation, such as Article 6(4), does not explicitly recognise that a gatekeeper may take restrictive measures that are strictly necessary and proportionate to protect the security of its users when complying with its obligation under that provision.
- (76) In any event, any alleged security considerations under Article 5(4) of Regulation (EU) 2022/1925 could only justify restrictions on the freedom to communicate, promote offers and conclude contracts free of charge as required by Article 5(4) of Regulation (EU) 2022/1925 if such restrictions were objectively necessary and proportionate to protect the security of end users. As opposed to Article 5(4) of Regulation (EU) 2022/1925, Article 6(4) of Regulation (EU) 2022/1925 contains explicit requirements with regard to security and integrity measures that gatekeepers may implement for the installation of third-party apps and app stores. As set out in more detail in Section 5.2.2 below, the Commission considers that Alphabet has not provided convincing arguments showing that the restrictions under the External

⁶⁷ Alphabet’s submission “Play generates ongoing value for developers over the lifetime of an app by creating an environment of trust and confidence”, submitted on 6 December 2023, [...], paragraphs 7 et seq.; Alphabet’s response to the Commission’s RFI of 30 July 2024, submitted on 26 August 2024, [...], paragraph 14 et seq.

Offers Program are objectively necessary and proportionate to protect the end user's security.

5.2.1.2. Alphabet's arguments

- (77) Alphabet contends that the Commission's position is incorrect and overexpansive in the interpretation of Article 5(4) of Regulation (EU) 2022/1925 in two aspects.
- (78) First, Alphabet claims that the Commission's position is wrong in law, since the External Offers Program allows developers to steer end users to any destination of their choice to promote their own offers and enter into contracts with their users for those offers.⁶⁸ According to Alphabet, this is supported by all methods of statutory interpretation as further outlined below in recitals (150) to (166). In addition, Alphabet claims that the Commission's position is wrong in fact as further outlined below in recitals (167) and (168).
- (79) Second, Alphabet argues that allowing developers to steer users to conclude contracts with third parties and in particular, steering users to install third party apps would be disproportionate as it would expose European consumers to intolerable risks and harm.⁶⁹
- (80) In that respect, Alphabet considers that it would be unrealistic for Alphabet to maintain a sufficiently secure and trusted environment for developers and consumers if links to third party offers were allowed in apps distributed on Google Play.⁷⁰ Alphabet claims that the Android ecosystem facilitates an openness for developers which would be unviable to maintain if links to third parties were permitted as this would force Alphabet to "move Android away from its current open model and towards a closed system more like that of Apple."⁷¹

5.2.1.3. The Commission's assessment of Alphabet's arguments

- (81) The Commission considers that none of Alphabet's arguments convincingly put into question the Commission's position. This conclusion is based on the following reasons.
- (82) First, Alphabet's arguments alleging that the Commission's interpretation of Article 5(4) of Regulation (EU) 2022/1925 is incorrect and overexpansive should be dismissed for the reasons outlined below in Section 5.2.2.3.1.1.
- (83) Second, Alphabet's arguments attempting to justify the restrictions pursuant to the External Offers Program on the ability of app developers to freely communicate, promote offers and conclude contracts with end users should be dismissed for the reasons outlined below in Sections 5.2.2.1.4 and 5.2.2.3.4. In that respect, Alphabet fails to show that the restrictions are either objectively necessary or proportionate to protect the security of end users.

⁶⁸ Alphabet's response to the Preliminary Findings, [...], paragraphs 4, 77-83.

⁶⁹ Alphabet's response to the Preliminary Findings, [...], paragraph 5-6.

⁷⁰ Alphabet's response to the Preliminary Findings, [...], paragraph 6-9.

⁷¹ Alphabet's response to the Preliminary Findings, [...], paragraph 8-10.

5.2.2. *Assessment of Alphabet's restrictions to steering and steered transactions under the External Offers Program*

5.2.2.1. The Commission's position

5.2.2.1.1. Alphabet's restrictions regarding the destinations after steering

- (84) The Commission takes the view that for app developers to be able to freely steer acquired end users, they must be able to direct such acquired end users to any destination of their choice. This means that steering, e.g. in the form of linking-out or directing end users to any out-of-app (e.g., app store or web page) or in-app destination (e.g., web page displayed in the app via web view), must not be limited by Alphabet to destinations hosting the app developer's own digital content/items or services that are consumable in the app. Indeed, alternative channels may be accessed through any destination steered to by app developers, including destinations offering third parties' digital content/items or services, as well as any other type of offers of the app developer concerned or of any other third party app developer, including apps or app stores offered by such third party app developers, or, as clarified by recital 40 of Regulation (EU) 2022/1925, any other indirect channel that the app developer uses.⁷² Neither Article 5(4) of Regulation (EU) 2022/1925, nor recital 40 provide for the possibility to apply any technical restriction as to the steering destination. For example, if an app developer wishes to steer an end user to its own website or third-party app store, or to a destination offered by a third party app developer, with a view to concluding a contract with that end user on those alternative distribution channels, or conclude contracts with other developers on those distribution channels, they should be able to do so.
- (85) Contrary to Alphabet's view,⁷³ the Commission considers that Alphabet's requirement under the External Offers Program according to which app developers are restricted from showing, in their apps, link-outs that lead to destinations hosting, something other than digital content or items associated with their respective apps, such as third-party digital content or items, does not comply with Article 5(4) of Regulation (EU) 2022/1925.
- (86) Notably, such a restriction does not allow those app developers to freely communicate and promote offers and conclude contracts with end users. Rather, such a restriction limits the ability of app developers and end users to choose the channel through which they would like to engage with each other.

5.2.2.1.1.1. Steering that leads to third party offers

- (87) The Commission considers that Alphabet's requirement according to which steering must not lead to third-party offers amounts to a violation of Article 5(4) of Regulation (EU) 2022/1925 for the reasons set out below.

⁷² The Commission notes that any such steering, including to third-party app stores and apps distributed through third-party app stores, must also be free of charge, as set out below in Section 5.2.3 In this context, the Commission further notes that whether a gatekeeper is entitled to charge an initial acquisition fee and / or other fees in case of such steering has to be assessed in light of the specific circumstances of the steering at issue, and in particular in light of whether the gatekeeper in such cases has actually facilitated the initial acquisition of an end user that has not previously been acquired by the app developer.

⁷³ Alphabet's response to the Commission's RFI of 30 July 2024, submitted on 26 August 2024, [...], paragraphs 12, 13, 36 and 37.

- (88) First, recital 40 of Regulation (EU) 2022/1925 clarifies that developers must be able to engage in “*any form of communication and conclusion of contracts*”. Steering to any types of offers, including to offers on third-party websites as well as on third-party app stores, is one of the many forms of communication, in addition to first-party websites and app stores, through which app developers can engage and conclude steered transactions with end users.
- (89) Second, unless a channel or form of communication is explicitly excluded from the scope of Article 5(4) of Regulation (EU) 2022/1925, gatekeepers must allow app developers to use that channel or form of communication to engage with end users. There is nothing in Article 5(4) of Regulation (EU) 2022/1925 that would allow the gatekeeper to restrict steering to any types of offers, including to offers on first-party and third-party websites as well as on first-party and third-party app stores.
- (90) In this context, the Commission considers that the claims presented by Alphabet are not convincing.
- (91) First, the Commission rejects Alphabet’s view that recital 40 of Regulation (EU) 2022/1925 requires that any steering can only lead to first-party offerings.⁷⁴ In line with the actual wording of Article 5(4) of Regulation (EU) 2022/1925, the Commission considers that app developers should be able to freely steer end users to any type of offer, including to third-party offers, in apps or on app stores not operated by the app developer itself. For example, this includes situations where a developer may wish to steer an end user to an alternative app store provided by a third-party developer. In such a scenario, the app developer that steers the end user continues to be the entity that interacts with the end user, since it is this app developer which communicates and promotes the offers of third parties to its acquired end users.
- (92) Second, a restriction on the destination to which app developers may steer would also be contrary to the objective of Article 5(4) of Regulation (EU) 2022/1925 as clarified by recital 40 of that Regulation, since it would prevent app developers and end users from using the distribution channel of their choice, including those provided by third parties.
- (93) If app developers, whose business model involves the communication or promotion of offers of third parties, could not use the channel of their choice, such a restriction would not only prevent them from using “any form of communication or promotion”, but would de facto allow the gatekeeper to dictate the terms of how and where app developers interact with acquired end users. This would, in turn, increase those app developers’ dependence on the gatekeeper CPS in question and further entrench its gatekeeper status which, as clarified in recital 40 of Regulation (EU) 2022/1925, is contrary to the stated objective of Article 5(4) of that Regulation.
- (94) Third, contrary to Alphabet’s view,⁷⁵ the fact that recital 40 of Regulation (EU) 2022/1925 states that “*end users should also be free to choose offers of such business users*”, does not mean that this is an exhaustive list of the type of offers that app developers can steer to or that recital 40 of Regulation (EU) 2022/1925 limits the type of offers that app developers can steer to. The aforementioned reference merely

⁷⁴ Alphabet’s response to the Commission’s RFI of 30 July 2024, submitted on 26 August 2024, [...], paragraph 37a.

⁷⁵ Alphabet’s response to the Commission’s RFI of 30 July 2024, submitted on 26 August 2024, [...], paragraphs 12, 13, 36 and 37.

provides an example of offers to which end users could be steered to but cannot be considered to restrict the scope of Article 5(4) of Regulation (EU) 2022/1925.

- (95) Fourth, Alphabet’s view is not supported either by the Impact Assessment support study for the Commission’s Proposal for a Regulation on contestable and fair markets in the digital sector of 15 December 2020⁷⁶ (“the Proposal”), when it refers to the “*advertisement of lower priced subscriptions*”.⁷⁷
- (96) Contrary to Alphabet’s claim,⁷⁸ the support study does not argue that “*the point of Art. 5(4) is to allow developers to advertise “lower priced subscriptions” for their apps.*” The support study simply referred – by way of an example – to concerns expressed by a service provider interviewed for this study, which noted that high commissions charged by Apple for in-app subscriptions coupled with the prohibition on advertising lower priced subscriptions via its own website made it difficult to compete with Apple’s rival product.⁷⁹
- (97) In any event, an impact assessment, including any support studies commissioned by the Commission for an impact assessment, cannot be used to interpret a legal act against its wording.

5.2.2.1.1.2. Steering that leads to offers other than digital content or items associated with the app

- (98) The Commission further takes the view that contrary to Alphabet’s claim⁸⁰, Article 5(4) of Regulation (EU) 2022/1925 should not be interpreted as only requiring gatekeepers to allow app developers to communicate and promote offers for digital content or items associated with or consumable in their respective apps. Rather, the Commission takes the view that steering within the meaning of Article 5(4) of Regulation (EU) 2022/1925 relates to any type of offers.⁸¹
- (99) First, neither Article 5(4) of Regulation (EU) 2022/1925 nor recital 40 of that same Regulation specify or limit in any way the types of offers that app developers can steer to. Accordingly, offers that app developers can steer to can relate to any product or service, including in-app content, apps and app stores, regardless of whether it is offered by first-party or third-party. It is irrelevant whether the offer relates to digital or physical goods or services or is associated with the app or not. If Article 5(4) of

⁷⁶ COM/2020/842 final.

⁷⁷ Digital Markets Act – Impact Assessment support study DOI: 10.2759/791349, [Digital Markets Act - Publications Office of the EU \(europa.eu\)](#) and [Digital Markets Act - Publications Office of the EU \(europa.eu\)](#), [...], page 10.

⁷⁸ Alphabet’s response to the Commission’s RFI of 30 July 2024, submitted on 26 August 2024, [...], paragraph 38.

⁷⁹ Digital Markets Act – Impact Assessment support study Doi: 10.2759/791349, [Digital Markets Act - Publications Office of the EU \(europa.eu\)](#) and [Digital Markets Act - Publications Office of the EU \(europa.eu\)](#), [...], page 10.

⁸⁰ Alphabet’s response to the Commission’s RFI of 30 July 2024, submitted on 26 August 2024, [...], paragraph 42.

⁸¹ This does not, however, mean that Alphabet is necessarily entitled to charge for the steering to any type of offers by way of the Initial Acquisition Fee and / or the Ongoing Services Fee. For example, in scenarios such as the one outlined in recital (84) above, any possible fee for the initial acquisition charged by Alphabet may only be limited to purchases of digital content usable in the app in which the developer has steered the end user. That is because, any possible fee imposed on purchases for content that is not usable in the app in which the developer has steered the end user (e.g., purchases in apps downloaded following steering) is not commensurate to the value of the initial end user acquisition, as set out in particular in Section 5.2.3.2.

Regulation (EU) 2022/1925 were limited only to offers for digital content or items associated with or consumable within an app, the legislature would have specified this limitation in the provision.

- (100) Second, contrary to the assertions made by Alphabet, the reference to “*any form of communication*” in recital 40 of Regulation (EU) 2022/1925 does not relate only to the form of communication that should be permitted, (e.g., email, SMS, TV, mail, billboards, in-app communication, online ads), but also the content or object of the communication⁸².
- (101) As set out above, Article 5(4) of Regulation (EU) 2022/1925 establishes that gatekeepers must allow business users to communicate with end users. The term “*communicate*” covers a wide range of information that may be conveyed by business users to end users. Nothing in Article 5(4) of Regulation (EU) 2022/1925 suggests that either the form or the content of such communication may be restricted in any way. In principle, unless a channel, form or content of communication is explicitly excluded from the scope of Article 5(4) of Regulation (EU) 2022/1925 – and there is nothing in that provision that would suggest that that is the case – gatekeepers must allow app developers to use any channel, form or content of communication of their liking to engage with end users.⁸³
- (102) The fact that recital 40 of Regulation (EU) 2022/1925 refers to “*any form of communication*” confirms the scope of the provision which refers to the term “*communicate*” without any restrictions. Therefore, app developers should be able to steer to any destination page of their choice, including those offered by third parties.
- (103) Third, the references to “*an app store that does not allow its business users to advertise alternative subscription options outside its platform to acquire customers*” in paragraph 39 of the Commission’s Impact Assessment Report, Part 1, and to “*advertising the existence of alternative subscription and billing mechanisms*” in paragraph 59 of the Commission’s Impact Assessment Support Study do not support Alphabet’s view either.⁸⁴
- (104) These sentences merely refer to a factual description of one example of anti-steering provisions “*by which gatekeepers prevent business users from directing acquired consumers to offers other than those provided on the platform, even though such alternative offers may be cheaper or otherwise potentially more attractive.*”⁸⁵ In any event, as stated before, the Impact Assessment does not determine the scope of Article 5(4) of Regulation (EU) 2022/1925 and can in any event not contradict the wording of Article 5(4).
- (105) Moreover, the Impact Assessment Report in fact supports the Commission’s view that Article 5(4) of Regulation (EU) 2022/1925 is not limited to offers for digital content or items associated with the app. Indeed, it describes “anti-steering” rules as

⁸² Alphabet’s response to the Commission’s RFI of 30 July 2024, submitted on 26 August 2024, [...], paragraphs 44-45.

⁸³ Reasonable exceptions may be permissible, for instance in case of manifestly illegal content.

⁸⁴ Alphabet’s response to the Commission’s RFI of 30 July 2024, submitted on 26 August 2024, [...], paragraphs 42a and 42b.

⁸⁵ cf. the complete sentence “*for instance, an app store that does not allow its business users to advertise alternative subscription options outside its platform to acquire customers*”, Commission’s Impact Assessment Report, Part 1, [Impact assessment of the Digital Markets Act | Shaping Europe’s digital future \(europa.eu\)](#), [...], paragraph 39.

an example of unfair practices by which gatekeepers prevent business users from directing acquired end users to offers other than those provided on the platform, even though such alternative offers may be cheaper or otherwise potentially more attractive, without specifying the types of offers users can be directed to.

- (106) Fourth, as regards Alphabet’s argument that the Article 102 TFEU Apple Decision in case AT.40437⁸⁶ does not require Apple to allow link-outs to app stores or pages where apps can be downloaded,⁸⁷ the Commission recalls that recital 10 of Regulation (EU) 2022/1925 clarifies that this Regulation aims to complement the enforcement of competition law and it should apply without prejudice to Articles 101 and 102 TFEU. Furthermore, recital 11 of Regulation (EU) 2022/1925 clarifies that “[t]his Regulation pursues an objective that is complementary to, but different from that of protecting undistorted competition on any given market, as defined in competition-law terms, which is to ensure that markets where gatekeepers are present are and remain contestable and fair, independently from the actual, potential or presumed effects of the conduct of a given gatekeeper covered by this Regulation on competition on a given market. This Regulation therefore aims to protect a different legal interest from that protected by those rules and it should apply without prejudice to their application.”
- (107) Therefore, the Commission’s antitrust decision in case AT.40437 is not a precedent for the Commission’s assessment of Alphabet’s compliance with Article 5(4) of Regulation (EU) 2022/1925.
- (108) Fifth, the Commission’s view in recital (98) above also does not conflict with Article 6(4) of Regulation (EU) 2022/1925. Unlike Article 6(4) of Regulation (EU) 2022/1925, Article 5(4) of that Regulation does not require gatekeepers to allow and technically enable the installation and effective use of third-party apps or app stores using, or interoperating with, its operating system and allow those apps or app stores to be accessed by means other than the relevant CPSs of that gatekeeper. Article 5(4) of Regulation (EU) 2022/1925 rather requires gatekeepers to allow developers to steer end users to any destination, including alternative distribution channels, irrespective of whether the offers communicated and promoted by app developers lead to alternative channels, including where apps may be available for download.
- (109) In other words, Article 5(4) of Regulation (EU) 2022/1925 contains a substantially different obligation from the one stated in Article 6(4) of that Regulation. This also means that the Commission’s interpretation of Article 5(4) of Regulation (EU) 2022/1925 is without prejudice to the application of Article 6(4) of that Regulation and in particular the objectively necessary and proportionate security measures that gatekeepers may take pursuant to Article 6(4) of that Regulation with regard to the installation of third-party apps or app stores.
- (110) The Commission’s view in Section 5.2.2.1 does also not entail that Google Play shall be required to carry other app stores within the meaning of Article 2(14) of Regulation (EU) 2022/1925.⁸⁸ It rather requires Alphabet not to restrict developers’

⁸⁶ Commission decision of 4 March 2024, Case AT.40437 – *Apple – App Store Practices (music streaming)*

⁸⁷ Alphabet’s response to the Commission’s RFI of 30 July 2024, submitted on 26 August 2024, [...], paragraph 42c.

⁸⁸ Alphabet’s response to the Commission’s RFI of 30 July 2024, submitted on 26 August 2024, [...], paragraph 41c.

ability to communicate and promote any type of offers available on other app stores or third-party websites, including offers for apps. Contrary to the assertions by Alphabet, the Commission is not arguing that Alphabet is required under Article 5(4) of Regulation (EU) 2022/1925 to allow app developers to offer third party app stores on Google Play but Alphabet must allow the steering to such alternatives outside Google Play. This is because the act of steering to such third party app stores does not turn the app through which an app developer steers into a software application store within the meaning of Article 2(14) of Regulation (EU) 2022/1925.

- (111) Sixth, the Commission takes the view that the context of Article 5(4) of Regulation (EU) 2022/1925 does not lend further support to Alphabet’s argument. According to Alphabet, “*Art. 5(4) represents a significant intrusion into the freedom of an app store to organise its business and it is meant to be directly applicable without need for any further specification (in contrast to Art. 6 rules). As a result, it must be read narrowly. It is not permissible to read complicated and expansive obligations into this rule that would entirely subvert the basic operational model of an app store.*”⁸⁹
- (112) Except for a broad statement, Alphabet does not explain how the Commission’s interpretation of Article 5(4) of Regulation (EU) 2022/1925 would represent a significant intrusion into its freedom to organise its business. In any event, Alphabet has not provided a justification as to why this would warrant a narrow interpretation of that provision in view of the clear and unconditional obligation it contains, Alphabet makes no serious attempt to substantiate this generalisation.
- (113) In any event, for the reasons set out in recitals (461) to (471), any limitation of Alphabet’s freedom to conduct a business brought about by this Decision strikes a fair balance between the fundamental rights and freedoms at stake.

5.2.2.1.2. Alphabet’s Linkout Prompt following steering

- (114) The Commission takes the view that Alphabet’s repeated imposition of the Google Linkout Prompt (hereafter “the Prompt”) after every link-out, reproduced in recital (53)(b) above, constitutes an unjustified restriction on developers’ ability to freely communicate, promote offers and conclude contracts, and disincentivises app developers and end users from using any alternative distribution channel for viewing offers and/or from interacting and transacting.
- (115) The imposition of the repeated Prompt, in particular its wording and its frequency, makes the exercise of the rights provided by Article 5(4) of Regulation (EU) 2022/1925 unduly difficult for both app developers and end users. This significantly restricts the way in which end users and app developers may communicate within the app and engage in, or make use of the possibility afforded by, steering, as envisaged by Article 5(4) of Regulation (EU) 2022/1925. Furthermore, Alphabet has not sufficiently substantiated why the repeated Prompt is neutral and objective. This is based on the following reasons.
- (116) First, the Commission takes the view that the Prompt requires end users to overcome an additional step each time they are steered, for example, for making a payment outside the app. Such a repeated requirement unduly degrades the experience and usefulness of steering for both app developers and end users by making the communication and, in particular, the conclusion of contracts following steering

⁸⁹ Alphabet’s response to the Commission’s RFI of 30 July 2024, submitted on 26 August 2024, [...], paragraph 43.

unnecessarily burdensome, in particular when compared to using Google Play's in-app payments system which does not display such a prompt at all, let alone in a repeated manner.

- (117) Second, the Commission considers that Alphabet's wording of the repeated Prompt is not neutral and objective and thereby may deter end users from exercising their right under Article 5(4) of Regulation (EU) 2022/1925. By asking end users to "[o]nly follow links from sources [...] [they] trust", Alphabet suggests that end users run a risk while availing themselves of the possibility of steering, rather than simply and in a neutral manner informing the end users that they will be transacting with the app developer directly instead of with Alphabet. Contrary to Alphabet's claim,⁹⁰ this framing risks deterring end users from making use of steering due to perceived and generally assumed safety concerns, irrespective of whether such risks objectively exist.
- (118) Third, the Commission finds that the frequency of Alphabet's requirement to display the Prompt every time⁹¹ end users exit an app via steering restricts app developers' ability to freely engage in "*any form of communication and conclusion of contracts*". The frequent and recurrent nature of the Prompt makes the exercise of these choices unduly difficult for end users within their app and acts as a deterrent for end users to engage in steering.

5.2.2.1.3. Alphabet's restriction on including additional data in the URL

- (119) The Commission takes the view that, by preventing app developers from passing additional parameters in the URL in the hyperlink they provide in their app for linking-out, Alphabet's External Offers Program is in breach of Article 5(4) of Regulation (EU) 2022/1925. Such restriction prevents app developers from pre-populating fields on the destination page with personal data (e.g. end user's name, email address or payment information) from the app, allegedly "*in order to protect the user*",⁹² and restricts app developers' ability to engage in "*any form of communication and conclusion of contracts*" with end users.
- (120) First, such a restriction requires the end user to re-enter the required information each time they are steered, for example, for making a payment outside the app. Such a requirement unduly degrades the experience and usefulness of steering for both app developers and end users by making the communication and, in particular, the conclusion of contracts following steering unduly difficult, in particular when compared to using Google Play's in-app payments system which pre-populates the relevant fields prior to concluding a transaction.
- (121) Second, the Commission considers that Alphabet's reference to the possibility for users to auto-fill payment details using previously saved information in their browser⁹³ cannot compensate for the restriction on pre-populating fields with data

⁹⁰ Alphabet's response to the Commission's RFI of 17 April 2024, submitted on 21 May 2024, [...], paragraph 55.

⁹¹ Alphabet's response to the Commission's RFI of 17 April 2024, submitted on 21 May 2024, [...], paragraph 53, and External Offers APIs, accessible at: [External offers APIs | Google Play's billing system | Android Developers](#), accessed on 16 October 2024, [...].

⁹² Enrolling in the external offers program, accessible at: [Enrolling in the external offers program - Play Console Help \(google.com\)](#), accessed on 10 December 2024, [...] and Alphabet's response to the Commission's RFI of 17 April 2024, submitted on 21 May 2024, [...], paragraph 45.

⁹³ Alphabet's response to the Commission's RFI of 17 April 2024, submitted on 21 May 2024, [...], paragraph 47.

from the app, as the functionality does not avoid making the process of concluding steered transactions unduly difficult for end users. This is because the end user must have first saved their payment details via their browser in order to use the autofill function. Furthermore, even if the end user could use previously saved information in a web browser to populate the relevant fields, this in itself does not ensure or demonstrate compliance by Alphabet with Article 5(4) of Regulation (EU) 2022/1925 because it requires the end user to undertake an additional step (i.e. confirming the pre-population of these fields by selecting the previously saved information) every time they are presented with a payments page, rather than having their data automatically pre-populated when landing on that page following steering and simply proceeding with the payment by, e.g., pressing a “Pay” button.

5.2.2.1.4. Alphabet has failed to adequately justify any of the aforementioned restrictions on security grounds

(122) The Commission notes that although not expressly provided for in Article 5(4) of Regulation (EU) 2022/1925, for the purposes of this Decision, the Commission does not argue that Alphabet is, in principle, prevented from taking measures that are objectively necessary and proportionate to protect security. However, the Commission considers that Alphabet has failed to adequately justify any of the aforementioned restrictions on the ability of app developers to freely communicate, promote offers and conclude contracts with end users as it did not provide elements showing that the restrictions are either objectively necessary or proportionate to protect the security of end users, insofar as Alphabet claims such security considerations.

5.2.2.1.4.1. Alphabet’s restriction regarding the destinations after steering

(123) First, as regards Alphabet’s restrictions on the destination following steering and the type of offers app developers can steer to, the disproportionate nature of Alphabet’s restriction is highlighted by Alphabet’s own policies with regard to the distribution of apps selling physical goods and services. Google Play allows developers to distribute apps that sell “non-digital” goods and services, despite the fact that Google Play does not vet those goods and services, e.g. for compliance with product safety legislation. It is therefore unclear why Alphabet considers a complete restriction on steering to third party offers or distribution channels as a proportionate measure in view of the alleged objectives pursued by Alphabet.

(124) Second, Alphabet has not sufficiently substantiated why these measures are objectively necessary and proportionate, beyond general references to hypothetical risks and examples of security incidents. The Commission agrees that an information prompt that complies with Article 5(4) of Regulation (EU) 2022/1925, may be shown to end users, where appropriate, since it can help those users make an informed decision. Therefore, where end users are shown such an information prompt, a restriction on the destinations and types of offers to which developers can steer is not necessary, since end users are duly informed about the consequences of their choices via such information prompt, including that they will no longer be transacting with Alphabet after steering. Such an information prompt is also a more proportionate

way to ensure that users are protected from the alleged risks that Alphabet is claiming.⁹⁴

- (125) As stated by Alphabet, the Prompt ensures “*that users have the information they need to decide whether to proceed with a linkout and are aware that Play’s services (e.g. monetisation features such as refunds, and security features such as app vetting and parental controls) will not be available*”.⁹⁵
- (126) An additional restriction on the type of communication, which allegedly pursues the same objective, that is to protect the security of end users, therefore appears to be neither objectively necessary to protect end users appropriately of the alleged security risks involved in steering, nor proportionate in view of the alleged objective.
- (127) Alphabet claims that warning messages such as the Prompt do not provide adequate protection against these risks,⁹⁶ due to end users’ low comprehension rates of such warning messages. Furthermore, Alphabet further argues that the Prompt is not sufficient in cases where a developer may inadvertently show a link to third party content that may be harmful, because end users trust the app developer showing the third-party link due to their experience of their Google Play distributed apps.⁹⁷ The Commission considers that these claims do not lend support to Alphabet’s argument that completely restricting app developers’ ability to steer to any destination of their choice is the least restrictive measure available. This is because, except for generalisation, Alphabet has not provided sufficiently specific evidence to demonstrate the existence and magnitude of the purported risks, nor why a complete restriction on steering to third party content is a necessary measure and the most proportionate one to mitigate these risks. Furthermore, app developers are themselves subject to EU legislation addressing the purported risks identified by Alphabet, such as fraud, credit card theft, identity and data theft, child pornography and IT security risks. Finally, Alphabet itself seems to consider, by introducing them, that a proper prompt actually adequately informs users of the fact that they will not be dealing with Alphabet anymore, but another app developer.
- (128) Similarly, the studies cited by Alphabet, which suggest that online consent forms have low comprehension rates, do not show that warning messages do not provide adequate protection against these risks.⁹⁸
- (129) All three studies cited by Alphabet deal with consent forms for research studies.⁹⁹ Since the studies were partly assigned a very low risk to participation in online social

⁹⁴ This is without prejudice to the Commission’s view set out in Section 5.2.2.1.2 above that, while the Commission does not disagree that information prompts may be shown to end users, when appropriate, since they can help those users to make an informed decision, the Prompt does not comply with Article 5(4) of Regulation (EU) 2022/1925.

⁹⁵ Alphabet’s submission of 16 April 2024, DMA Art. 5(4): Design Principles for the Google Linkout Prompt, [...], paragraph 1.

⁹⁶ Alphabet’s response to the Commission’s RFI of 30 July 2024, submitted on 26 August 2024, [...], paragraph 29.

⁹⁷ Alphabet’s submission on “Play’s Revised Compliance Proposal for its External Offers Program Expands Developer Flexibility and Reduces Fees”, 26 October 2024, [...], paragraph 48.

⁹⁸ Alphabet’s response to the Commission’s RFI of 30 July 2024, submitted on 26 August 2024, [...], paragraph 30 and footnotes 15-17.

⁹⁹ Cf. Perrault, E.K., & Keating, D.M. (2018). Seeking Ways to Inform the Uninformed: Improving the Informed Consent Process in Online Social Science Research. *Journal of Empirical Research on Human Research Ethics*, 13, 50 – 60, p. 50, [...]; Stanley, B. H., & Guido, J. R. (1996). In B. H. Stanley, J. E. Sieber, & G. B. Melton (Eds.), *Research ethics: A psychological approach* (pp. 105–128). Lincoln:

science research, it can be assumed that the participants did not see themselves as exposed to dangers as in everyday life and were therefore less attentive.¹⁰⁰ Participants even justified skimming or not reading the consent form because researchers were bound by research guidelines and therefore no danger was to be expected.¹⁰¹ Furthermore,¹⁰² the studies cited are not representative because they tested only 547 participants¹⁰³, and in any event, contrary to Alphabet's explanation,¹⁰⁴ the comprehension rates were between 35%-80% and not merely 35%¹⁰⁵. Finally, the tested consent forms were much longer than the Prompt in question. While the latter only counts 52 words¹⁰⁶, the tested consent forms comprised 180-518 words.¹⁰⁷ Shorter consent forms have a higher comprehension rate.¹⁰⁸ 42% of participants even suggested to shorten the consent forms to increase comprehension rates.¹⁰⁹

- (130) Furthermore, the survey that Alphabet conducted in [date] did not engage in any live testing of end user behaviour in-app, but was rather based on a set of alternative warning messages and a number of related multiple-choice questions on

University of Nebraska Press, p. 107, 108, cited as part of [...]; Varnhagen, C. K., Gushta, M., Daniels, J., Peters, T. C., Parmar, N., Law, D., Hirsch, R., Takach, B. S., & Johnson, T. (2005). How informed is online informed consent? *Ethics & behavior*, 15(1), pp.37–48, p. 39, [...].

100 See, for example: “in social scientific studies defined as minimal risk, “the probability and magnitude of harm or discomfort anticipated in the research [must not be] greater ... than those ordinarily encountered in daily life” (U.S. Department of Health and Human Services [USDHHS], 2009, p. 4). Given that minimal risk, online-based studies are typically considered as low-stakes, and consent can even be waived in some cases, some may argue that there is little regulatory or ethical imperative to ensure that participants are informed.” Cf. Perrault, E.K., & Keating, D.M. (2018). Seeking Ways to Inform the Uninformed: Improving the Informed Consent Process in Online Social Science Research. *Journal of Empirical Research on Human Research Ethics*, 13, 50 – 60, p. 50, 59, [...].

101 Varnhagen, C. K., Gushta, M., Daniels, J., Peters, T. C., Parmar, N., Law, D., Hirsch, R., Takach, B. S., & Johnson, T. (2005). How informed is online informed consent? *Ethics & behavior*, 15(1), pp.37–48, p. 44, [...].

102 *Ibid.*

103 Perrault, E.K., & Keating, D.M. (2018). Seeking Ways to Inform the Uninformed: Improving the Informed Consent Process in Online Social Science Research. *Journal of Empirical Research on Human Research Ethics*, 13, 50 – 60, p. 52, [...].

104 Alphabet's response to the Commission's RFI of 30 July 2024, submitted on 26 August 2024, [...], footnote 17.

105 Stanley, B. H., & Guido, J. R. (1996). In B. H. Stanley, J. E. Sieber, & G. B. Melton (Eds.), *Research ethics: A psychological approach* (pp. 105–128). Lincoln: University of Nebraska Press, p.108, 109 [...].

106 Including the last sentence, which the Commission regards as non-neutral. Without the sentence in question the Google Linkout Prompt only comprises 45 words.

107 Perrault, E.K., & Keating, D.M. (2018). Seeking Ways to Inform the Uninformed: Improving the Informed Consent Process in Online Social Science Research. *Journal of Empirical Research on Human Research Ethics*, 13, 50 – 60, p. 52, [...]; Varnhagen, C. K., Gushta, M., Daniels, J., Peters, T. C., Parmar, N., Law, D., Hirsch, R., Takach, B. S., & Johnson, T. (2005). How informed is online informed consent? *Ethics & behavior*, 15(1), pp.37–48, p. 44, 46, [...].

108 Perrault, E.K., & Keating, D.M. (2018). Seeking Ways to Inform the Uninformed: Improving the Informed Consent Process in Online Social Science Research. *Journal of Empirical Research on Human Research Ethics*, 13, 50 – 60, p. 51, [...].

109 Perrault, E.K., & Keating, D.M. (2018). Seeking Ways to Inform the Uninformed: Improving the Informed Consent Process in Online Social Science Research. *Journal of Empirical Research on Human Research Ethics*, 13, 50 – 60, p. 56, [...]; Varnhagen, C. K., Gushta, M., Daniels, J., Peters, T. C., Parmar, N., Law, D., Hirsch, R., Takach, B. S., & Johnson, T. (2005). How informed is online informed consent? *Ethics & behavior*, 15(1), pp.37–48, p. 44, 46, [...].

comprehension and effectiveness that were put in the abstract to a sample of hypothetical app users [number] out of 27 EU Member States.¹¹⁰

- (131) [Description of Google’s internal survey] It presented [description of Google’s internal survey].¹¹¹ However, [description of internal survey].¹¹² [Description of Google’s internal survey].
- (132) In any event, even leaving aside these methodological shortcomings and associated concerns, which the Commission clearly and timely communicated to Alphabet prior to the survey,¹¹³ Alphabet decided to base the Prompt primarily on the two versions of the warning screen tested that scored lowest in terms of comprehension.¹¹⁴ In addition, with regard to the effectiveness of the different prompts tested, Alphabet did not specifically ask how users would react to the statement “[o]nly follow links from sources you trust.”
- (133) In the absence of valid justification being put forward by Alphabet, the Commission takes the view that Alphabet’s approach to completely restrict app developers’ ability to steer to any destination of their choice, without considering other measures that may be more proportionate, is contrary to Article 5(4) of Regulation (EU) 2022/1925.
- (134) Third, Alphabet refers to research indicating that “*apps installed outside Play are up to 19 times more likely to contain malware compared to apps installed via Play.*”¹¹⁵ The Commission considers that this study does not provide convincing evidence of the magnitude of security risks in the context of steering to third party app stores or websites where third party apps may be downloaded, since it does not take into account that developers who may possibly steer to such app stores or websites have already been vetted by Google Play.
- (135) Furthermore, the Commission considers that, contrary to Alphabet’s view,¹¹⁶ recital 62 of Regulation (EU) 2022/1925 does not entitle Alphabet to implement security measures or measures to fight against illegal and unwanted content to limit the apps that its users can access following steering. Recital 62 of Regulation (EU) 2022/1925 clarifies the interpretation of Article 6(12) of that Regulation. That recital does not relate to Article 5(4) of Regulation (EU) 2022/1925, and should therefore not be interpreted as allowing gatekeepers offering app stores to undermine the application of Article 5(4) of that Regulation on grounds of fighting against illegal and unwanted content.
- (136) In any event, while Alphabet may be required to identify risks associated with a possible availability and dissemination of illegal content and introduce effective mitigating measures under Regulation (EU) 2022/2065 (the ‘Digital Services Act’),

¹¹⁰ See Alphabet’s submission of 16 April 2024, [...], paragraph 3 et seqq. [Description of Google’s internal survey].

¹¹¹ Alphabet’s submission of 16 April 2024, [...], [...], paragraphs 2- 5.

¹¹² Alphabet’s submission of 16 April 2024, [...], [...], slide 6.

¹¹³ Meetings between Alphabet and the Commission on 22 February and 8 April 2024.

¹¹⁴ Alphabet’s submission of 16 April 2024, “DMA Art. 5(4): Design Principles for the Google Linkout Prompt”, [...], paragraph 3 et seq.

¹¹⁵ Alphabet’s response to the Commission’s RFI of 30 July 2024, submitted on 26 August 2024, [...], paragraph 17.

¹¹⁶ Alphabet’s response to the Commission’s RFI of 30 July 2024, submitted on 26 August 2024, [...], paragraph 24.

this cannot allow the introduction of unjustified restrictions contrary to Alphabet's obligations under Article 5(4) of Regulation (EU) 2022/1925.

- (137) Finally, Alphabet's claim that within the environment created by Google Play, only apps vetted by Google Play can be downloaded,¹¹⁷ does not support its view that steering to any distribution channel or offer of the developer's choice must be prohibited. That is because any steering that the app developer engages in occurs within the app developer's app and therefore within that app developer's environment, not within Google Play's environment.
- (138) Therefore, the Commission takes the view that such a restriction regarding the destinations after steering is not objectively necessary and proportionate to protect the end user's security.

5.2.2.1.4.2. Alphabet's restriction regarding the Prompt following steering

- (139) First, as regards the frequency of the Prompt, contrary to Alphabet's argument, the fact that end users have more than one app on their Android device and therefore do not remember which app concludes transactions within Google Play and which one outside of it¹¹⁸, cannot justify the display of a recurrent Prompt for every steered transaction. It is not demonstrated that end users making several purchases following steering across multiple apps and/or within a short timeframe (e.g., whilst playing a mobile game) would forget information that they have just been shown. Rather, a proportionate balance must be struck between reminding end users of possible risks of transactions outside of the Google Play environment and enabling steering in a manner that does not introduce unnecessary and unjustified frictions. This requires non-intrusive reminders of end users in a reasonable period of time as well as the possibility for end users to opt out of the repeated display of warning prompts.
- (140) In particular, there does not appear to be any need to display such a repeated Prompt every time an end user is steered from the same app, since an end user that has previously been steered from that app has already been sufficiently informed the first time that the Prompt is displayed that clicking on "Continue" results in leaving Google Play. Therefore, any subsequent showing of the Prompt within the same app and with a link previously used, in case of an already acquired user, fails to take into account that the end user already has the necessary information about the implications of proceeding. The Prompt is introducing a recurrent additional friction without providing any additional information to the end user. It thereby does not serve the purpose it allegedly pursues (i.e. informing the end user) but rather makes the exercise of the right provided for in Article 5(4) of Regulation (EU) 2022/1925 unduly and unjustifiably difficult for end users.
- (141) In any event, Alphabet has not sufficiently justified why a recurrent Prompt is necessary every time an end user is steered. The tens of thousands of apps distributed through Google Play that sell "non-digital" goods and services already use third-

¹¹⁷ Alphabet's response to the Commission's RFI of 30 July 2024, submitted on 26 August 2024, [...], paragraph 27.

¹¹⁸ Alphabet's response to the Commission's RFI of 17 April 2024, submitted on 21 May 2024, [...], paragraph 56.

party payment systems (i.e., the end user does not transact with Alphabet) *and* are not required to present any similar prompt at all.¹¹⁹

- (142) The contradiction in Alphabet’s position on the language and frequency of the recurrent Prompt in relation to apps distributed through Google Play that sell “non-digital” goods and services is further highlighted by Alphabet’s submission in the course of the present proceedings, in which Alphabet stated that “[t]he information prompt is a one-time prompt per app: once the user has linked out to a website from a particular app for the first time, the user does not see the prompt again. For all subsequent link outs from that app, the user will be redirected automatically to the developer’s external website”.¹²⁰ Furthermore, Alphabet indicated that “This is less intrusive than analogous implementations of link outs by other platforms.”¹²¹ However, Alphabet later clarified that it had ultimately replaced the one-time information screen in favour of one that is displayed each time a user is directed outside of the app. Alphabet’s decision was based on the results of a consumer survey on mobile app stores¹²² allegedly indicating that it is users’ expectation that their Google Play apps are safe, and on the basis of the results of the survey referred to in recital (130) above, according to which many users did not fully comprehend the prompt the first time they saw it. For the reasons set out in recitals (130) to (132) above, the Commission does not consider that the results of the survey referred to in that recital show that the Prompt must be displayed on a recurrent basis. The mobile app stores consumer survey referred to by Alphabet also cannot be considered as supporting Alphabet’s view,⁽¹²³⁾ since it did not explicitly seek end user’s views on the design of the Prompt in question.
- (143) Alphabet’s argument for imposing repeated warnings is based on the premise of providing factual information to end users. However, presenting the same warning repeatedly with language that implies risk rather than a neutral and objective presentation of the facts, regardless of the context, creates the impression that steering to external pages is inherently unsafe, even when app developers have chosen reputable and secure services. This repeated signalling generates unnecessary friction and may have an undue impact on end users’ engagement. While legitimate security concerns may justify prompting end users, Alphabet has not substantiated that the current frequency of the prompt or its language is a proportionate or effective way to balance the need to inform end users about the fact that following steering, end users will engage with a third-party that is different to Alphabet without making exercising choice unduly difficult.
- (144) Second, Alphabet’s argument that the Prompt is less intrusive than analogous implementations of steering by other platforms does not justify the wording and frequency of its current prompts. The frequency and messaging of the Prompt must be necessary and proportionate. Proportionality requires that the prompts are

¹¹⁹ Alphabet’s response to the Commission’s RFI of 17 April 2024, submitted on 21 May 2024, [...], paragraph 61.

¹²⁰ Alphabet’s response to the Commission’s RFI of 27 October 2023 submitted on 21 November 2023, [...], paragraph 29.

¹²¹ Alphabet’s response to the Commission’s RFI of 27 October 2023, submitted on 21 November 2023, [...], footnote 22.

¹²² Alphabet’s response to the Commission’s RFI of 17 April 2024, submitted on 21 May 2024, [...], paragraph 51.

¹²³ Alphabet’s submission “Consumer perceptions of mobile app stores”, submitted on 6 December 2023, [...].

objective and neutral, and carefully tailored to avoid making the exercise of rights laid down in Article 5(4) of Regulation (EU) 2022/1925, read in conjunction with Article 13(6) of that Regulation, unduly difficult. As demonstrated above, Alphabet does not require such prompts for tens of thousands of apps distributed through Google Play that sell “non-digital” goods and services and already use third-party payment systems. This suggests that less intrusive measures could achieve the objective of informing users of security risks without disproportionately limiting app developers’ and end user’s ability to exercise their rights under Article 5(4) of Regulation (EU) 2022/1925. The mere fact that the steering is to a third-party app developer cannot be considered as a justification to argue that such source is non-secure for this reason alone.

- (145) Therefore, the Commission concludes that the design and manner of operation of the user interface of the current recurrent Prompt is not neutral, unjustified, and thus does not ensure effective compliance with Article 5(4) of Regulation (EU) 2022/1925 by making the exercise of end users’ choice and the business user’s exercise of their right unduly difficult in violation of Article 5(4), read in conjunction with Article 13(6) of Regulation (EU) 2022/1925.

5.2.2.1.4.3. Alphabet’s restriction on including additional data in the URL

- (146) Alphabet’s restriction on passing additional parameters in the URL as described in Section 4.2.1. above cannot be justified by Alphabet’s alleged aim to protect end-users’ data from data leaks, browser history sniffing and phishing attacks.¹²⁴ To the extent there is a legal basis for the processing of personal data under Regulation (EU) 2016/679, there is no justification for restricting the passing of additional parameters in the URL. This is particularly the case since the mandatory display of an information prompt, that is appropriately worded and with an appropriate frequency, upon steering, could already inform end users that they will no longer be transacting with Alphabet after steering. This is without prejudice to the Commission’s view set out in Section 5.2.2.1.2 above that, while the Commission does not disagree that information prompts may be shown to end users, when necessary and in an objective, neutral and proportionate manner, since they can help those users to make an informed decision, the Prompt as currently introduced by Alphabet does not comply with Article 5(4) of Regulation (EU) 2022/1925.
- (147) Furthermore, it could be reasonably assumed that the data that an end user has already provided to the app developer within the app will be used by the app developer to facilitate the use of the app developer’s applications and services, including the conclusion of transactions. Furthermore, any processing of personal data by the app developer is covered by Regulation (EU) 2016/679,¹²⁵ which is enforced by national data protection authorities and not by Alphabet.
- (148) In light of the above argumentation, the Commission therefore does not consider that Alphabet has provided sufficient evidence that the restriction on including additional data in the URL is objectively necessary and proportionate to protect end users.

¹²⁴ Alphabet’s response to the Preliminary Findings, [...], paragraph 109

¹²⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

- (149) Therefore, the Commission takes the view that such additional restrictions on the type of communication are not objectively necessary and proportionate to protect the end user's security.

5.2.2.2. Alphabet's arguments

5.2.2.2.1. Alphabet's restrictions regarding the destinations after steering

5.2.2.2.1.1. Steering that leads to third party offers

- (150) Alphabet argues that all methods of statutory interpretation confirm that Art. 5(4) of Regulation (EU) 2022/1925 does not require developers to be able to steer users to conclude contracts with unrelated third parties,¹²⁶ as set out below.
- (151) First, Alphabet claims that this view is supported by the literal interpretation of Article 5(4) of Regulation (EU) 2022/1925.¹²⁷
- (152) In the first place, according to Alphabet, Article 5(4) of Regulation (EU) 2022/1925 requires that business users using Google Play are able to promote offers to and conclude contracts with *their* existing end users.¹²⁸ There is no reference in the wording of Article 5(4) of that Regulation to a requirement to permit developers to promote offers of unrelated third parties and enable unrelated third parties to conclude contracts with end users.¹²⁹ A literal interpretation of Article 5(4) of Regulation (EU) 2022/1925 shows that the business users referred to in that article are the developers using Google Play, not unrelated third parties that have no relationship with Google Play.¹³⁰ The end users are the end users of Play that Play has referred to the business users of Play. Therefore, Alphabet argues that what Play must enable is the ability of *its* business users to conclude contracts with end users that Play has connected the business users with.
- (153) In the second place, Alphabet also claims that “[i]t follows that the ability to communicate and promote offers relates to the offers of Play’s business users, not unrelated 3Ps” and that “the point of the ability to communicate and promote offers is to enable Play’s business users to conclude contracts with their acquired users. Play needs to let its business users promote offers so that they can conclude contracts for those offers. The PFs confirm that promoting offers and concluding contracts are interdependent (paras. 122-132)”.¹³¹
- (154) In the third place, Alphabet claims that this interpretation of Article 5(4) of Regulation (EU) 2022/1925 is, in turn, reinforced by Recital 40 of that Regulation, which explains that: “[...] **the business users of [the] gatekeepers should be free to promote and choose the distribution channel that they consider most appropriate for the purpose of interacting with any end users that the business users have already acquired... This should apply to the promotion of offers, ... and any form of communication and conclusion of contracts between business users and end users**”.¹³²

¹²⁶ Alphabet's response to the Preliminary Findings, [...], paragraphs 3, 55-76.

¹²⁷ Alphabet's response to the Preliminary Findings, [...], paragraphs 58-64.

¹²⁸ Alphabet's response to the Preliminary Findings, [...], paragraphs 55-57.

¹²⁹ Alphabet's response to the Preliminary Findings, [...], paragraphs 58.

¹³⁰ Alphabet's response to the Preliminary Findings, [...], paragraph 59.

¹³¹ Alphabet's response to the Preliminary Findings, [...], paragraph 60.

¹³² Alphabet's response to the Preliminary Findings, [...], paragraph 62.

- (155) Alphabet also considers that this interpretation is supported by recital 40 of Regulation (EU) 2022/1925 which is focused on the interaction between business users of the gatekeeper and their acquired end users, due to the reference to “*such business users*” and a distribution channel that the business user “*uses*”.¹³³ If the business user steers users to offers of unrelated third parties, it is not steering to a distribution channel that the business user is using, but that the unrelated third party is using.
- (156) Finally, Alphabet claims that it relies on recital 40 of Regulation (EU) 2022/1925 as a relevant aid to the interpretation of Article 5(4) of that Regulation, not as a means to derogate from Article 5(4) of that Regulation.¹³⁴
- (157) Second, Alphabet argues that its interpretation is supported by the legislative history of Article 5(4) of Regulation (EU) 2022/1925.¹³⁵
- (158) According to Alphabet, this is supported by (a) the Impact Assessment for Regulation (EU) 2022/1925 and the Article 102 TFEU Apple Decision¹³⁶ which discuss how the anti-steering rule should be designed to allow developers to advertise “alternative subscription models” that the developer offers for its own apps;¹³⁷ (b) the Report to the Committee on the Internal Market and Consumer Protection of June 2021 on Regulation (EU) 2022/1925 which explains that “*the purpose of the DMA’s anti-steering rule is to prohibit gatekeepers “from constraining the ability of business users to promote their own services to reach out [sic] end users and offer them services outside the core platform service”* (emphasis added); (c) a November 2022 Briefing by the European Parliamentary Research Service; (d) amendments made during that draft Regulation’s passage through Parliament in relation to developers’ acquired end users, which, according to Alphabet, focus on offers and contracts with the original app developer without any reference to third parties.¹³⁸ Alphabet further claims that the Commission has not pointed to a single part of the “travaux préparatoires” or legislative history that would support its interpretation of Article 5(4) of Regulation (EU) 2022/1925.
- (159) Third, Alphabet argues that its interpretation of Article 5(4) of Regulation (EU) 2022/1925 is supported by the context of that Regulation as a whole.¹³⁹
- (160) In the first place, Alphabet claims that where the legislature intended to extend obligations to or confer rights in respect of third parties, it said so expressly (e.g., Articles 5(9), 5(10), 6(8), 6(9), 6(10)), which is not the case for Article 5(4) of Regulation (EU) 2022/1925.¹⁴⁰
- (161) In the second place, Alphabet argues that recital 40 of Regulation (EU) 2022/1925 makes clear that steering must be allowed to destinations owned by the developer

¹³³ Alphabet’s response to the Preliminary Findings, [...], paragraphs 62-63 (a) - (c).

¹³⁴ Alphabet’s response to the Preliminary Findings, [...], paragraph 64.

¹³⁵ Alphabet’s response to the Preliminary Findings, [...], paragraphs 65-67.

¹³⁶ Commission decision of 4 March 2024, Case AT.40437 – *Apple – App Store Practices (music streaming)*.

¹³⁷ Alphabet’s response to the Preliminary Findings, [...], paragraphs 65a.

¹³⁸ Alphabet’s response to the Preliminary Findings, [...], paragraphs 65-67

¹³⁹ Alphabet’s response to the Preliminary Findings, [...], paragraphs 68-72.

¹⁴⁰ Alphabet’s response to the Preliminary Findings, [...], paragraphs 69-70.

(direct channels) and not owned by the developer but that the developer uses (indirect channels), which the External Offers Program allows.¹⁴¹

- (162) In the third place, Alphabet argues that if Article 5(4) of Regulation (EU) 2022/1925 required gatekeepers to allow the installation of third-party apps and app stores, the security measure of Article 6(4) of that Regulation would be rendered meaningless.¹⁴² Instead, the fact that Regulation (EU) 2022/1925 includes detailed and specific rules on installing third-party apps and third-party app stores under Article 6(4) of that Regulation demonstrates that this matter is not covered by Article 5(4) of that Regulation. If Article 5(4) of that Regulation covered installing third-party apps and third-party app stores, it would also have included a built-in provision for necessary security measures to be permitted.
- (163) In this regard, Alphabet also claims that the fact that Articles 8(2) and 8(3) of Regulation (EU) 2022/1925 do not apply to the obligations set out in Article 5 of that Regulation also supports this interpretation.¹⁴³ According to Alphabet, those provisions allow for engagement between the Commission and gatekeepers about how to implement the more complex obligations under Articles 6 and 7 of that Regulation, and for consultation of affected third parties, including data subjects/their representatives, and none of this applies to Article 5(4) of that Regulation.
- (164) Fourth, Alphabet argues that its interpretation is supported by a teleological interpretation of Article 5(4) of Regulation (EU) 2022/1925.¹⁴⁴
- (165) In the first place, Alphabet claims that, according to recital 40 of Regulation (EU) 2022/1925, the objective of Article 5(4) of that Regulation is to ensure that the “business users” of app stores are “*free to promote and choose the distribution channel that they consider most appropriate for the purpose of interacting with any end users that those business users have already acquired.*” Article 5(4)’s purpose is not to require the freedom to link to third-party offers, and enable contracts with unrelated third parties, without any reference to this or any provision to guard against the security risks that would flow from such a wide-ranging obligation.¹⁴⁵
- (166) In the second place, Article 5(4) of Regulation (EU) 2022/1925 was part of the set of provisions of that Regulation whose purpose was to ensure that business users are not restricted in how they interact with their end users, i.e., it was grouped with the rule on most-favoured nation clauses, to ensure fairness in the end user and business user relationship. In that context, it was observed that a developer might promote offers (e.g., subscriptions) on other platforms, and users should be allowed to conclude contracts for those offers. Alphabet considers that this purpose has nothing to do with concluding contracts with unrelated third parties.¹⁴⁶ In this regard, Alphabet also claims that this is supported by the May 2022 Council Note which frames Article 5(4) of Regulation (EU) 2022/1925 as part of measures to allow business users to

¹⁴¹ Alphabet’s response to the Preliminary Findings, [...], paragraph 70.

¹⁴² Alphabet’s response to the Preliminary Findings, [...], paragraphs 71-72.

¹⁴³ Alphabet’s response to the Preliminary Findings, [...], footnote 48.

¹⁴⁴ Alphabet’s response to the Preliminary Findings, [...], paragraphs 73-75.

¹⁴⁵ Alphabet’s response to the Preliminary Findings, [...], paragraph 74.

¹⁴⁶ Alphabet’s response to the Preliminary Findings, [...], paragraph 75.

*“differentiate the conditions under which they offer their products or services to end users”.*¹⁴⁷

- (167) Fifth, Alphabet argues that the Commission’s position is wrong in fact as the External Offers Program only limits the provider of the offers to which a developer can steer, but the offer can be hosted, and contracts can be concluded, on any destination.¹⁴⁸ Alphabet claims that the External Offers Program web page only states that *“External offers must only direct users to the developer’s own digital features or services.”*¹⁴⁹
- (168) Alphabet claims that the reference to *“any form of communication and conclusion of contracts”* in recital 40 cannot be read in isolation and must be read together with the requirement that the developer should be able to steer to the distribution channel of their choice. This interpretation is consistent with Alphabet’s External Offers Program which allows any form of communication and conclusion of contracts, on the distribution channel of the developer’s choice.¹⁵⁰

5.2.2.2.1.2. Steering that leads to offers other than digital content or items associated with the app

- (169) In its response to the Commission’s Preliminary Findings, Alphabet has not contested that Article 5(4) of Regulation (EU) 2022/1925 requires Alphabet to allow developers to steer end users to software applications that can be downloaded following steering.
- (170) In addition, Alphabet has indicated that because it has proposed to enable links to any type of first party offers in its [Google’s non-public compliance proposal], it did not further discuss steering to first party offers, in its response to the Commission’s Preliminary Findings in order to *“allow focus on the core issues.”*¹⁵¹

5.2.2.2.2. Alphabet’s Linkout Prompt following steering

- (171) With regard to the frequency of the Prompt described in recital (118), Alphabet argues that the Commission provides no evidence that end users clicking on the Prompt is *“unduly difficult”* to exercise ability to freely engage in *“any form of communication”* with regard to recurrent prompts.

5.2.2.2.3. Alphabet’s restriction on including additional data in the URL

- (172) According to Alphabet, the Commission’s position that Alphabet’s policies make pre-population of data via URLs *“unnecessarily burdensome”* is contradicted by the following.
- (173) First, Alphabet claims that, contrary to the Commission’s position in recital (120), the policy is not burdensome. End users only have to enter their information once, as they can save their personal details on their browsers when they complete their first transaction via a linkout. The browser then automatically populates the information. Alternatively, if end users with login credentials save their payment information in

¹⁴⁷ Alphabet’s response to the Preliminary Findings, [...], footnote 49.

¹⁴⁸ Alphabet’s response to the Preliminary Findings, [...], paragraphs 77-81.

¹⁴⁹ Alphabet’s response to the Preliminary Findings, [...], footnote 51.; See Enrolling in the external offers program, accessible at: [Enrolling in the external offers program - Play Console Help \(google.com\)](https://play.google.com/console/help/enrolling-in-the-external-offers-program), accessed on 10 December 2024, [...].

¹⁵⁰ Alphabet’s response to the Preliminary Findings, [...], paragraphs 82-83.

¹⁵¹ Alphabet’s response to the Preliminary Findings, [...], paragraph 22 and footnote 1.

the developer's app or site, they could automatically populate that payment information following the linkout once they log into the app.¹⁵²

- (174) Second, Alphabet argues that requiring some end users to enter their personal details just once following a linkout does not create additional friction compared to Google Play's in-app payment system. According to Alphabet, as of 2024, only [a small minority] of Google Play users have provided Alphabet with their financial and authentication details to support pre-population. So, in [the majority] of cases, end users have to manually enter their personal information to complete an in-app transaction within Google Play.¹⁵³
- (175) Third, according to Alphabet, on average [a minority] of EEA users have a form of payment saved to their Chrome browser. Alphabet argues that, given that [...] end users have their payment details saved on their browser than they do on Google Play, there is more user friction for end users to enter their financial details to complete a transaction in a Google Play app compared to completing the same transaction on their browser via a linkout.¹⁵⁴

5.2.2.2.4. Alphabet has failed to adequately justify any of the aforementioned restrictions on security grounds

5.2.2.2.4.1. Alphabet's restriction regarding the destinations after steering

- (176) First, Alphabet argues that Article 5(4) of Regulation (EU) 2022/1925 has to be interpreted "as allowing gatekeepers to apply necessary and proportionate measures to ensure the security of end users."¹⁵⁵ In particular, according to Alphabet, Article 5(4) of Regulation (EU) 2022/1925 "cannot require a gatekeeper to implement measures that undermine the security, user safety or data protection provided by its service. This is made clear by Art. 8(1), which states that the gatekeeper "shall ensure" that any measures implemented to comply with [Article 5 of Regulation (EU) 2022/1925] also "compl[y] with applicable law", in particular the GDPR, the ePrivacy Directive, and legislation on "cyber security, consumer protection, product safety, as well as with the accessibility requirements."¹⁵⁶
- (177) In addition, Alphabet argues that it is objectively necessary and proportionate for Alphabet not to permit steering that leads to third party offers.¹⁵⁷
- (178) Second, Alphabet argues that there are stark differences in security risks between physical goods and services to third party digital offers due to the following reasons: "*Physical goods and services do not surreptitiously take over users' mobile devices and expose them to the harms created by unvetted apps from the open Internet*"¹⁵⁸; Google Play "*cannot realistically police everything that goes on in the physical world*"¹⁵⁹; and there is "*no reasonable basis to expect Google will ensure [physical] goods and services provided outside a [Google Play]-supported app are safe to the same degree as digital goods and services offered from [Google Play] apps.*"¹⁶⁰

¹⁵² Alphabet's response to the Preliminary Findings, [...], paragraph 108.a.

¹⁵³ Alphabet's response to the Preliminary Findings, [...], paragraph 108.b.

¹⁵⁴ Alphabet's response to the Preliminary Findings, [...], paragraph 108.c.

¹⁵⁵ Alphabet's response to the Preliminary Findings, [...], paragraph 84.

¹⁵⁶ Alphabet's response to the Preliminary Findings, [...], paragraph 85.

¹⁵⁷ Alphabet's response to the Preliminary Findings, [...], paragraph 88.

¹⁵⁸ Alphabet's response to the Preliminary Findings, [...], paragraph 102.a.

¹⁵⁹ Alphabet's response to the Preliminary Findings, [...], paragraph 102.b.

¹⁶⁰ Alphabet's response to the Preliminary Findings, [...], paragraph 102.c.

- (179) Third, Alphabet argues that steering that leads to third-party offers from Google Play apps could lead to user harm in the following ways: “(1) *Bad actors may incentivize or trick good-faith [Google Play] developers into inadvertently showing links to harmful content that they cannot properly monitor or control. (2) Bad actors posing as trusted developers could distribute “safe” apps on [Google Play] to then lure users to harmful apps via links [...]. Or (3) nation states hostile to the EU [...] could use links in [Google Play] apps as a new vector in their ongoing campaigns to spread misinformation and undermine the security of European users.*”¹⁶¹
- (180) In addition, according to Alphabet, end users are “*at considerably greater risk compared to sideloading*”¹⁶² and steering that leads to third-party offers are “*considerably more dangerous than [first party] offers.*”¹⁶³
- (181) Furthermore, based on Alphabet’s evaluation of possible implementation scenarios to enable steering that leads to third-party offers, Alphabet claims that there are the following two core challenges: one is a need to scale up Alphabet’s review infrastructure “[scaling factor] *to review all the [app volume]*”¹⁶⁴ and another challenge is [technical security limitations].¹⁶⁵ According to Alphabet, even if these challenges could be overcome, end users would still not be protected due to Android’s open installer permission and there is “*no way to solve this challenge, without fundamentally rearchitecting Android away from an open ecosystem into a closed one, akin to Apple’s iOS.*”¹⁶⁶
- (182) Fourth, Alphabet argues that the Prompt is not sufficient on its own to protect users against serious harm from steering that leads to third party offers and additional measures are proportionate and necessary.¹⁶⁷ Alphabet argues that its approach to prevent steering that leads to third party offers, while permitting steering that leads to first party offers on any destination, is a proportionate means to protect end users’ security and safety.¹⁶⁸ According to Alphabet, the Commission is wrong to suggest that restrictions on steering that lead to third party offers is not proportionate because Alphabet would show the Prompt, for the following three reasons.
- (183) In the first place, Alphabet argues that the Commission “*wrongly equates [end] users being provided with the relevant information with that information being completely effective across a broad set of [end] users.*”¹⁶⁹ According to Alphabet’s survey, the Prompt received end user comprehension scores of “[45-55]%. ”¹⁷⁰ Alphabet argues that the Prompt is therefore “*no panacea for the severe security and safety risks in unvetted apps.*”¹⁷¹

¹⁶¹ Alphabet’s response to the Preliminary Findings, [...], paragraphs 89-90, and Alphabet’s response to the Preliminary Findings, [...], Appendix 1, paragraph 55.

¹⁶² Alphabet’s response to the Preliminary Findings, [...], paragraphs 91-93.

¹⁶³ Alphabet’s response to the Preliminary Findings, [...], paragraphs 94-96.

¹⁶⁴ Alphabet’s response to the Preliminary Findings, [...], paragraph 95, and Alphabet’s response to the Preliminary Findings, [...], Appendix 2, paragraphs 20 to 26.

¹⁶⁵ Alphabet’s response to the Preliminary Findings, [...], paragraph 95, and Alphabet’s response to the Preliminary Findings, [...], Appendix 2, paragraph 27.

¹⁶⁶ Alphabet’s response to the Preliminary Findings, [...], paragraph 96, and Alphabet’s response to the Preliminary Findings, [...], Appendix 2, paragraphs 29 to 38.

¹⁶⁷ Alphabet’s response to the Preliminary Findings, [...], paragraph 103.

¹⁶⁸ Alphabet’s response to the Preliminary Findings, [...], paragraph 106.

¹⁶⁹ Alphabet’s response to the Preliminary Findings, [...], paragraph 103.a.

¹⁷⁰ Alphabet’s response to the Preliminary Findings, [...], paragraph 103.a.

¹⁷¹ Alphabet’s response to the Preliminary Findings, [...], paragraph 103.a.

- (184) In the second place, Alphabet argues that the Commission’s position that the Prompt on its own is sufficient to reduce the serious security risks of steering that leads to third-party offers “*runs contrary to well-established cybersecurity principles that stress that multiple strategies are needed to protect [end] users from harm.*”¹⁷²
- (185) In the third place, Alphabet argues that even if an end user comprehends the Prompt and understands that a steered to destination is not controlled by Google Play, it does not follow that the end user has sufficient information to determine whether an app is trustworthy or not.¹⁷³
- (186) In addition, Alphabet argues that the Commission dismisses the evidence cited by Alphabet on end user comprehension of the Prompt based on the “misconceived”¹⁷⁴ assumption that participants in the studies cited by Alphabet as evidence did not see themselves as exposed to dangers as they would be via steering that leads to third party offers. According to Alphabet, no evidence for this assumption is presented and, contrary to the assumption, because of Google Play’s trusted environment, end users are not likely to view themselves as exposed to dangers and are therefore especially likely to be inattentive to the Prompt.¹⁷⁵
- (187) In particular, Alphabet argues that the Commission cannot simply pick the top level of the comprehension findings, especially given the overall conclusion of the authors which is that comprehension of consent information is poor, and the comprehension level for the specific prompt at issues was [comprehension level].¹⁷⁶ Alphabet also argues that, given that approximately [security limitation].¹⁷⁷
- (188) Fifth, Alphabet argues that the fact that the original Google Play developer has been reviewed does not mitigate the risk of links to an unreviewed third-party app¹⁷⁸, and that the Commission’s position misunderstands the nature of the following two core risks that arise in respect to steering that leads to third-party offers.
- (189) In the first place, according to Alphabet, it is a well-recognised strategy of malicious actors to distribute safe apps on Google Play to encourage end users to download apps and then subsequently to target end users’ security or expose them to harmful content, and enabling steering that leads to third party offers would make it easier for bad actors to execute this strategy.¹⁷⁹
- (190) In the second place, according to Alphabet, trusted app developers acting in good faith will inevitably but inadvertently show links to third-party offers containing malicious content that they do not have the capacity to properly monitor or control, since most app developers will have no way of ensuring that linked-to third-party offers are not updated to include harmful content.¹⁸⁰

¹⁷² Alphabet’s response to the Preliminary Findings, [...], paragraph 103.b., and Alphabet’s response to the Preliminary Findings, [...], Appendix 1, paragraphs 20 to 22.

¹⁷³ Alphabet’s response to the Preliminary Findings, [...], paragraph 103.c.

¹⁷⁴ Alphabet’s response to the Preliminary Findings, [...], paragraph 104.

¹⁷⁵ Alphabet’s response to the Preliminary Findings, [...], paragraph 104.

¹⁷⁶ Alphabet’s response to the Preliminary Findings, [...], paragraph 105.

¹⁷⁷ Alphabet’s response to the Preliminary Findings, [...], paragraph 105, and Alphabet’s response to the Preliminary Findings, [...], Appendix 1, paragraph 55.

¹⁷⁸ Alphabet’s response to the Preliminary Findings, [...], paragraph 100.

¹⁷⁹ Alphabet’s response to the Preliminary Findings, [...], paragraph 100.a., and Alphabet’s response to the Preliminary Findings, [...], Appendix 1, paragraph 46.

¹⁸⁰ Alphabet’s response to the Preliminary Findings, [...], paragraph 100.b.

- (191) Finally, Alphabet claims that forcing Google Play to move to “a closed ecosystem”¹⁸¹ and to enable steering that leads to third-party offers to conclude contract with “unrelated”¹⁸² third parties would be disproportionate and run counter to the objectives of Regulation (EU) 2022/1925 for the following three reasons.
- (192) In the first place, Alphabet argues that it would expose European end users to serious security and safety risks, and the harm to European end users would be associated with Regulation (EU) 2022/1925 and its implementation.¹⁸³
- (193) In the second place, according to Alphabet, if steering that leads to third-party offers from a Google Play-supported app turns out to be unsafe and harm the end users, that will impact the end users’ confidence in all apps listed on Google Play. Alphabet claims that lack of end users trust has “a corrosive effect”¹⁸⁴ that, in turn, harms business users because end users will not transact with them.
- (194) In the third place, Alphabet argues that “[l]oss of trust in [Google Play] would undermine the Android ecosystem, [competitor assessment].”¹⁸⁵

5.2.2.2.4.2. Alphabet’s restriction regarding the Prompt following steering

- (195) According to Alphabet, it is appropriate for Alphabet to show the Prompt for each linkout, given the low comprehension rates of the Prompt, and end users use multiple apps on their devices and so cannot easily track which of their apps use linkouts unless they are shown recurrent prompts.¹⁸⁶
- (196) Second, with regard to the wording of the Prompt, Alphabet argues that the wording was inspired by and aligns with the advice of Europol, which stresses that end users should install apps from trusted sources only.
- (197) Alphabet claims that Alphabet tested the wording in surveys, under the supervision of the Commission, and subsequently chose the Prompt with the best user comprehension, which was a reasonable and proportionate approach.¹⁸⁷

5.2.2.2.4.3. Alphabet’s restriction on including additional data in the URL

- (198) Alphabet argues that the Commission’s position ignores Alphabet’s legitimate basis for the policy on pre-population of data via URLs, which is founded on well-understood user privacy and security concerns. Alphabet argues that pre-population poses obvious additional security and data protection risks for end users, particularly in respect of financial data, by allowing unencrypted data to be transmitted across insecure networks, which can then be used by malicious actors to conduct fraud. According to Alphabet, the following security risks associated with pre-population are recognised by organisations such as the Open Web Application Security Project¹⁸⁸:
- (a) Data leakage risks: when developers append parameters to URLs, sensitive information such as user IDs, session tokens, or personal data could be exposed in the URL itself.

¹⁸¹ Alphabet’s response to the Preliminary Findings, [...], paragraph 97.

¹⁸² Alphabet’s response to the Preliminary Findings, [...], paragraph 98.

¹⁸³ Alphabet’s response to the Preliminary Findings, [...], paragraph 98.a.

¹⁸⁴ Alphabet’s response to the Preliminary Findings, [...], paragraph 98.b.

¹⁸⁵ Alphabet’s response to the Preliminary Findings, [...], paragraph 98.c.

¹⁸⁶ Alphabet’s response to the Preliminary Findings, [...], paragraph 107.b.

¹⁸⁷ Alphabet’s response to the Preliminary Findings, [...], paragraph 107.a.

¹⁸⁸ Alphabet’s response to the Preliminary Findings, [...], paragraph 109.

- (b) History sniffing: URLs with sensitive data can be stored in browser history or caches. This stored data can be accessed by other applications or exploited by attackers, leading to privacy breaches.
- (c) Vulnerability to Man-in-the-Middle attacks: Allowing parameters to be appended creates opportunities for malicious actors to manipulate URLs, in particular through ‘Man-in-the-Middle’ attacks on unsecure networks. This can lead to phishing attacks where end users are redirected to malicious sites, or where manipulated parameters change the behaviour of the website in harmful ways.

5.2.2.3. The Commission’s assessment of Alphabet’s arguments

5.2.2.3.1. Alphabet’s restrictions regarding the destinations after steering

5.2.2.3.1.1. Steering that leads to third-party offers

- (199) The Commission considers that none of Alphabet’s arguments described in recitals (77) to (80) of this Decision convincingly put into question the Commission’s position as described in Section 5.2.1 of this Decision. This conclusion is based on the reasons outlined in that section.
- (200) As a preliminary matter, the Commission notes that Alphabet does not contest and in fact agrees that Article 5(4) of Regulation (EU) 2022/1925 requires that developers should be able to steer end users to the destination of their choice.¹⁸⁹ However, contrary to Alphabet’s view, the Commission considers that Alphabet actually does not allow developers, in practice, to steer to any destination of their choice, for the reasons set out in this section.
- (201) As regards the statutory interpretation of Article 5(4) of Regulation (EU) 2022/1925, the Commission does not find that Alphabet’s arguments are convincing for the reasons set out below.
- (202) First, as is apparent from its wording, Article 5(4) of Regulation (EU) 2022/1925 requires Alphabet to allow developers to communicate and promote offers to their acquired end users. That provision does not provide for any limitation on the types of offers developers can promote or on the content of developers’ communications with end users. Article 5(4) of Regulation (EU) 2022/1925 also requires Alphabet, without limitation, to allow end users to contract with developers for the offers which are communicated and promoted to them.
- (203) Recital 40 of Regulation (EU) 2022/1925 further clarifies that developers should be free to promote offers and engage in *any* form of communication and conclusion of contracts with end users. Therefore, developers should be free and unrestricted to promote offers of third parties and end users should be free to contract for those offers. There is nothing in Article 5(4) of Regulation (EU) 2022/1925 that would limit the types of offers one could be steered to and to subsequently contract for.
- (204) Moreover, not only do Article 5(4) and recital 40 of Regulation (EU) 2022/1925 not contain any limitation on the means of contracting which must be allowed by the gatekeeper, they also do not allow for any such limitation.

¹⁸⁹ Alphabet’s response to the Preliminary Findings, [...], paragraph 77.

- (205) Contrary to Alphabet’s view,¹⁹⁰ the fact that Article 5(4) of Regulation (EU) 2022/1925 refers to allowing business users to conclude contracts with “those end users” does not allow for any such limitation. The fact that Article 5(4) of Regulation (EU) 2022/1925 explicitly refers to the conclusion of contracts between the developer who promotes an offer and the end user to whom an offer is promoted to does not mean that that end user cannot contract freely (i.e. without any limitation) with a third-party developer following steering. Since, as already set out in recital (71) above, steering to any type of offers, including apps of third parties, should be allowed under Article 5(4) of Regulation (EU) 2022/1925, and promoting offers amounts to a proposal to contract, it logically follows that users should be able to contract for the offers they are steered to. This conclusion of a contract effectively constitutes the culmination of the steering process and should therefore be allowed, without limitation.
- (206) If end users were prevented by Alphabet from contracting for the offers they have been steered to, such steering would be rendered meaningless. This would lead to an outcome where end users can see offers of developers but not contract them. It would thus mean that developers would be effectively prevented from freely steering to the offers of their choosing and end users would be effectively prevented from freely concluding contracts following steering for the offers of their choosing, contrary to the requirements of Article 5(4) of Regulation (EU) 2022/1925.
- (207) Alphabet’s argument that “*The point of the ability to communicate and promote offers is to enable Play’s business users to conclude contracts with their acquired users*” is built on Alphabet’s false premise that “*the ability to communicate and promote offers relates to the offers of Play’s business users, not unrelated 3Ps.*”¹⁹¹ As set out in recital (71) above, the ability to communicate and promote offers does not only relate to the developer’s offers but to any offers, including the offers of third parties. Therefore, the only logical conclusion is that end users should be able to contract for all the offers promoted to them by developers, including third-party offers.
- (208) Contrary to Alphabet’s claim,¹⁹² the fact that the definitions of an “end user” in Article 2(20) of Regulation (EU) 2022/1925 and a “business user” in Article 2(21) of that Regulation refer to those end users and business users who use core platform services of the gatekeeper does not change the fact that Article 5(4) of that Regulation entitles business users to steer users to any type of offer and for end users to subsequently conclude contracts for those offers, or indeed any other offers they may subsequently navigate to, following steering. To the extent that a business user of Google Play steers an end user of Google Play, such steering should cover third party offers for which end users can contract.
- (209) The fact that recital 40 of Regulation (EU) 2022/1925 states that “***To prevent further reinforcing their dependence on the core platform services of gatekeepers, and in order to promote multi-homing, the business users of those gatekeepers should be free to promote and choose the distribution channel that they consider most appropriate for the purpose of interacting with any end users that those business users have already acquired through core platform services provided by the***

¹⁹⁰ Alphabet’s response to the Preliminary Findings, [...], paragraphs 59.

¹⁹¹ Alphabet’s response to the Preliminary Findings, [...], paragraph 60.

¹⁹² Alphabet’s response to the Preliminary Findings, [...], paragraph 55-57.

gatekeeper or through other channels. This should **apply to the promotion of offers, including through a software application of the business user**, and any form of communication and conclusion of contracts between business users and end users. [...] (emphasis added) end users should **also** be free to choose **offers of such business users** and to enter into contracts with them either through core platform services of the gatekeeper, if applicable, or from a direct distribution channel of the business user or another indirect channel that **such business user uses**” (emphasis added) cannot serve as ground for significantly limiting the scope of Article 5(4) of Regulation (EU) 2022/1925. As set out in Recital (91) above, recitals cannot be used to contradict a provision or to interpret that provision in a manner contrary to its wording. In this case, recital 40 of Regulation (EU) 2022/1925 merely points to one example of steering that should be allowed under Article 5(4) of that Regulation. Alphabet cannot reasonably argue that the legislature should have listed each and every single possible use case of steering that should be enabled by Article 5(4) of Regulation (EU) 2022/1925.

- (210) The Commission similarly rejects Alphabet’s view that Article 5(4) of Regulation 2022/1925 requires that it is the business user who interacts with their acquired end user, and that therefore any steering can only lead to first-party offerings. It follows from the wording of Article 5(4) of Regulation (EU) 2022/1925 that gatekeepers need to allow in practice the conclusion of contracts following steering without any obstacles (both technically and contractually). Read in conjunction with the preceding requirement that gatekeepers shall allow the communication and promotion of any offer by the app developer, this means that gatekeepers shall effectively allow the promotion of certain channels or modalities for the conclusion of contracts following steering with end users.
- (211) Contrary to Alphabet’s claim,¹⁹³ Alphabet is not merely using recital 40 of Regulation (EU) 2022/1925 as an aid to its interpretation, but it is interpreting that recital against the wording of Article 5(4) of that Regulation. As set out in recitals (74) and (99) above, there is nothing in that provision that limits the types of offers or communication the developer engages in, which is precisely what Alphabet argues. Recital 40 of Regulation (EU) 2022/1925 clarifies that developers should be able to engage in any form of communication and promotion of offers. The fact that this recital clarifies that the notion of offers and communications is unrestricted in terms of the types of offers that developers may steer to, supports the fact that the examples of steering provided later in that same recital cannot possibly be considered as exhaustive.
- (212) Second, Alphabet is wrong in claiming that the legislative history of Article 5(4) of Regulation (EU) 2022/1925 supports its interpretation.¹⁹⁴
- (213) In particular, neither (a) the Impact Assessment for Regulation (EU) 2022/1925 and the Article 102 TFEU Apple Decision¹⁹⁵; (b) the Report to the Committee on the Internal Market and Consumer Protection of June 2021 on Regulation (EU) 2022/1925; (c) the November 2022 Briefing by the European Parliamentary Research Service; nor (d) the amendments made during the legislative process in

¹⁹³ Alphabet’s response to the Preliminary Findings, [...], paragraph 64.

¹⁹⁴ Alphabet’s response to the Preliminary Findings, [...], paragraphs 65-67.

¹⁹⁵ Commission decision of 4 March 2024 in Case AT.40437 – *Apple – App Store Practices (music streaming)*

relation to a developer's acquired end users can be interpreted as limiting the scope of or derogating from the final text of the Regulation which has been decided by the legislature.

- (214) In the first place, as set out in recital (97) above, an impact assessment, including its constituent parts such as support studies, cannot be used to interpret a legal act against its wording. Under Union law, impact assessments examine whether there is a need for Union action and analyse the possible impacts of available solutions. They are carried out during the preparation phase before the Commission finalises a proposal for a legislative instrument. The aim of an impact assessment is therefore to assess the soundness of the Commission exercising its right of initiative in a particular area. Moreover, impact assessments cannot preclude the ability of the Union legislature to modify the Commission's proposal. As stipulated in the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making¹⁹⁶, the European Parliament and the Council, upon considering Commission legislative proposals, take full account of the Commission's impact assessments, however they are not bound by them; *"To that end, impact assessments shall be presented in such a way as to facilitate the consideration by the European Parliament and the Council of the choices made by the Commission. The European Parliament and the Council will, when they consider this to be appropriate and necessary for the legislative process, carry out impact assessments in relation to their substantial amendments to the Commission's proposal. The European Parliament and the Council will, as a general rule, take the Commission's impact assessment as the starting point for their further work. The definition of a 'substantial' amendment should be for the respective Institution to determine."* Furthermore, the General Court has confirmed that *"the EU legislature is not required to have at its disposal an impact assessment in every circumstance, and that such an impact assessment is not, in any event, binding on it."*¹⁹⁷
- (215) In the second place, amendments proposed in the European Parliament, including the Report to the Committee on the Internal Market and Consumer Protection of June 2021 on Regulation (EU) 2022/1925, cannot limit nor serve to interpret the provisions of the final text adopted by the Union legislature against their wording either. The fact that the Union legislature has not listed all possible examples of steering that could be enabled by Article 5(4) of Regulation (EU) 2022/1925 cannot mean that steering should be limited strictly to the examples considered by the legislature.
- (216) In the third place, as regards the November 2022 Briefing by the European Parliamentary Research Service, the report itself indicates that *"This document is prepared for, and addressed to, the Members and staff of the European Parliament as background material to assist them in their parliamentary work. The content of the document is the sole responsibility of its author(s) and any opinions expressed herein should not be taken to represent an official position of the Parliament."*¹⁹⁸ Therefore, this document neither represents the Union legislature's interpretation, nor does it reflect its intended meaning of Article 5(4) of Regulation (EU) 2022/1925.

¹⁹⁶ OJ L 123, 12.5.2016, paragraphs 14 and 15.

¹⁹⁷ Judgement of 19 November 2025, Amazon EU v Commission, T-367/23, paragraph 93

¹⁹⁸ EPRS Briefing, EU Legislation in Progress, November 2022, [...], page 12.

- (217) In the fourth place, the fact that amendments were introduced during the legislative process to clarify the meaning of an “acquired end user” does not mean that Article 5(4) of Regulation (EU) 2022/1925 is limited only to the conclusion of contracts between the developer and their acquired end users.¹⁹⁹ The amendments simply clarify the meaning of an “acquired end user” in order to limit the scope of what a gatekeeper, if applicable, may be entitled to be remunerated for, i.e., the initial acquisition of an end user. In other words, while a gatekeeper may, if applicable, only be remunerated for the initial acquisition of an end user, it must allow developers to steer to any types of offers and end users to contract for the offers they are steered to. In addition, it should be noted that certain amendments referred to by Alphabet have been part of the amendments proposed by the European Parliament at the initial stages of the legislative process but have not been adopted and that the final text of Regulation (EU) 2022/1925 is providing for the relevant legal text which should be interpreted.²⁰⁰
- (218) Furthermore, the fact that the Commission has not pointed to a part of the legislative history that specifically states that steering to third party offers should be allowed under Article 5(4) of Regulation (EU) 2022/1925 does not invalidate the conclusions reached in Sections 5.2.1.1 and 5.2.1.3 above. While documents drawn up in the context of the “travaux préparatoires” may provide indications as regards the intention of the EU legislature,²⁰¹ as further set out in Recitals (212) to (217) above, those documents cannot be used to limit the scope of a provision or derogate from the final text of the Regulation as adopted by the Union legislature. In the present case, the scope of the provision is clear. It is therefore not for the Commission to point to documents drawn up in the context of the “travaux préparatoires” that explicitly refer to each and every single use case that could possibly be enabled under Article 5(4) of Regulation (EU) 2022/1925. In support of its arguments against the wording of the provision, it is for Alphabet to point to such documents that specifically demonstrate the Union legislature’s intention to exclude steering to third party offers from the scope of the provision in the final text adopted by the Union legislature. Alphabet has failed to adduce such evidence in support of its arguments.
- (219) Third, the context of Regulation (EU) 2022/1925 as a whole does not limit the types of offers a developer may steer to or contract for.²⁰²
- (220) In the first place, the fact that certain obligations contain explicit references to third parties does not change the Commission’s assessment. Those obligations are not in scope of the current proceedings. In any event, as explained in recitals (71), (74), (89), (101) and (205) the fact that steering to third party offers and concluding

¹⁹⁹ “Amendments adopted by the European Parliament on 15 December 2021 on the proposal for a regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act)”, 15 December 2021, Amendment 25, [...]; “Report of the Committee on the Internal Market and Consumer Protection on the proposal for a regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act)”, 30 November 2021, Amendment 25, [...].

²⁰⁰ The wording proposed in these amendments states that “*An acquired end user is an end user who has already entered into a contractual relationship with the business user.*”. This wording is different from the final text of Regulation (EU) 2022/1925 which states that “*An acquired end user is an end user who has already entered into a commercial relationship with the business user and, where applicable, the gatekeeper has been directly or indirectly remunerated by the business user for facilitating the initial acquisition of the end user by the business user.*”

²⁰¹ Judgement of 3 September 2024, *Illumina v Commission*, C-611/22 P, paragraph 134.

²⁰² Alphabet’s response to the Preliminary Findings, [...], paragraphs 68-72

contracts with third party developers are not explicitly mentioned in Article 5(4) and recital 40 of Regulation (EU) 2022/1925 cannot mean that they are excluded, since the wording of Article 5(4) of that Regulation extends to any offers and any form of communication without limitation.

- (221) In the second place, the fact that there is no security exception similar to the one in Article 6(4) of Regulation (EU) 2022/1925 does not mean that the obligation does not cover steering to third party offers. The absence of such a security exception in Article 5(4) of Regulation (EU) 2022/1925 suggests that the legislature did not consider that the implementation of Article 5(4) of Regulation (EU) 2022/1925 could entail security risks which would merit such an exception. In any event, as set out in recital (76) above, for the purposes of the present case the Commission does not argue that Alphabet is prevented in principle from taking measures that are objectively necessary and proportionate to protect security. Finally, Alphabet's argument that the security measures permitted by Article 6(4) of Regulation (EU) 2022/1925 would be rendered meaningless must be rejected, since Alphabet's compliance with that provision is not in scope of the present proceedings.
- (222) In the third place, the fact that the obligation laid down in Article 5(4) of Regulation (EU) 2022/1925 is, in principle, not qualified as an obligation susceptible of being further specified pursuant to Article 6 of that Regulation, does not entail that it needs to be interpreted particularly restrictively as claimed by Alphabet.²⁰³ Article 5(4) of Regulation (EU) 2022/1925, supported by recital 40 of that Regulation, is sufficiently clear, both in its language and as regards its objective that app developers must be enabled to steer end users to any channel of their choice, without restriction by the gatekeeper.
- (223) Fourth, Alphabet is incorrect in claiming that the objective of Article 5(4) of Regulation (EU) 2022/1925 precludes steering to third party offers and concluding contracts with third party developers.²⁰⁴
- (224) In the first place, as set out in recitals (71), (74), (89), (101) and (205), Article 5(4) of Regulation (EU) 2022/1925 requires gatekeepers to allow developers to engage in unrestricted communications and promotions of offers to end users. Nothing in that provision allows for the limitation of the types of offers that one can steer to. In Alphabet's view,²⁰⁵ recital 40 of Regulation (EU) 2022/1925 modulates Article 5(4) of that same Regulation by limiting the freedom of business users to steer to third party offers as recital 40 of Regulation (EU) 2022/1925 makes no explicit mention of third party offers. However, recital 40 of Regulation (EU) 2022/1925 cannot be read in conjunction with Article 5(4) to limit the clearly stated freedom for business users to communicate offers regardless of the origin of the offer.
- (225) In the second place, recital 40 of Regulation (EU) 2022/1925 clarifies the purpose of the provision, that is to reduce dependency on the gatekeeper's core platform service, enable multi-homing and increase developers' and users' choice of the distribution channel they want to use. Steering to third party offers is in line with this purpose as it allows developers to promote any offer including those of third parties under potentially better conditions than those offered via Google Play through the channel of their choice. Similarly, this affords end users better choice and potentially

²⁰³ Alphabet's response to the Preliminary Findings, [...], footnote 48.

²⁰⁴ Alphabet's response to the Preliminary Findings, [...], paragraphs 73-75.

²⁰⁵ Alphabet's response to the Preliminary Findings, [...], paragraph 74.

conditions for the offers that they can receive through the apps that they use. In doing so, this type of steering enables developers and end users to reduce their dependency on Alphabet's services and in particular on the Google Play app store while increasing their choice as to the distribution channel they want to use. Conversely, Alphabet's interpretation would limit the scope of Article 5(4) of Regulation (EU) 2022/1925 and significantly undermine its objective, by restricting developers' freedom to promote any offer and ultimately users' choice.

- (226) If Alphabet's interpretation were correct (*quod non*), such a limitation would have been explicitly laid down in Article 5(4) of Regulation (EU) 2022/1925.
- (227) In the third place, it is also unclear how Alphabet's argument according to which "*Art. 5(4) was part of the set of DMA provisions whose purpose was to ensure that business users are not restricted in how they interact with their end users. Art. 5(4) was grouped with the rule on most-favored nation clauses, to ensure fairness in the end user <-> business user relationship*" supports its claim that Alphabet can restrict steering to third party offers. As already set out in recital (29) above, Article 5(4) of Regulation (EU) 2022/1925 requires the gatekeeper to ensure that app developers can communicate and promote offers of third parties to end users and that those end users should be able to contract with regard to those offers. Article 5(3) of Regulation (EU) 2022/1925, on the other hand, provides that the gatekeeper shall not prevent business users from offering the same products or services to end users through third-party online intermediation services or through their own direct online sales channel at prices or conditions that are different from those offered through the online intermediation services of the gatekeeper. Article 5(3) of Regulation (EU) 2022/1925 therefore contains a substantially different obligation from the one stated in Article 5(4) of that Regulation. It cannot therefore be used to restrict the scope of Article 5(4).
- (228) Furthermore, Alphabet is factually wrong in arguing that Article 5(4) of Regulation (EU) 2022/1925 was originally grouped with Article 5(3) of that Regulation in the Commission's Proposal COM/2020/842 as a single obligation, from which it allegedly follows that only first party offers can be promoted.²⁰⁶ On the contrary, those provisions were two separate obligations in the Commission's proposal. In any event, the Union legislature is not precluded from modifying the Commission's proposal and its final decision cannot be limited by the Commission's proposal. Alphabet's reference to "*differentiate the conditions under which they offer **their products or services** to end users*" in the Council note of May 2022²⁰⁷ also fails to convince since the recital to which this quote can be attributed is recital 39 of the Commission's proposal which clarifies the obligation laid down in Article 5(3) of the now adopted Regulation (EU) 2022/1925, and not the obligation laid down in Article 5(4) thereof.
- (229) Fifth, contrary to Alphabet's view,²⁰⁸ the External Offers Program does not allow developers to steer end users to any destination of their choice.
- (230) In arguing that the Commission has made an error of fact, Alphabet misses the point of the Commission's position regarding the steering to third party offers. Article 5(4) of Regulation (EU) 2022/1925 requires that steering should be possible to any

²⁰⁶ Alphabet's response to the Preliminary Findings, [...], paragraph 75.

²⁰⁷ Alphabet's response to the Preliminary Findings, [...], footnote 49.

²⁰⁸ Alphabet's response to the Preliminary Findings, [...], paragraphs 77-83.

destination and any offer of the developer's choice. The offer and the destination to which a developer is steered to are interrelated. If steering to a certain type of offer (e.g., third party offers) is restricted, steering to the destination (i.e., the landing page the user is displayed with following steering) where that type of offer can be found is also restricted. The External Offers Program therefore restricts both the type of destinations and offers developers may steer to, as it prevents steering to anything other than the developer's own offers.

- (231) Furthermore, contrary to Alphabet's view,²⁰⁹ the fact that steering to third party offers must be allowed does not follow only from the reference to "*any form of communications*" in recital 40 of Regulation (EU) 2022/1925 in isolation. As set out in recitals (71), (74), (89), (101) and (205) above, the wording of Article 5(4) of Regulation (EU) 2022/1925 does not limit in any way the types of offers that can be steered to. This is further supported by the objective of Article 5(4) of Regulation (EU) 2022/1925 as clarified by recital 40 of that Regulation, as well as additionally by the reference to "*any form of communication*" which indicates that the communication that developers engage in should not be restricted by, e.g., restrictions on what can be included in such communication (e.g., steering to third party offers).
- (232) Steering to third party offers is one form of communication which developers must be able to engage in and which is limited by the External Offers Program. Furthermore, the destination to which a developer can steer to is restricted if that developer cannot steer to destinations on which third party offers can be found. It is therefore not sufficient for the External Offers Program to allegedly allow any form of communication and conclusion of contracts with the developer only on the distribution channel of the developer's choice. The developer should also be free to steer to the types of offers of his choice.

5.2.2.3.1.2. Steering that leads to offers other than digital content or items associated with the app

- (233) The Commission observes that, in its response to the Commission's Preliminary Findings, Alphabet has not contested that Article 5(4) of Regulation (EU) 2022/1925 requires Alphabet to allow developers to steer end users to apps that can be downloaded following steering.
- (234) Furthermore, Alphabet has indicated that because it has proposed to enable links to any type of first party offers in [Google's non-public compliance proposal], it did not discuss further in its response to the Commission's Preliminary Findings steering to first party offers, to "allow focus on the core issues."²¹⁰
- (235) Alphabet has therefore not contested that the External Offers Program restricts steering to certain types of offers, such as apps (including a version of the same app from which a user has been steered, distributed via an alternative distribution channel, as well as other apps of the developer) of that developer, which the user can subsequently download, after having been steered to them.

²⁰⁹ Alphabet's response to the Preliminary Findings, [...], paragraphs 82-83.

²¹⁰ Alphabet's response to the Preliminary Findings, [...], paragraph 22 and footnote 1.

5.2.2.3.2. Alphabet's Linkout Prompt following steering

- (236) The Commission agrees that an information prompt may be shown to end users, where appropriate, since it can help those users make an informed decision.
- (237) First, regarding the frequency of the Prompt, the Commission considers that Alphabet's repeated imposition of the Prompt after every steering constitutes an unjustified restriction on developers' ability to freely communicate, promote offers and conclude contracts, and disincentivises app developers and end users from using any alternative distribution channel for viewing offers and/or from interacting and transacting.
- (238) Second, Alphabet does not contest the Commission's position outlined in recitals (114), (115), (116), and (117).
- (239) Therefore, the Commission takes the view that Alphabet's repeated imposition of the Prompt after every link-out constitutes an unjustified restriction on developers' ability to freely communicate, promote offers and conclude contracts, and disincentivises app developers and end users from using any alternative distribution channel for viewing offers and/or from interacting and transacting.

5.2.2.3.3. Alphabet's restriction on passing additional data in the URL

- (240) First, with regard to the possibility to save end users' personal details on their browsers, this requires that end users have saved their personal details on their browsers in the first place. Not all end users necessarily may have done so, as shown by Alphabet's response to the Preliminary Findings.²¹¹
- (241) Second, even where end users have saved personal information in their browsers, the process of pre-populating this data is not automatic, contrary to Alphabet's view.²¹² Additional user actions are required, such as logging into the developer's website, manually selecting saved payment details, tapping an empty field at the destination and then tapping again the proposed autofill information to input it into the empty field provided by the destinations. As a result, users may still encounter friction when attempting to complete transactions, contrary to Alphabet's suggestion that browser-stored data provides a seamless alternative.
- (242) Third, even if this possibility could compensate for Alphabet's restriction, which the Commission considers not to be the case, Alphabet's own data indicate that [the majority] of Chrome users do not have a form of payment saved²¹³, meaning that a majority of end users who use Chrome would not be able to pre-populate with data from their browsers.
- (243) Furthermore, whether developers can pre-populate end users' data at a higher or lower rate compared to when they use Google Play in-app payment system does not change the fact that they are prevented from doing so in the first place. Rather developers must have full freedom to pre-populate such fields at the destination, subject to compliance with Regulation (EU) 2016/679²¹⁴.

²¹¹ Alphabet describes that on average only [a minority] of EEA end users have a form of payment saved in their Chrome Browsers. See. Alphabet's response to the Preliminary Findings, [...], paragraph 108.c.

²¹² Alphabet's response to the Preliminary Findings, [...], paragraph 108.a.

²¹³ Alphabet's response to the Preliminary Findings, [...], paragraph 108.c.

²¹⁴ OJ L 119, 4.5.2016.

(244) Therefore, the Commission takes the view that, by preventing app developers from passing additional parameters in the URL in the hyperlink they provide in their app for linking-out, Alphabet’s External Offers Program is in breach of Article 5(4) of Regulation (EU) 2022/1925.

5.2.2.3.4. Alphabet has failed to adequately justify any of the aforementioned restrictions on security grounds

(245) As explained in recital (75) of this Decision, there is no security exception in Article 5(4) of Regulation (EU) 2022/1925. Even if Alphabet may be required to implement security measures to comply with applicable law, this cannot allow the introduction of disproportionate restrictions to the rights granted to business users under Article 5(4) of Regulation (EU) 2022/1925.

(246) Alphabet has failed to show that the restriction regarding the destination after steering is objectively necessary and proportionate to protect end user security.

5.2.2.3.4.1. Alphabet’s restriction regarding the destinations after steering

(247) First, as regards the disproportionate nature of Alphabet’s restriction, highlighted by Alphabet’s own policies with regard to the distribution of apps selling physical goods and services, Alphabet argues that a comparison of its restriction between the apps selling physical goods and services and those selling digital goods and services is “inapt”²¹⁵ because “[p]hysical goods and services do not surreptitiously take over users’ mobile devices and expose them to the harms created by unvetted apps from the open Internet”.²¹⁶ However, Alphabet fails to prove, with convincing evidence, why the alleged “stark differences in the security risks between non-digital goods and services and links to [third party] offers”²¹⁷, the allegation that users who purchase physical goods or services are more likely to understand that they are “leaving the Play environment” compared to users who purchase digital goods or services that justify²¹⁸ and the fact that Alphabet’s is not aware of other app stores provided by third parties that review physical goods and services sold through apps justify Alphabet’s decision to take it upon itself to prevent security risks for one type of goods and services (digital) and not other types of goods and services (physical), provided that end users make an informed choice to navigate to at third party offers, and thus, why Alphabet’s restriction is proportionate to the security risk. In addition, Alphabet’s arguments do not focus on security risk and rather claim (see Alphabet arguments above at recital (178)) that Alphabet is unable to ensure that physical goods and services provided outside a Google Play-supported app are safe²¹⁹. However, the fact that Google Play cannot prevent an Uber driver from crashing his taxi or that , as Alphabet claims, does not in itself explain why a complete restriction on steering to third party offers is a proportionate measure to address the alleged risks from such steering, since this has not prevented Google Play from nevertheless allowing Uber to distribute its app via Google Play. Alphabet claims that it has evaluated possible implementation scenarios to enable steering that leads to third-party offers and that there is no realistic implementation scenario as it would require Alphabet to review all apps on Android devices and all third-party offers, [technical

²¹⁵ Alphabet’s response to the Preliminary Findings, [...], paragraph 102.

²¹⁶ Alphabet’s response to the Preliminary Findings, [...], paragraph 102.a.

²¹⁷ Alphabet’s response to the Preliminary Findings, [...], paragraph 102.

²¹⁸ Alphabet’s response to the Preliminary Findings, [...], paragraph 102c

²¹⁹ Alphabet’s response to the Preliminary Findings, [...], paragraphs 102.b. and c.

feasibility assessment].²²⁰ However, Alphabet's argument is not convincing for the following reasons:

- (a) regardless of the risk associated with linking out to third-party offers, Alphabet already allows for alternative distribution on Android including through the use of a browser (e.g., Chrome). It is difficult to understand why this steering that leads to third party offers through a browser is entirely different from that through steering on the apps distributed through Google Play, such that the latter would raise security concerns which the former does not.
 - (b) Appendix 2, Statement of [Google's technical expert] of Alphabet's response to the preliminary findings is made by an Alphabet employee. It is settled case-law that a statement taken from a defendant's own employee and drafted for the purposes of litigation has very low evidential value.²²¹ It has not been reviewed nor validated by any external parties; it lacks credibility due to the uncertainty regarding the level of neutrality of [Google's technical expert], with whom it is written, and the [description of Google's internal processes] mentioned in Appendix 2.
 - (c) Alphabet predicates its analysis on a need to review all destinations to third party offers, but Alphabet does not substantiate why this would be necessary, when users take an informed choice to download a third-party app following steering after seeing an appropriate prompt message.
 - (d) Even if Alphabet had duly justified the need for such a review, Alphabet has not attempted to sufficiently substantiate why the implementation of such a review system would amount to a disproportionate requirement on Alphabet, beyond a general statement that Alphabet would need to allegedly scale up its review infrastructure [scaling factor] [technical feasibility assessment]. This is particularly notable given that Alphabet is proposing a security review for third-party offers in its joint motion to modify permanent injunction with Epic Games in the Epic Games v. Google case in the United States.²²²
 - (e) In any event, such review process, is to be assessed under Article 6(4) of Regulation (EU) 2022/1925 since it concerns the installation of third-party apps on Android devices.
- (248) Third, the Commission concludes that Alphabet's claims, described in recital (182) do not lend support to Alphabet's argument that completely restricting app developers' ability to steer to any destination of their choice is the least restrictive measure available. This is because, except for generalisations, Alphabet has not provided sufficient evidence to demonstrate the existence and magnitude of the purported risks, nor why a complete restriction on steering to third party content is necessary and proportionate in order to mitigate these risks. Furthermore, app

²²⁰ Alphabet's response to the Preliminary Findings, [...], paragraphs 94 to 96.

²²¹ For example, see Judgement of the General Court of 15 July 2015, *Akzo Nobel NV and Others v European Commission*, Cases T-47/10, EU:T:2015:506, paragraph 236; Judgement of the General Court of 8 September 2016, *Arrow Group ApS and Arrow Generics Ltd v European Commission*, Case T-467/13, EU:T:2016:450, paragraph 136; and Judgement of the General Court of 20 December 2023, *JPMorgan Chase & Co. and Others v European Commission*, Case T-106/17, EU:T:2023:832, paragraph 60.

²²² Joint Motion to Modify Permanent Injunction of 4 November 2025, *Epic v. Google*, Case 3:21-md-02981-JD.

developers are themselves subject to EU legislation addressing the purported risks identified by Alphabet, such as fraud, credit card theft, identity and data theft, child pornography and IT security risks. The Commission assessment of Alphabet's arguments in recital (182) is based on the following reasoning.

- (249) In the first place, with regard to the studies on user comprehension, described in recitals (128) and (129), Alphabet's arguments do not respond to the Commission's position. Although the Commission considers that the studies cited by Alphabet do not sufficiently show that warning messages do not provide adequate protection against the purported risks, Alphabet's argument remains generic without supporting the credibility of the studies and neglects Alphabet's burden of proof in substantiating its claims of end user behaviour. In addition, despite Alphabet's argument described in recital (186), the comprehension ranges are too wide to sufficiently show that warning messages do not provide adequate protection against the purported risks. Furthermore, Alphabet fails to respond to all the points the Commission pointed out concerning the credibility of the studies as relevant to justify restrictions to the freedom provided for in Article 5(4) of Regulation (EU) 2022/1925.
- (250) In the second place, with regard to Alphabet's argument in recitals (183) and (185)²²³, the design of the prompts is under Alphabet's control. A poor comprehension rate signals a problem with how the warning is presented, not with allowing steering to third party offers. It is for Alphabet to come up with an alternative information sheet to give sufficient information to end users. Alphabet cannot claim the incompleteness of the current information sheets as justification to have the complete restriction on steering to third party offers, unless Alphabet shows why this restriction is necessary for, and proportionate to, the alleged security risk.
- (251) In the third place, Alphabet has not attempted to design its prompt in a way that aims at achieving a sufficient level of user comprehension and neutrality as outlined in recital (132).
- (252) In the fourth place, with regard to Alphabet's claim that there is a need for multiple strategies to protect end users from harm²²⁴, even if Alphabet would be allowed to implement security measures under Article 5(4) of Regulation (EU) 2022/1925, this cannot justify the introduction of unjustified restrictions to the rights of business users under that provision. Alphabet's claim does not lend support to Alphabet's argument that completely restricting app developers' ability to steer to any destination of their choice is proportionate, in that it is the least restrictive measure available.
- (253) In the fifth place, as described in recital (187), Alphabet claims that [security limitation].²²⁵ However, this claim of [security protection] is flawed as the Android devices that have disabled GPP might use other malware protection tools available on the market.
- (254) In the sixth place, Alphabet does not contest the Commission's position on the survey that Alphabet conducted in December 2023, as described in recitals (130), (131), and (132).

²²³ Alphabet's response to the Preliminary Findings, [...], paragraphs 103.a., 103.c.

²²⁴ Alphabet's response to the Preliminary Findings, [...], paragraph 103.b.

²²⁵ Alphabet's response to the Preliminary Findings, [...], paragraph 105.

- (255) Fourth, with regard to the research described in recital (134)²²⁶, Alphabet’s argument does not respond to the Commission’s position, but instead generally concerns the magnitude of security risks with hypothetical examples. Alphabet neither responds to the Commission’s position of the study on insufficient methodology, nor explains how this study supports the proportionality of Alphabet’s restrictions. Therefore, the Commission considers that this study does not provide convincing evidence on the magnitude of security risks in the context of steering.
- (256) Finally, Alphabet argues that enabling steering that leads to third party offers will require Alphabet to “a closed ecosystem”²²⁷ and it “would be disproportionate and cut across the DMA’s objectives of openness and contestability.”²²⁸ However, Alphabet’s claim is based on a wrong understanding of Article 5(4) of Regulation (EU) 2022/1925, as it only requires Alphabet to ensure that app developers are allowed to engage in any form of communication, promotion of offers, and conclusion of contracts with end users both within and outside their app. It is for Alphabet to design its system, to comply with Regulation (EU) 2022/1925. To the extent that Alphabet chooses to design its system in a way that also results in Alphabet reviewing the offers to which developers steer, the Commission does not prevent Alphabet from providing duly justified reasons to explain why such a design is objectively necessary and proportionate and otherwise complies Regulation (EU) 2022/1925. Furthermore, it is unclear how Alphabet’s restriction would support *[Google’s competitive assessment]* and *[Google’s competitive assessment]*, since Apple is subject to the same obligations in Regulation (EU) 2022/1925 regarding its App Store CPS and, as part of its measures implemented on 26 June 2025 to comply with Article 5(4) of Regulation (EU) 2022/1925, Apple has allowed developers to “*communicate and promote offers for purchases available at a destination of their choice*”.²²⁹

5.2.2.3.4.2. Alphabet’s restriction regarding the Prompt following steering

- (257) First, the Commission further notes that it is for Alphabet to demonstrate that the frequency of the Prompt is strictly necessary and proportionate to achieve an objective that can justify imposing a restriction, and Alphabet fails to do so for the following reasons.
- (258) In the first place, Alphabet fails to provide evidence to show that repeatedly displaying the Prompt serves a purpose beyond what is achieved by showing it once. Where a user has already seen the Prompt and has actively followed up on steering, repetition does not enhance transparency or user understanding; it merely adds unnecessary friction without any incremental informational value. The Commission also notes Alphabet’s reference findings on low comprehension rates of the Prompt. However, relying on repeated disruption to compensate for ineffective communication is not a necessary nor proportionate mitigation measure.

²²⁶ Alphabet’s response to the Preliminary Findings, [...], paragraphs 100, 101.

²²⁷ Alphabet’s response to the Preliminary Findings, [...], paragraph 97.

²²⁸ Alphabet’s response to the Preliminary Findings, [...], paragraph 97.

²²⁹ Apple, “*Communication and promotion of offers on the App Store in the EU*”, 26 June 2025, available at <https://developer.apple.com/support/communication-and-promotion-of-offers-on-the-app-store-in-the-eu/>, (accessed on 4 March 2026). [...].

- (259) In the second place, Alphabet’s argument that end users cannot easily track which of their apps use steering unless they are shown recurrent prompts is not supported by any verifiable data and remains an unsubstantiated hypothetical scenario.
- (260) Second, Alphabet does not contest the Commission’s position outlined in recitals (139), (140), (141), and (143).

5.2.2.3.4.3. Alphabet’s restriction on including additional data in the URL

- (261) First, contrary to Alphabet’s claim in recital (198), the Commission considers Alphabet’s alleged aim to protect end users’ data from data leaks, browser history and phishing attacks.²³⁰ As shown in recital (198), Alphabet’s response to the Preliminary Findings consists only of general references to security risks, without offering additional evidence beyond what has already been submitted to the Commission previously²³¹. Therefore, the Commission does not consider that Alphabet has provided sufficient evidence to substantiate the restrictions on passing additional parameters in the URL as necessary and proportionate to protect end users.
- (262) Second, Alphabet does not contest the Commission’s position outlined in recitals (146), (147), and (148).
- (263) Therefore, Alphabet has failed to show that the restriction regarding the destination after steering, the frequency and wording of the Prompt, and including additional data in the URL is objectively necessary and proportionate to protect end user security.

5.2.3. *Alphabet does not allow app developers to communicate, promote offers and conclude contracts “free of charge”*

- (264) Alphabet does not allow app developers to communicate, promote offers and conclude contracts “free of charge”, contrary to its obligations under Article 5(4) of Regulation (EU) 2022/1925. This Section first sets out the scope of Article 5(4) of Regulation (EU) 2022/1925 and the free of charge obligation set out therein (Section 5.2.3.1.) as well as of the ability of gatekeepers to charge developers for the initial acquisition of end users (Section 5.2.3.2.) in relation to steering and steered transactions. Furthermore, the Section sets out why Alphabet’s Initial Acquisition Fee (Section 5.2.3.3.) as well as Alphabet’s Ongoing Services Fee (Section 5.2.3.4.) are not compliant with Article 5(4) of Regulation (EU) 2022/1925. Furthermore, the Section finds that Alphabet’s treatment of contracts following steering which were concluded on websites displayed within an app via web view as not falling under the scope of Article 5(4) of Regulation (EU) 2022/1925 and thus falling under Google Play’s standard fee model, is not compliant with that obligation (Section 5.2.3.5.). Lastly, the Section concludes by setting out why the Commission’s interpretation of Article 5(4) of Regulation (EU) 2022/1925 is not expropriatory and does not undermine an efficient revenue-share based charging model that benefits developers (Section 5.2.3.6.).

²³⁰ The Commission’s Preliminary Findings, [...], paragraph 117.

²³¹ For example, Alphabet’s response to the Commission’s RFI of 17 April 2024, submitted on 21 May 2024, [...], paragraph 45.

5.2.3.1. Article 5(4) of Regulation (EU) 2022/1925 requires gatekeepers to allow business users to steer and to conclude contracts with end users free of charge

5.2.3.1.1. The Commission's position

- (265) Pursuant to Article 5(4) of Regulation (EU) 2022/1925, “*the gatekeeper shall allow business users, free of charge, to communicate and promote offers, including under different conditions, to end users acquired via its core platform service or through other channels, and to conclude contracts with those end users, regardless of whether, for that purpose, they use the core platform services of the gatekeeper.*” Accordingly, steering as well as the conclusion of contracts following steering between business users and acquired end users must be “free of charge”.
- (266) Recital 40 of Regulation (EU) 2022/1925 defines an ‘acquired user’ as “*an end user who has already entered into a commercial relationship with the business user and, where applicable, the gatekeeper has been directly or indirectly remunerated by the business user for facilitating the initial acquisition of the end user by the business user.*” It follows that an acquired end user is any end user that has already entered into a commercial relationship with the business user, which may be on a paid or on an unpaid basis. In addition, the gatekeeper may, where applicable, be directly or indirectly remunerated for the initial acquisition of the end user. At the same time, Article 5(4) of Regulation (EU) 2022/1925 provides that the gatekeeper cannot charge any fees for the steering itself or for the subsequent conclusion of contracts, both of which must remain free of charge.
- (267) The aforementioned “free of charge” requirement applies both to the communication and promotion of offers within and outside an app as well as to the conclusion of contracts following such communication, irrespective of where those contracts are concluded. This is based on the following considerations:
- (268) First, the “free of charge” expression is enclosed in commas and placed both before “to communicate and promote” and “to conclude contracts”. Therefore, the wording and structure of the provision mean that Article 5(4) of that Regulation contains an enumeration of activities that business users engage in and therefore “free of charge” applies to what is being enumerated after.
- (269) Second, the aforementioned interpretation also follows from the legislative history leading to the adoption of Regulation (EU) 2022/1925.
- (270) The Proposal did not include a “*free of charge*” requirement in its Article 5(c) (now Article 5(4) of Regulation (EU) 2022/1925).²³²
- (271) A publicly available note from the General Secretariat of the Council to the Committee of Permanent Representatives of March 2022 explains the proposed introduction of the “*free of charge*” requirement by the Council. Accordingly, the “*free of charge*” requirement was introduced in order to avoid that gatekeepers would circumvent the obligation to allow business users to conclude contracts with end users by charging a fee for steering or steered transactions that could disincentivise such transactions: “*S’agissant de l’article 5.c [now Article 5(4)], accepter l’ajout convenu au niveau technique d’une condition de gratuité pour éviter la possibilité de contournement de cette obligation par les contrôleurs d’accès en*

²³² Article 5(c) of the Proposal stated that gatekeepers shall “*allow business users to promote offers to end users acquired via the core platform service, and to conclude contracts with these end users regardless of whether for that purpose they use the core platform services of the gatekeeper or not [...].*”

*fixant une commission pour les transactions réalisées en dehors du service de plateforme essentiel dont le montant pourrait faire obstacle à l'effectivité de l'obligation.” (emphasis added)*²³³

- (272) Shortly after the March 2022 note was sent, the Council sent a letter, on 11 May 2022, to the European Parliament with a compromise text of the Proposal. Article 5(4) of that text was amended to provide that “[t]he gatekeeper shall allow business users, free of charge, to communicate and promote offers, including under different conditions, to end users acquired via its core platform service or through other channels, and to conclude contracts with those end users, regardless of whether, for that purpose, they use the core platform services of the gatekeeper.”²³⁴
- (273) The position of the European Parliament adopted at first reading on 5 July 2022²³⁵ approved this revised provision, including the “free of charge” requirement “regardless of whether, for that purpose, they use the core platform services of the gatekeeper”. This shows that charging a fee for steering and for steered transactions (i.e. for concluding a contract *following steering*) was perceived by the legislature as an obstacle to the effectiveness of Article 5(4) of Regulation (EU) 2022/1925, which led the legislature to introduce the “free of charge” requirement.
- (274) Third, the fact that the “free of charge” requirement also applies to the conclusion of contracts is in line with the objective of Article 5(4) of Regulation (EU) 2022/1925, as clarified by recital 40 of that Regulation.
- (275) As explained in that recital of Regulation (EU) 2022/1925, that provision aims to ensure that app developers should be able to make effective use of any channel for the conclusion of contracts and to inform end users about the existence of such channels. Similarly, end users should be able to freely choose the offers of developers and to enter into contracts via any channel of their choice.
- (276) That a commission fee for steering or steered transactions is contrary to the objectives of Regulation (EU) 2022/1925 is further underlined by the Impact Assessment Report accompanying the Proposal, which describes the “anti-steering” rules as an example of unfair practices by which “gatekeepers prevent business users from directing acquired consumers to offers other than those provided on the platform, even though such alternative offers may be cheaper or otherwise potentially more attractive”.²³⁶
- (277) The objective pursued by Article 5(4) of Regulation (EU) 2022/1925 would be undermined if app developers could be subject to a “steering fee” for concluding

²³³ Council of the European Union, Interinstitutional file: 2020/0374(COD), 7294/22, 18 March 2022, paragraph 16, [...]. Free translation into English: “As regards Article 5(c), accept the additional wording agreed at technical level of a condition of free of charge to avoid the possibility of circumvention of this obligation by gatekeepers by setting a commission for transactions outside the core platform service the amount of which could hinder the effectiveness of the obligation.”

²³⁴ Council of the European Union, Interinstitutional file: 2020/0374(COD), 8722/22, [...].

²³⁵ European Parliament, Document EP-PE_TC1-COD(2020)0374, [...]. Article 5(4) in that document reads as follows: “The gatekeeper shall allow business users, free of charge, to communicate and promote offers, including under different conditions, to end users acquired via its core platform service or through other channels, and to conclude contracts with those end users, regardless of whether, for that purpose, they use the core platform services of the gatekeeper.”

²³⁶ Commission staff working document impact assessment report accompanying the document proposal for a Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act), SWD/2020/363 final, 15 December 2020, [...], paragraph 39.

contracts through other channels than Google Play following a call for action and could not therefore pass-on to end users any price and other advantages deriving from the use of such alternative channels.

- (278) Accepting that a commission fee could be charged for steering and for steered transactions would mean that app developers could not fully benefit from the (price) advantages of alternative channels and from passing those advantages on to end users.

5.2.3.1.2. Alphabet's arguments

- (279) Alphabet does not contest the Commission's interpretation of the scope of the "free of charge" requirement in Article 5(4) of Regulation (EU) 2022/1925 as including both the communication and promotion of offers within and outside an app as well as the conclusion of contracts following such communication.
- (280) According to Alphabet, "*the free-of-charge rule provides that the exercise of the right to promote offers and conclude contracts must be free. App stores cannot charge a developer that exercises that right a fee, without rendering a service. Nor can app stores charge developers an additional fee compared to what they charge developers that do not exercise that right.*"²³⁷
- (281) Further, Alphabet states that "[t]he PFs explain that the free-of-charge language covers both the right to promote offers and the right to conclude contracts (para. 124). There is no dispute that the exercise of both the right to promote offers and conclude contracts must be free."²³⁸
- (282) The Commission and Alphabet appear to agree on the Commission's interpretation of Article 5(4) of Regulation (EU) 2022/1925, namely that the gatekeeper cannot charge a fee for steering as well as for the conclusion of contracts following steering between business users and acquired end users.

5.2.3.2. Alphabet is entitled to charge only an initial acquisition fee under Article 5(4) Regulation (EU) 2022/1925, where applicable

5.2.3.2.1. The Commission's position

- (283) As clarified in recital 40 of Regulation (EU) 2022/1925 and taking into account the "free of charge" requirement set out in Article 5(4) of that Regulation, as described in recital (266) above, gatekeepers may, where applicable (in relation to steering and steered transactions), be "*directly or indirectly remunerated by the business user for facilitating the initial acquisition of the end user by the business user*". This remuneration may take the form of a fee for an initial acquisition.
- (284) This means that under Article 5(4) Regulation (EU) 2022/1925 Alphabet is entitled to charge only a fee for facilitating the initial acquisition of new users (not yet acquired), where applicable, and not for the conclusion of steered transactions with users already acquired.
- (285) Thus, under Article 5(4) of Regulation (EU) 2022/1925, read in light of recital 40, in relation to steering and steered transactions a fee can be justified as remuneration for facilitating an initial acquisition, for which certain requirements apply. Notably, an initial acquisition fee must: (i) be related to the initial acquisition only, which means

²³⁷ Alphabet's response to the Preliminary Findings, [...], paragraph 117.

²³⁸ Alphabet's response to the Preliminary Findings, [...], paragraph 119.

that it cannot be extended to steered transactions with an already acquired user; (ii) be commensurate to the value of the initial acquisition and must take into account any direct or indirect remuneration already received from business users for facilitating the initial acquisition; (iii) not remunerate the gatekeeper for its gatekeeper value.

- (286) First, it follows from Article 5(4) read in conjunction with recital 40 of Regulation (EU) 2022/1925 that the initial acquisition fee in relation to steering and steered transactions must be related to remunerating the facilitation of the initial acquisition only. Regarding its duration, this means that the initial acquisition fee in relation to steering and steered transactions must be linked in time to the facilitation of the initial acquisition of the end user by the app developer and cannot apply throughout the overall lifetime of the commercial relationship between the end user and the business user that was established with the “facilitation” of the initial acquisition by the gatekeeper. Rather, the initial acquisition fee in relation to steering and steered transactions must be limited to an “initial” period.
- (287) This is underlined by recital 40 itself, which states that the gatekeeper “*may be directly or indirectly remunerated by the business user for facilitating the initial acquisition of the end user by the business user [...]*” (emphasis added). In line with recital 40, end users are initially “*acquired*” by app developers of Google Play when they enter into a commercial relationship with the developer, for example by way of the installation of a free app or the purchase of a paid app. At the same time, the inclusion of “*if applicable*” in relation to remuneration for the initial acquisition in recital 40 of Regulation (EU) 2022/1925 acknowledges that there may be instances where the gatekeeper was not involved in facilitating the initial acquisition and that the gatekeeper may not seek remuneration in such instances either.
- (288) Therefore, the reference to an “*initial*” acquisition in recital 40 of Regulation (EU) 2022/1925 clarifies that Alphabet can only be remunerated for facilitating the initial acquisition of an end user by the app developer in relation to steering and steered transactions, which usually takes place through the download of an app by an end user. Such remuneration can be deferred for or spanning over a certain limited, and thus initial, period of time. This can notably be the case where an end user does not pay at all, or only a relatively limited amount, for the initial download of the app and then concludes one or more transactions within a relatively short time window after the initial acquisition, i.e. after the download of the app in question. Such deferred remuneration during the initial acquisition period takes into account that end users usually take a limited amount of time before they have familiarised themselves with the app and its offerings and before they have made the first purchase decisions, e.g. following a free trial or other lead-up periods.
- (289) Moreover, when setting the initial acquisition fee in relation to steering and steered transactions, a gatekeeper needs to take into account all relevant forms of remuneration it receives in the context of end user acquisition.
- (290) Second, in addition to relating to the *initial* end user acquisition, the initial acquisition fee in relation to steering and steered transactions must also be commensurate to the *value* of the initial acquisition, that is, it needs to reward the service of assisting with the initial acquisition of an end user by a business user. The amount of the initial acquisition fee in relation to steering and steered transactions should reflect the value of the services provided by Alphabet for the developer related to the initial acquisition (i.e. the matchmaking between the developer and the

end user), and should account for the fact that the value generated by an end user for the developer will always depend on a variety of factors, in particular on the marketing efforts of the developer and the attractiveness of the app. It is for Alphabet to demonstrate that the initial acquisition fee it has chosen to charge in relation to steering and steered transactions, is commensurate to the value of the initial acquisition taking into account all relevant factors.

- (291) The Commission considers, contrary to Alphabet’s view, that it is insufficient for Alphabet to justify the value of the Initial Acquisition Fee in relation to steering and steered transactions solely with reference to user lifetime value, meaning the value a developer generates over the lifetime over a particular user.
- (292) As follows from the clarifications laid down in recital 40, in relation to steering and steered transactions Article 5(4) makes a clear distinction between (i) the value of the acquisition of an end user by an app developer and (ii) the value generated by the app developer with the acquired end user during their overall commercial relationship: *“An acquired end user is an end user who has already entered into a commercial relationship with the business user and, where applicable, the gatekeeper has been directly or indirectly remunerated by the business user for facilitating the initial acquisition of the end user by the business user. Such commercial relationships can be on either a paid or a free basis, such as free trials or free service tiers, and can have been entered into either on the core platform service of the gatekeeper or through any other channel.”* (emphasis added).
- (293) Consequently, under Article 5(4) of Regulation (EU) 2022/1925, the fees charged by the gatekeeper that provides an app store CPS to its business users in relation to steering and steered transactions must be commensurate to the services it provides to them, i.e. the facilitation of the initial acquisition. By contrast, the value of an end user to an app developer depends on a number of factors that are not influenced by the app store that intermediated the initial acquisition of that user. For instance, whether an app developer manages to convert an end user from a non-paying end user to a paying one depends on the efforts and investments of the app developer and takes place after the initial acquisition of an end user.
- (294) Third, beyond the *initial* and *acquisition* criteria set out above, gatekeepers are, in the context of Article 5(4) of Regulation (EU) 2022/1925, also prohibited from charging for the gatekeeper value in relation to steering and steered transactions. Gatekeeper value is the value a service provided by a gatekeeper with a CPS has, on top of the market value of the service, because of its position as an important gateway for business users to reach end users which forces both groups to rely on the gatekeeper. This general principle follows from the objective of Regulation (EU) 2022/1925 to create contestable and fair markets, as illustrated in recital 13: *“[o]ften, there is only one or very few large undertakings providing those digital services. Those undertakings have emerged most frequently as gatekeepers for business users and end users, with far-reaching impacts. In particular, they have gained the ability to easily set commercial conditions and terms in a unilateral and detrimental manner for their business users and end users. Accordingly, it is necessary to focus only on those digital services that are most broadly used by business users and end users and where concerns about weak contestability and unfair practices by gatekeepers are more apparent and pressing from an internal market perspective.”* [emphases added].

- (295) In the specific context of Article 5(4) of Regulation (EU) 2022/1925, an initial acquisition fee in relation to steering and steered transactions that reflects gatekeeper value would further entrench the gatekeeper position, as the gatekeeper would essentially extend the benefits of the entrenched position of its designated app store CPS into the distribution channels to which business users steer end users contrary to the stated objective of the provision as clarified in recital 40 of Regulation (EU) 2022/1925.
- (296) This also means that, contrary to Alphabet’s view,²³⁹ Google Play’s standard 30%/15% commission fee which pre-dates the entry into application of Regulation (EU) 2022/1925 may not be an appropriate benchmark for determining the possible fee for initial acquisition in relation to steering and steered transactions under Article 5(4) of that Regulation, since it risks including gatekeeper value in view of the entrenched position as established by the Alphabet designation decision in relation to Google Play CPS, which Alphabet has not appealed.
- (297) Fourth, the Commission takes the view that Alphabet’s Initial Acquisition Fee on transactions after steering is not compliant with Article 5(4) of Regulation (EU) 2022/1925 to the extent that it also applies to end users whose initial acquisition by an app developer on Google Play was already facilitated by Alphabet (including prior to 7 March 2024) and for which Alphabet has already been remunerated, by way of its standard commission fee on in-app purchases using Google Play Billing for digital goods and services under the General Business Terms, as described in recital (47) of this Decision. The obligation in Article 5(4) of Regulation (EU) 2022/1925 for gatekeepers to ensure that the “free of charge” requirement in relation to steering and steered transactions applies to end users who have *already been acquired* is not limited only to end users that have been acquired after the 7 March 2024 deadline for Alphabet to comply with the obligations laid down in, inter alia, Article 5(4) of Regulation (EU) 2022/1925. In other words, gatekeepers may not impose an initial acquisition fee on steered transactions in relation to end users that have been acquired before 7 March 2024, e.g., by way of having downloaded the app prior to that date, but engage in steering for the first time after 7 March 2024. Such end users are considered to be already acquired by the app developer and therefore Alphabet is not entitled for any remuneration for alleged initial matchmaking. Accordingly, all end users that already downloaded an app through Google Play before 7 March 2024 must be considered as having been already acquired within the meaning of recital 40 of Regulation (EU) 2022/1925 by the respective app developers.
- (298) In addition, the same applies to end users that have to pay in order to download an app (so-called “paid apps”), and for which the gatekeeper charges an initial acquisition fee on the purchase price of the app. In such instance, the end user is acquired when it makes a payment to the app developer to download the app and the gatekeeper has already been remunerated (through the initial acquisition fee on the purchase price of the app) for facilitating such initial acquisition.

5.2.3.2.2. Alphabet’s arguments

- (299) Alphabet contests the Commission’s interpretation of Article 5(4) of Regulation (EU) 2022/1925, read together with recital 40, that the fee for facilitating the initial

²³⁹ See Alphabet’s submission of 14 April 2023, Google’s Compliance with Arts. 5(4), 5(5), 5(7), 6(4), and 6(12) DMA, [...], paragraph 51 et seqq.

acquisition in relation to steering and steered transactions can only be justified if certain requirements related to “*level, duration and scope of the fee*”²⁴⁰ (set out in recitals (283) to (298)) are met. According to Alphabet, the Commission’s reading of Article 5(4) of Regulation (EU) 2022/1925 “*is incompatible with the wording of Art. 5(4), the purpose of the rule, and the DMA’s legal system.*”²⁴¹

- (300) First, Alphabet argues that the Commission’s position conflicts with the wording of Article 5(4) of Regulation (EU) 2022/1925. According to Alphabet, “*Art. 5(4) does not discuss the services that app stores render to developers (such as intermediation or ongoing developer support like updates) or the fees that they may charge for these services. On its face, the free-of-charge rule in Art. 5(4) covers only steering. It does not require app stores to provide other services for free. It does not dictate or preclude a particular way for charging the fees for those services, such as fixed fees vs. revenue share. Nor does it regulate the level, duration or scope of the fees.*”²⁴²
- (301) Rather than prohibit charging for other services provided to developers, Alphabet argues that Article 5(4) of Regulation (EU) 2022/1925 only prohibits charging for the steering itself, without rendering a service in addition.²⁴³ According to Alphabet, “[t]he free-of-charge rule under Art. 5(4) is therefore straightforward: the right that Art. 5(4) grants should not be burdened by an added cost that arises merely from exercising the right.”²⁴⁴ In Alphabet’s view, by setting the parameters for an initial acquisition fee to comply with Article 5(4) of Regulation (EU) 2022/1925, “*the PFs seek to impose a prescriptive and complex price-control system for the fees of the other services that platforms render that is dissociated from the language of Art. 5(4).*”²⁴⁵
- (302) Alphabet is of the view that Article 5(4) of Regulation (EU) 2022/1925 does not concern the form and level of remuneration for the initial acquisition in relation to steering and steered transactions at all and cannot be interpreted in such a way, stating that “[w]hat form and level that remuneration should take is not a question that is dealt with by 5(4) at all. It is dealt with by Art. 6(12) and its separate legal framework”.²⁴⁶
- (303) Second, Alphabet argues that the Commission’s position conflicts with the purpose of Article 5(4) of Regulation (EU) 2022/1925. According to Alphabet, “[t]he purpose of Art. 5(4) is to give developers the freedom to promote offers and conclude contracts via any distribution channel to reduce the “dependence” on the gatekeeper platform and “promote multi-homing” (Recital 40). The purpose is not to introduce a far reaching price-control system for the fees that platforms charge for their services.”²⁴⁷
- (304) Alphabet argues that the reason for the “free of charge” requirement in Article 5(4) of Regulation (EU) 2022/1925 is “*to prevent a gatekeeper from circumventing the rights that Art. 5(4) creates by imposing an added cost for exercising those*

²⁴⁰ Alphabet’s response to the Preliminary Findings, [...], paragraph 114.

²⁴¹ Alphabet’s response to the Preliminary Findings, [...], paragraph 115.

²⁴² Alphabet’s response to the Preliminary Findings, [...], paragraph 116.

²⁴³ Alphabet’s response to the Preliminary Findings, [...], paragraph 117.

²⁴⁴ Alphabet’s response to the Preliminary Findings, [...], paragraph 118.

²⁴⁵ Alphabet’s response to the Preliminary Findings, [...], paragraph 118.

²⁴⁶ Alphabet’s response to the Preliminary Findings, [...], paragraph 120.

²⁴⁷ Alphabet’s response to the Preliminary Findings, [...], paragraph 121.

rights.”²⁴⁸ In Alphabet’s view, the anti-circumvention purpose of the free of charge requirement is confirmed by the Council Note.²⁴⁹ Alphabet concludes from this note that “*the free-of-charge rule was introduced to avoid the circumvention of the obligation of Art. 5(4) (“éviter la possibilité de contournement de cette obligation”). It was not meant to introduce a regulatory price-control system for app store fees.*”²⁵⁰

- (305) Third, Alphabet argues that the Commission’s position conflicts with Regulation (EU) 2022/1925 legal system and Article 6(12) of Regulation (EU) 2022/1925.
- (306) In the first place, Alphabet argues that the Commission’s reasoning is incompatible with the relation between recitals and regulatory rules due to the way the Commission used recital 40 to interpret Article 5(4) of Regulation (EU) 2022/1925. Alphabet states that “[a] recital cannot introduce new rules or obligations. Just as a recital cannot restrict a legal provision [...], it cannot expand it either. But on the PFs’ reading, Recital 40 would serve as the basis for introducing a convoluted and complex price-control system not contained in Art. 5(4) and would therefore impermissibly expand that provision. This is incompatible with the role of recitals. The only reasonable reading of Art. 5(4) is that there is no price-control system in the first place.”²⁵¹
- (307) In the second place, Alphabet contends that the Commissions reasoning is incompatible with the Regulation (EU) 2022/1925 classification of rules. According to Alphabet, “Art. 5 rules, such as Art. 5(4), are meant to be clear cut so as to be “self-executing” and are not “susceptible of being further specified.””²⁵² According to Alphabet however, the Preliminary Findings “proceed to read into the rule a price-control system that is nowhere to be found in the rule and requires specification over 26 paragraphs. This cannot be reconciled with the self-executing nature of Art. 5 rules.”²⁵³
- (308) In the third place, Alphabet contends that the Commission’s reasoning is incompatible with how the Regulation (EU) 2022/1925 defines the service of an app store. Citing the definition of online intermediation services as set out in Article 2(5) of Regulation (EU) 2022/1925 which refers to Article 2(2) of Regulation (EU) 2019/1150, Alphabet concludes that “[w]hen Play facilitates a transaction between a user and a developer, it therefore renders the same service, regardless of where transactions are concluded.”²⁵⁴ From this, Alphabet concludes that “Play must be entitled to the same remuneration for that service, irrespective of where transactions take place. The PFs’ attempt artificially to constrain Play’s service fee in the case of transactions that take place off Play, but Play facilitates, is incompatible with the DMA’s definition of the service that Play renders.”²⁵⁵
- (309) In the fourth place, Alphabet contends that the Commission’s reasoning is incompatible with the relation between Article 5(4) and 6(12) of Regulation (EU)

²⁴⁸ Alphabet’s response to the Preliminary Findings, [...], paragraph 122.

²⁴⁹ Council of the European Union, Interinstitutional file: 2020/0374(COD), 7294/22, 18 March 2022, paragraph 16, [...].

²⁵⁰ Alphabet’s response to the Preliminary Findings, [...], paragraph 122.

²⁵¹ Alphabet’s response to the Preliminary Findings, [...], paragraph 123a.

²⁵² Alphabet’s response to the Preliminary Findings, [...], paragraph 123b.

²⁵³ Alphabet’s response to the Preliminary Findings, [...], paragraph 123b.

²⁵⁴ Alphabet’s response to the Preliminary Findings, [...], paragraph 123c.

²⁵⁵ Alphabet’s response to the Preliminary Findings, [...], paragraph 123c.

2022/1925. According to Alphabet, “Art. 6(12)—not Art. 5(4)—governs the fees that a gatekeeper can charge for its service. Art. 6(12) is limited to certain types of platforms; it specifies criteria for the assessment of fees; and it is subject to the specification process of Art. 8. The legislator via Art. 6(12) made a conscious choice on the limits of price regulation, its criteria, and the specific procedures that it is subject to.”²⁵⁶ From this, Alphabet concludes that “[t]he PFs’ attempt to introduce a price-control system via Art. 5(4) conflicts with these legislative choices. It is not permissible to interpret a provision in a way that conflicts with other rules of the same regulation.”²⁵⁷

- (310) Fourth, in response to the Commission’s interpretation that the fee Alphabet can charge must be related to initial acquisition, Alphabet submitted that “any fee can be expressed as a proportion of the average lifetime value of a user, regardless of whether it is a revenue share or a fixed fee, and regardless of its level. For example, assume that on average a user generates revenue of EUR 1,000 per year over a period of six years for a total average return of EUR 6,000. A fixed upfront lump sum fee of EUR 600 would then correspond to 10% of the average lifetime value. A fixed recurring monthly fee of EUR 10 running over two years would correspond to 4% of the average lifetime value. And a 6% revenue share over three years would correspond to 3% of the average lifetime value.”²⁵⁸
- (311) In sum, Alphabet concludes that “[t]he PFs’ attempt to read a new price-control system for app store fees into Art. 5(4) via Recital 40 is invalid. Price controls represent a serious interference with fundamental legal rights and the organizational principle of a market-based economy. They therefore cannot be imposed without a clear and proper legal basis via the backdoor of a recital, as the PFs attempt to do.”²⁵⁹

5.2.3.2.3. The Commission’s assessment of Alphabet’s arguments

- (312) The Commission considers that none of Alphabet’s arguments described in recitals (299) to (311) above put into question the Commission’s assessment as described in Section 5.2.3.2.1 of this Decision.
- (313) First, the Commission considers that its interpretation of Article 5(4) of Regulation (EU) 2022/1925 does not conflict with the wording of the provision. Contrary to Alphabet’s assertions, the Commission’s position and the criteria set out for the assessment of the Initial Acquisition Fee in this Decision follow directly from the wording in Article 5(4) and recital 40 of Regulation (EU) 2022/1925.
- (314) Article 5(4) of Regulation (EU) 2022/1925 explicitly lays down the “free of charge” principle as a general rule for steering and steered transactions. Contrary to Alphabet’s understanding, recital 40 of Regulation (EU) 2022/1925 clarifies that whilst steering and steered transactions with acquired users must remain free of charge, Alphabet may charge for facilitating the initial acquisition of an app user (also when such an acquisition involves the conclusion of steered transactions). The scope of that Initial Acquisition Fee in relation to steering and steered transactions is

²⁵⁶ Alphabet’s response to the Preliminary Findings, [...], paragraph 123d.

²⁵⁷ Alphabet’s response to the Preliminary Findings, [...], paragraph 123d.

²⁵⁸ Alphabet’s response to the Commission’s RFI of 17 April 2024, submitted on 21 May 2024, [...], paragraphs 119 & 120.

²⁵⁹ Alphabet’s response to the Preliminary Findings, [...], paragraph 124.

described in recital 40 of Regulation (EU) 2022/1925, namely it must be initial and reflect the value of initial matchmaking leading to user acquisition.

- (315) Based on the above, the analysis and the criteria set out for the assessment of the initial acquisition fee in relation to steering and steered transactions in this decision follow directly from the wording of Article 5(4) and recital 40 of Regulation (EU) 2022/1925.
- (316) Second, the Commission disagrees with Alphabet's view that its interpretation of Article 5(4) of Regulation (EU) 2022/1925 conflicts with the purpose of the provision.
- (317) Alphabet argues that because the "free of charge" requirement is aimed at preventing circumvention, this would somehow exclude the possibility of interpreting the provision as establishing strict limits to the ability of gatekeepers to charge for steering and steered transactions.²⁶⁰ The Commission does not follow this logic. Much to the contrary, as shown in recitals (271) to (273) and evidenced by the Council Note,²⁶¹ the "free of charge" requirement was introduced in Article 5(4) of Regulation (EU) 2022/1925, precisely in order to prevent circumvention and to allow business users to properly make use of steering, including through the conclusion of steered transactions.
- (318) Contrary to Alphabet's claims, it is also not clear how the "free of charge" requirement in relation to steering and steered transactions would somehow conflict with the purpose of reducing developers' gatekeeper-dependence and the promotion of multi-homing, as set out by Alphabet in its response to the Preliminary Findings.²⁶² To the contrary, the imposition of a fee for steering and steered transactions that is not in line with the criteria set out in recital (285) of the Decision, would undermine the objective of that provision. App developers may have no or a significantly reduced incentive to steer end users to alternative distribution channels if Alphabet is able to charge them a fee when they conclude a contract following steering. If app developers have to pay a commission fee to Alphabet when steering end users to cheaper or more attractive offers, the incentive to steer will be significantly undermined, since the revenues that the app developer could have generated from the end user via steering are reduced.
- (319) Third, contrary to Alphabet's view, the Commission's interpretation of Article 5(4) Regulation (EU) 2022/1925 does not conflict with the legal system set out in that Regulation.
- (320) In the first place, Alphabet misunderstands the legal system set out in Articles 5 to 8 of Regulation (EU) 2022/1925, in particular with regard to the specification procedure envisioned in Article 8(2) thereof. Alphabet correctly states that "*Art. 5 rules are meant to be clear cut so as to be "self-executing" and are not "susceptible of being further specified."*"²⁶³ In fact, all obligations set out in Articles 5, 6, 7 and 13 of Regulation (EU) 2022/1925 are directly applicable, notably Article 5(4) of Regulation (EU) 2022/1925. The Commission notes that there is no definition nor reference in Regulation (EU) 2022/1925 to "self-executing" provisions. This is thus

²⁶⁰ Alphabet's response to the Preliminary Findings, [...], paragraph 122.

²⁶¹ Council of the European Union, Interinstitutional file: 2020/0374(COD), 7294/22, 18 March 2022, paragraph 16, [...].

²⁶² Alphabet's response to the Preliminary Findings, [...], paragraph 121.

²⁶³ Alphabet's response to the Preliminary Findings, [...], paragraph 123b.

not a distinguishing characteristic of the obligations set out in Article 5 of Regulation (EU) 2022/1925. The difference between Article 5 on the one hand and Articles 6 and 7 of Regulation (EU) 2022/1925 on the other hand, is that the latter can be further specified in the Commission’s decision under the procedure set out in Article 8(2) of Regulation (EU) 2022/1925. The fact that the obligation laid down in Article 5(4) of Regulation (EU) 2022/1925 is, in principle, not qualified as an obligation susceptible of being further specified does not entail that it needs to be interpreted differently to any other provision of that Regulation.

- (321) Contrary to Alphabet’s claims, such a specification exercise does not need to be undertaken to arrive at the interpretation of Article 5(4) of Regulation (EU) 2022/1925. However, that does not mean that the Commission would be precluded from interpreting that provision, which is not the same as the specification proceeding set out in Article 8(2) of Regulation (EU) 2022/1925. In light of the principle of rule of law, it is precisely the duty of the Commission to interpret the rules which it is tasked to enforce, before being able to apply these rules to a specific case. This is exactly what the Commission has done in this Decision.
- (322) As regards the specific “price control system”²⁶⁴ which Alphabet argues is “*nowhere to be found in the rule*” and “*requires specification over 26 paragraphs*”²⁶⁵, the limitation to the gatekeeper’s ability to charge business users for steering is explicitly set out in Article 5(4) of Regulation (EU) 2022/1925 itself (“free of charge”). Recital 40 of Regulation (EU) 2022/1925 merely points to the fact that a gatekeeper may be remunerated for facilitating the initial acquisition. This is beneficial to Alphabet and it cannot validly complain that the exercise of this possibility to charge for the initial acquisition needs scrutiny to avoid rendering the “free of charge” requirement meaningless.
- (323) In the second place, Alphabet incorrectly relies on the definition of ‘online intermediation services’ to argue that the Commission’s interpretation of Article 5(4) of Regulation (EU) 2022/1925 is incompatible with that Regulation.
- (324) According to Article 2(5) of Regulation (EU) 2019/1150, by reference to Article 2(2) of Regulation (EU) 2022/1925 to which Alphabet is referring in paragraph 123(c) of the response to the Preliminary Findings,²⁶⁶ the definition of ‘online intermediation services’ requires that the services in question “*allow business users to offer goods or services to consumers, with a view to facilitating the initiating of direct transactions between those business users and consumers, irrespective of where those transactions are ultimately concluded*”. The Commission agrees that Google Play fulfils this element of the definition.²⁶⁷
- (325) Alphabet’s attempt to restrict the scope of Article 5(4) of Regulation (EU) 2022/1925 by relying on this definition is however misguided.
- (326) The fact that the definition of online intermediation services includes services initiating transactions “*irrespective of where those transactions are ultimately concluded*” does not concern the issue which of these transactions the gatekeeper may legally charge for under Regulation (EU) 2022/1925.

²⁶⁴ Alphabet’s response to the Preliminary Findings, [...], paragraph 123b.

²⁶⁵ Alphabet’s response to the Preliminary Findings, [...], paragraph 123b.

²⁶⁶ Alphabet’s response to the Preliminary Findings, [...], paragraph 123c.

²⁶⁷ See: Decision C(2023) 6101 final, recital 69.

- (327) In the third place, Alphabet’s attempt to argue that the Commission’s interpretation of Article 5(4) of Regulation (EU) 2022/1925 is incompatible with the relation between Articles 5(4) and 6(12) of that Regulation is incorrect.
- (328) According to Alphabet, Article 6(12) of Regulation (EU) 2022/1925 is the only obligation under that Regulation which governs the fees that a gatekeeper can charge for its services. Alphabet argues that “[t]he legislator via Art. 6(12) made a conscious choice on the limits of price regulation, its criteria, and the specific procedures that it is subject to”.²⁶⁸ This however ignores the fact that the legislator itself did in fact regulate the fees that a gatekeeper can charge for its designated services in several other obligations, such as Article 6(7) and most importantly in the context of the present decision, Article 5(4) of Regulation (EU) 2022/1925. Article 6(12) of Regulation (EU) 2022/1925, therefore, was not intended by the legislator as the only obligation under this Regulation to govern the fees that a gatekeeper can charge for its services. Both obligations apply to the gatekeeper independently of one another and none of the two obligations is intended to conflict with or prevent the application of the other obligation respectively, but rather to complement each other.
- (329) Fourth, Alphabet’s explanations regarding the relationship between the value of the initial acquisition and the average lifetime value of a user are beside the point. Article 5(4) of Regulation (EU) 2022/1925 and recital 40 clearly set out that, in relation to steering and steered transactions, the gatekeeper may only be remunerated for the *initial* acquisition of an end user by a developer. Any fee that would be levied over an extended period of time on the intermediation of steered transactions, irrespective of when such a transaction takes place, is not remunerating for the “initial” acquisition and thus compatible with Article 5(4) of Regulation (EU) 2022/1925.
- 5.2.3.3. Alphabet’s Initial Acquisition Fee cannot be considered as remuneration for facilitating the initial acquisition of the end user by the app developer
- (330) In light of the aforementioned principles, the Commission has assessed whether Alphabet’s Initial Acquisition Fee of 5% on auto-renewing subscriptions and 10% on purchases of other offers of digital in-app content and services charged over a period of two years following the first steered transaction, as described in more detail in Section 4.2.2 of this Decision, should be regarded as remuneration for facilitating, through Google Play, the initial acquisition of an end user by an app developer.
- (331) The Commission takes the view that Alphabet’s Initial Acquisition Fee does not comply with Article 5(4) of Regulation (EU) 2022/1925. First, Alphabet’s Initial Acquisition Fee does not amount to remuneration for the *initial* acquisition. Second, it does not amount to remuneration for the *acquisition*.
- 5.2.3.3.1. Alphabet’s Initial Acquisition Fee does not amount to remuneration for the *initial* acquisition
- 5.2.3.3.1.1. The Commission’s position
- (332) The Commission considers that contrary to the rules set out in Article 5(4) of Regulation (EU) 2022/1925 in combination with recital 40, Alphabet’s Initial Acquisition Fee in relation to steering and steered transactions does not amount to remuneration for the *initial* acquisition of end users by app developers through

²⁶⁸ Alphabet’s response to the Preliminary Findings, [...], paragraph 123.d.

Google Play, as its temporal scope is significantly remote in time from the initial instance at which the matchmaking between the app developer and the end user takes place. The Commission's view is based on the following reasons.

- (333) First, the Initial Acquisition Fee applies irrespective of when the end user downloads an app through Google Play. This is because the initial acquisition period during which Alphabet charges the Initial Acquisition Fee for steered transactions only starts when an end user completes, for the first time, a steered transaction if such steered transaction occurs within 120 hours following an external offer within the app. Alphabet thus decouples the initial acquisition period during which it charges the Initial Acquisition Fee from the download of an app and ties it to the conclusion of the first steered transaction between the end user and a developer.
- (334) Given that the end user becomes an acquired user through the download of the app as set out in recital (287) of this Decision, this effectively means that Alphabet does not charge for the *initial* acquisition of an end user by an app developer within the meaning of recital 40 of Regulation (EU) 2022/1925. For example, under Alphabet's current fee model, if an end user completes the first steered transaction five years after the download of an app, Alphabet would charge the Initial Acquisition Fee for the two consecutive years independent of when the end user downloaded the app, whereas it is via the download of the app that the commercial relationship between the app developer and the end user is established. A fee that starts to apply five years after the user acquisition by way of an app download cannot be considered a fee charged for the "*initial*" acquisition.
- (335) Second, even if the two-year period for charging the Initial Acquisition Fee were to start from the initial end user acquisition through the download of an app, the duration of two years goes far beyond what can be considered as relating to the facilitation of the "*initial*" acquisition.
- (336) In the first place, the word *initial* in itself indicates that the time period should not be excessively long. This holds notably true in the context of app stores, where the lifetime of commercial relationships between end users and business users is rather short. According to Alphabet's data, the average active user lifetime²⁶⁹ from the first download of an app to the last uninstall of a given app is [Google's internal figure], with the median active user lifetime of [Google's internal figure]. This is a conservative estimate given that app users might not uninstall an app immediately after its last usage. The average active user lifetime for [app category A] distributed through Google Play is [Google's internal figure]²⁷⁰, with a median active user lifetime of [Google's internal figure].²⁷¹
- (337) For the median 100 apps by downloads, the average active user lifetime is [Google's internal figure], with a median active user lifetime of [Google's internal figure]. The average active user lifetime for the median 100 apps by download for [app category A] is [Google's internal figure], with a median active user lifetime of [Google's

²⁶⁹ The term active user lifetime refers to the period of time between an end user's first download of a free or paid app and that end user's last use of the app, irrespective of when that user's first download of the app took place. See Alphabet's response to the Commission's RFI of 2 July 2024, submitted on 9 August 2024, [...], Q3.a, footnote 10.

²⁷⁰ Alphabet's response to the Commission's RFI of 2 July 2024, submitted on 9 August 2024, [...], Q3 paragraph 9.

²⁷¹ Alphabet's response to the Commission's RFI of 2 July 2024, submitted on 9 August 2024, Annex QI.3, [...].

internal figure] for [app category B], [Google's internal figure] for [app category C], [Google's internal figure] for [app category D], [Google's internal figure] for [app category E] and only [app category F] achieving a median active user lifetime [Google's internal figure].²⁷² To put this into perspective, [app category F] only account for [Google's internal figure] of the overall Google Play spend by end users.²⁷³

- (338) The average active buyer lifetime²⁷⁴ of Google Play app users, i.e. the time between the first install and the last purchase by Google Play users who make at least one in-app purchase during their user lifetime, across all apps, is [Google's internal figure] on average across all app categories, with the median active buyer lifetime of [Google's internal figure]. The average active buyer lifetime for all [app category A] distributed through Google Play is, [Google's internal figure] ([app category A] account for [Google's internal figure] of the overall Google Play spend²⁷⁵, with a median active buyer lifetime of [Google's internal figure]; [Google's internal figure] for the top 100 [app category A] by downloads; [Google's internal figure] for the 100 median [app category A] by downloads; and [Google's internal figure] for the 100 lowest quartile [app category A] by downloads.²⁷⁶
- (339) For the 100 median apps by the number of downloads, the average buyer lifetime is [Google's internal figure], with a median active buyer lifetime of [Google's internal figure] across all categories. The average active buyer lifetime for the 100 median apps by download for [app category A] is [Google's internal figure], with a median buyer lifetime of [Google's internal figure], [Google's internal figure] for [app category B], [Google's internal figure] for [app category C], [Google's internal figure] for [app category D], [Google's internal figure] for other apps, and with only [app category E] achieving a median active buyer lifetime of [Google's internal figure] among the 100 median apps by downloads²⁷⁷ while also only accounting for [Google's internal figure] of the overall Google Play spend by end users.²⁷⁸
- (340) An initial acquisition period of two years would therefore in many cases encompass and even go beyond the entire user and buyer lifetime of apps downloaded through Google Play and therefore cannot be considered to be solely related to the initial acquisition.

²⁷² Alphabet's response to the Commission's RFI of 2 July 2024, submitted on 9 August 2024, Annex QI.3, [...].

²⁷³ Alphabet's response to the Commission's RFI of 2 July 2024, submitted on 9 August 2024, [...], Q3 paragraph 9.

²⁷⁴ The term active buyer lifetime refers to the period of time between the first download of a free or paid app by an end user, who has made at least one purchase either in-app or when downloading a paid app, and that end user's last purchase made in the app, irrespective of when that user's first download of the app took place, including those users that made their first purchase in the last 3 years. See also Alphabet's response to the Commission's RFI of 2 July 2024, submitted on 9 August 2024, [...], Q3.b, footnote 11.

²⁷⁵ Alphabet's response to the Commission's RFI of 2 July 2024, submitted on 9 August 2024, [...], Q3 paragraph 9.

²⁷⁶ Alphabet's response to the Commission's RFI of 2 July 2024, submitted on 9 August 2024, Annex QI.3, [...].

²⁷⁷ Alphabet's response to the Commission's RFI of 2 July 2024, submitted on 9 August 2024, Annex QI.3, [...].

²⁷⁸ Alphabet's response to the Commission's RFI of 2 July 2024, submitted on 9 August 2024, [...], Q3 paragraph 9.

- (341) In this context, the Commission also rejects Alphabet’s claim that “[f]or example, European users who spend at least \$100 in a given app have an average buyer lifetime of [Google’s internal figure], and [Google’s internal figure] of these users have an average buyer lifetime of longer than 2 years.”²⁷⁹
- (342) Selecting users who spend at least USD 100 in a given app to make statements about the “average buyer lifetime” is potentially misleading as spending USD 100 in an app may take most users a substantial amount of time. For instance, the basic Spotify subscription currently is EUR 10.99, often including a three months free trial (student subscription EUR 5.99 plus one months of free trial), thus leading to a minimum buyer lifetime of approx. 12 months (approx. 18 months for students) before reaching the USD 100 cut off threshold.
- (343) Conversely, excluding users that spend less than USD 100 might exclude a large part of spending users.
- (344) In the second place, the Commission does not agree with Alphabet’s contention that the amount of end user spend falling within or outside the initial acquisition period, and not end user or buyer lifetimes, is the appropriate metric to analyse whether the Initial Acquisition Period is excessively long.²⁸⁰
- (345) End user spend is primarily a consequence of the commercial relationship built by the app developer and the app user with an attractive product offering and not of the initial user acquisition by way of an app download. The end user and buyer lifetime metrics thus provide a more appropriate basis to assess over which time period app users enter into a commercial relationship with app developers. The lifetime metrics allow to establish the initial acquisition, as expressed in the initial acquisition period, in the context of the overall commercial relationship between an app developer and an app user.
- (346) In addition, as set out above in recital (287) of this Decision, in the context of app stores, the concept of initial acquisition relates to the point in time of the download of an app and not to a monetary metric such as the amount of user spend over the lifetime of the commercial relationship.
- (347) However, even if end user spend were the appropriate metric (*quod non*), Alphabet’s initial acquisition period would still not be initial, as [Google’s internal figure] of the average EEA user spend across all apps fell within the two-year initial acquisition period in 2023 and [Google’s internal figure] outside of it.²⁸¹ For the top 20 apps in terms of user spend, about [Google’s internal figure] of the user spend falls within the two-year initial acquisition period. An initial acquisition period that captures [Google’s internal figure] of all revenues generated by app developers cannot be considered initial.²⁸²
- (348) When looking at in-app user spend for subscriptions as from the initiation of the subscription, in line with Alphabet’s External Offers Program, [Google’s internal figure] of the cumulated end user spend in 2023 fell within the two-year initial

²⁷⁹ Alphabet’s letter to the Commission, submitted on 5 March 2024, [...], paragraph 4.

²⁸⁰ Alphabet’s response to the Commission’s RFI of 2 July 2024, submitted on 9 August 2024, [...], paragraph 13 et seq. and Q3 paragraph.

²⁸¹ Alphabet’s response of 15 September 2024 to the Commission’s RFI of 30 August 2024, [...], paragraph 14.

²⁸² Alphabet’s letter to the Commission, submitted on 5 March 2024, [...], paragraph 4.

acquisition period.²⁸³ [Google's internal figure] of all subscription spend in 2023 fell within the first 30 days after download and [Google's internal figure] of all subscription spend in 2023 fell within the first year of the app download.²⁸⁴ As regards non-subscription user spend across all app categories in 2023, [Google's internal figure] fell within two years from app download ([Google's internal figure] in 2021 and [Google's internal figure] in 2022).²⁸⁵ [Google's internal figure] fell within the first 30 days, [Google's internal figure] in the first 90 days and [Google's internal figure] in the first year from download in 2023.²⁸⁶ When looking at games apps in particular, [Google's internal figure] of all in-app purchase spend in 2023 fell within the first two years from download.²⁸⁷

- (349) Furthermore, when looking at the median 2023 EEA user spend falling outside the first two years following the initial acquisition, the data unequivocally shows that the two year period is simply too long to be considered to constitute an initial period: ²⁸⁸

App Categories	Median 2023 EEA user spend falling outside the two-year initial acquisition period (%) ²⁸⁹			
	<u>All apps</u>	<u>Top 100 apps (downloads)</u>	<u>100 Median apps (downloads)</u>	<u>Top 100 lowest quartile apps (downloads)</u>
All app categories	[Google's internal figure]	[Google's internal figure]	[Google's internal figure]	[Google's internal figure]
[App category B]	[Google's internal figure]	[Google's internal figure]	[Google's internal figure]	[Google's internal figure]
[App category B]	[Google's internal figure]	[Google's internal figure]	[Google's internal figure]	[Google's internal figure]
[App category C]	[Google's internal figure]	[Google's internal figure]	[Google's internal figure]	[Google's internal figure]
[App category D]	[Google's internal figure]	[Google's internal figure]	[Google's internal figure]	[Google's internal figure]

²⁸³ Alphabet's response to the Commission's RFI of 17 April 2024, submitted on 27 May 2024, [...], p. 31.
²⁸⁴ Alphabet's response to the Commission's RFI of 18 September 2024, submitted on 7 October 2024, [...], Figure 1, p. 16.
²⁸⁵ Alphabet's response to the Commission's RFI of 18 September 2024, submitted on 7 October 2024, [...], Figure 8, p. 23.
²⁸⁶ Alphabet's response to the Commission's RFI of 18 September 2024, submitted on 7 October 2024, [...], Figure 8, p. 23.
²⁸⁷ Alphabet's response to the Commission's RFI of 18 September 2024, submitted on 7 October 2024, [...], Figure 9, p. 24.
²⁸⁸ Alphabet's Response of to the Commission's RFI of 30 August 2024, submitted on 15 September 2024, Annex Q5.01, [...].
²⁸⁹ The [lowest value range] in this table may represent rounded values and may therefore include values [figures close to zero].

[App category E]	[Google's internal figure]	[Google's internal figure]	[Google's internal figure]	[Google's internal figure]
[App category F]	[Google's internal figure]	[Google's internal figure]	[Google's internal figure]	[Google's internal figure]

- (350) In this context, the Commission does not agree with Alphabet's contention that median 2023 EEA user spend is not a meaningful metric as it is not weighted by end user spend and impacted by apps that generate very little revenue and are therefore not representative.
- (351) In the Commission's view, Article 5(4) of Regulation (EU) 2022/1925 is not limited to app developers that achieve particularly high revenues above a certain "representative" threshold. Rather, Article 5(4) applies without any distinction to all app developers that distribute their apps through Google Play. There is nothing in Regulation (EU) 2022/1925 that would suggest otherwise.
- (352) Furthermore, the Commission precisely considers median values a particularly appropriate metric as they show – in contrast to average figures which are tilted towards particularly successful apps – more accurately the impact that Google Play's fee structure has on app developers distributing through Google Play.
- (353) It follows that the temporal scope of the Initial Acquisition Fee charged by Alphabet goes beyond what can be considered remuneration for the "initial" acquisition.
- (354) Third, and in addition, the Commission further notes in this context that the only other app store CPS provided by a gatekeeper, i.e. the App Store provided by Apple Inc., has announced on 8 August 2024 the introduction of an initial acquisition fee that is charged over the period of one year starting from the download of an app.²⁹⁰ Irrespective of whether such an initial acquisition period of one year can be considered "initial" and is therefore compliant with Regulation (EU) 2022/1925, this example further shows that Alphabet's initial acquisition period of two years is excessively long.
- (355) Fourth, the Commission takes the view that Alphabet's Initial Acquisition Fee on steered transactions is also not compliant with Article 5(4) of Regulation (EU) 2022/1925 to the extent that it applies to acquired end users, as further explained in recitals (297) and (298) of this Decision.
- (356) In the first place, contrary to Article 5(4) of Regulation (EU) 2022/1925, the Initial Acquisition Fee applies to end users whose initial acquisition by an app developer on Google Play was already facilitated by Alphabet, including prior to 7 March 2024 or prior to the developer signing up to the External Offers Program, and for which Alphabet therefore has already been remunerated, e.g., by way of its standard commission fee for digital goods and services under the General Business Terms, as

²⁹⁰ See Apple's Updates to the StoreKit External Purchase Link Entitlement, available at <https://developer.apple.com/news/?id=szrqxadx>, Union, (accessed on 16 October 2024), [...], as well as Apple's Alternative payment options on the App Store in the European available at <https://developer.apple.com/support/alternative-payment-options-on-the-app-store-in-the-eu/>, (accessed on 16 October 2024), [...].

described in recital (47) of this Decision. Notably, Alphabet's New Business Terms do not distinguish between end users that were already subject to Google Play's standard commission fee and those end users that were not.

- (357) For the sake of clarity, Article 5(4) of Regulation (EU) 2022/1925 obliges gatekeepers to ensure that the "*free of charge*" requirement applies to end users who have already been acquired prior to the developer entering into the External Offers Program. The Commission considers that this obligation is not limited to end users that have been acquired prior to 7 March 2024, but applies to any end user that has been acquired before the developer has entered into the External Offers Programme. Accordingly, Alphabet may not impose the Initial Acquisition Fee in relation to steering and steered transactions on app developers in relation to end users that have been acquired under Alphabet's General Business Terms.
- (358) In the second place, the Initial Acquisition Fee also applies to end users that have to pay in order to download an app (so-called "paid apps"), and for which Alphabet charges the Initial Acquisition Fee on the purchase price of the app. In such instance, the end user has already been acquired when it makes a payment to the app developer to download the app, and Alphabet has already been remunerated (through the Initial Acquisition Fee on the purchase price of the app) for facilitating such initial acquisition. In such a case, the end user must be considered an acquired end user for which Alphabet has already been remunerated for. Alphabet is therefore not entitled to charge the Initial Acquisition Fee in relation to any further steered transactions with such acquired end users.

5.2.3.3.2. Alphabet's Initial Acquisition Fee does not amount to remuneration for the initial *acquisition*

5.2.3.3.2.1. The Commission's position

- (359) The Commission further considers that Alphabet's Initial Acquisition Fee of 10% (5% for auto-renewing subscriptions) exceeds what can be considered remuneration for the initial *acquisition* of end users by app developers through Google Play.
- (360) First, the Commission notes that under Article 8(1) of Regulation (EU) 2022/1925, Alphabet was under the obligation to ensure and demonstrate compliance with Article 5(4) of that Regulation as of 7 March 2024.
- (361) Despite this obligation, throughout the duration of the time period assessed in this decision, Alphabet has not provided the Commission with any detailed explanation as to why the initial acquisition fee should be set at the level of 10% (5% for auto-renewing subscriptions). While Alphabet stated that the initial acquisition fee is intended to compensate Alphabet for discovery, trust building and distribution services, Alphabet submitted that "[s]plitting up the fee for Play's facilitation service into discovery, trust building, and delivery is neither practicable nor meaningful."²⁹¹
- (362) Second, and in addition, the Commission's assessment is further supported by a benchmark comparison with the initial acquisition fee announced by Apple on 8 August 2024 and further amended and implemented on 26 June 2025.²⁹² This is

²⁹¹ Alphabet's response to the Commission's RFI of 2 July 2024, submitted on 9 August 2024, [...], response to question 6, paragraph 30.

²⁹² See Apple's Updates to the StoreKit External Purchase Link Entitlement, available at <https://developer.apple.com/news/?id=szrqxadx>, Union, (accessed on 16 October 2024), [...]. For the sake of completeness, Apple has since further revised and implemented its fee structure on 26 June

without prejudice to the fact that Apple's fee structure in relation to the App Store, including the initial acquisition fee charged by Apple on steered transactions, may be subject to further scrutiny by the Commission under Regulation (EU) 2022/1925 and in particular Article 5(4) thereof.

- (363) In the first place, at the outset, the Commission notes that such a benchmark analysis constitutes an appropriate way of assessing fee levels in light of the objectives of Regulation (EU) 2022/1925 to ensure fair markets in the digital sector and in particular in light of the objectives of Article 5(4) of that Regulation. As clarified in recital 40 of Regulation (EU) 2022/1925, one of the objectives of Article 5(4) of that Regulation is to ensure that any remuneration the gatekeeper charges in relation to steering does not go beyond what is necessary to compensate for the service the gatekeeper has provided in facilitating the initial acquisition of an end user by an app developer. A benchmark analysis enables the Commission to determine whether the fee charged for a specific service exceeds the market value of that service.
- (364) In the second place, the Commission further takes the view that in order to assess whether the Initial Acquisition Fee charged by Alphabet goes beyond the market value of the facilitation of the initial acquisition, it needs to examine whether the initial acquisition fee announced by Apple on 8 August 2024 and further amended and implemented on 26 June 2025²⁹³ in relation to the facilitation of the initial acquisition by the App Store is the most suitable and comparable benchmark in the context of the present case.
- (365) In this context, Apple operates the App Store which is a software application store CPS within the meaning of Article 2(14) of Regulation (EU) 2022/1925.²⁹⁴ Apple has been designated pursuant to Article 3 of that Regulation as gatekeeper for that CPS. The App Store, in view of its size in terms of business users and end users, is a relevant and comparable benchmark to Google Play when it comes to assessing the initial acquisition fee.
- (366) Further, Apple has introduced an initial acquisition fee that remunerates Apple for similar matchmaking services that it provides for the facilitation of the initial acquisition of end users as compared to what Alphabet can be remunerated for in light of the objectives of Article 5(4) of Regulation (EU) 2022/1925. Consequently, the App Store and the initial acquisition fee announced by Apple on 8 August 2024

2025: Apple's Alternative payment options on the App Store in the European available at <https://developer.apple.com/support/alternative-payment-options-on-the-app-store-in-the-eu/>, (accessed on 16 October 2024), [...]. This is without prejudice to the fact that Apple's fee structure in relation to the App Store, including the initial acquisition fee charged by Apple on steered transactions, may be subject to further scrutiny by the Commission under Regulation (EU) 2022/1925 and in particular Article 5(4) thereof.

²⁹³ See Apple's Updates to the StoreKit External Purchase Link Entitlement, available at <https://developer.apple.com/news/?id=szrqxadx>, Union, (accessed on 16 October 2024), [...]. For the sake of completeness, Apple has since further revised and implemented its fee structure on 26 June 2025: Apple's Alternative payment options on the App Store in the European available at <https://developer.apple.com/support/alternative-payment-options-on-the-app-store-in-the-eu/>, (accessed on 16 October 2024), [...]. This is without prejudice to the fact that Apple's fee structure in relation to the App Store, including the initial acquisition fee charged by Apple on steered transactions, may be subject to further scrutiny by the Commission under Regulation (EU) 2022/1925 and in particular Article 5(4) thereof.

²⁹⁴ The Commission designated Apple Inc., together with all legal entities directly or indirectly controlled by Apple Inc. (hereinafter "Apple") as a gatekeeper in relation to its online intermediation service App Store, see Commission Decision C(2023) 6100 final.

and further amended and implemented on 26 June 2025²⁹⁵ is the most suitable and comparable benchmark for the initial acquisition fee charged by Alphabet in terms of business users and end users and the nature of the service it provides.

- (367) In the third place, and in light of the various considerations set out above, the Commission further considers that an initial acquisition fee of 10% for digital in-app purchases other than auto-renewing subscriptions and an initial acquisition fee of 5% for auto-renewing subscriptions over a two-year period goes beyond the value of the initial acquisition. This follows from the analysis applying the benchmark further explained below.
- (368) Apple announced on 8 August 2024, in relation to its App Store CPS and in the context of Article 5(4) of Regulation (EU) 2022/1925, the planned introduction of an initial acquisition fee amounting to 5% over the period of one year for all sales of digital goods and services, including auto-renewing subscriptions.²⁹⁶ The fee level of the initial acquisition fee was further amended and implemented on 26 June 2025. The Commission further notes that Alphabet requests a significantly higher percentage in terms of the initial acquisition fee charged for digital in-app purchases other than auto-renewing subscriptions as well as a longer timespan during which such an initial acquisition fee is charged for all sales of digital goods and services although the matchmaking services Apple and Alphabet offer are comparable. These considerations are without prejudice to the fact that Apple's fee structure in relation to the App Store, including the initial acquisition fee charged by Apple, may be subject to further scrutiny by the Commission under Regulation (EU) 2022/1925 and in particular Article 5(4) thereof.
- (369) Third, the Commission takes the view that Alphabet's proposed benchmarks are not an adequate proxy for determining the possible remuneration for the initial acquisition.
- (370) Contrary to Alphabet's view,²⁹⁷ Alphabet has not provided convincing evidence that Alphabet's selected fees charged by app stores, such as for example the traditional standard commission fees of 30%/15% charged by Google Play and the Apple App Store in 2023 and fees charged by other mobile app stores such as the Amazon App

²⁹⁵ See Apple's Updates to the StoreKit External Purchase Link Entitlement, available at <https://developer.apple.com/news/?id=szrqxadx>, Union, (accessed on 16 October 2024), [...]. For the sake of completeness, Apple has since further revised and implemented its fee structure on 26 June 2025: Apple's Alternative payment options on the App Store in the European available at <https://developer.apple.com/support/alternative-payment-options-on-the-app-store-in-the-eu/>, (accessed on 16 October 2024), [...]. This is without prejudice to the fact that Apple's fee structure in relation to the App Store, including the initial acquisition fee charged by Apple on steered transactions, may be subject to further scrutiny by the Commission under Regulation (EU) 2022/1925 and in particular Article 5(4) thereof.

²⁹⁶ See Apple's Updates to the StoreKit External Purchase Link Entitlement, available at <https://developer.apple.com/news/?id=szrqxadx>, Union, (accessed on 16 October 2024), [...]. For the sake of completeness, Apple has since further revised and implemented its fee structure on 26 June 2025: Apple's Alternative payment options on the App Store in the European available at <https://developer.apple.com/support/alternative-payment-options-on-the-app-store-in-the-eu/>, (accessed on 16 October 2024), [...]. This is without prejudice to the fact that Apple's fee structure in relation to the App Store, including the initial acquisition fee charged by Apple on steered transactions, may be subject to further scrutiny by the Commission under Regulation (EU) 2022/1925 and in particular Article 5(4) thereof.

²⁹⁷ Alphabet's submission "Play's Fee Model For Its External Offers Program Value and Options", 21 May 2024, [...], paragraph 79 et seqq.

Store, are a suitable benchmark.²⁹⁸ This is because Alphabet has not explained why the fees of other app stores, as well as the traditional fees charged by Google Play, are limited to charging for the initial acquisition. For example, Alphabet has not explained whether these fees are not charged on a continuing basis and are thus limited in time to the initial end user acquisition, or if they also include fees that go beyond the initial acquisition fee that Alphabet may charge in the relation to steering and steered transactions pursuant to Article 5(4) of Regulation (EU) 2022/1925, as is witnessed by Alphabet’s description of its current fees²⁹⁹ or, for example, by the fee model of the Amazon App Store,³⁰⁰ to which Alphabet refers as a benchmark.³⁰¹ In addition, Alphabet has not demonstrated that the traditional fees charged by app stores are not likely to incorporate gatekeeper value such as in the case of Alphabet’s Google Play or Apple’s App Store (at least until Apple’s initial acquisition fee announced on 8 August 2024 and further amended and implemented on 26 June 2025).³⁰²

²⁹⁸ See Alphabet’s submission of 14 April 2023, Google’s Compliance with Arts. 5(4), 5(5), 5(7), 6(4), and 6(12) DMA, [...], paragraph 48.

²⁹⁹ See, for instance, Alphabet’s description of the services remunerated by the Google Play commission fee, “What does the service fee pay for?: *The service fee supports our investments across Android and Google Play, reflects the value provided by Android and Google Play, enables us to deliver an affordable and innovative user experience, helps developers reach users and build sustainable businesses, and keeps the platform safe and secure. Major investment areas include: Android & the Google Play Store: The free Android operating system enables hardware manufacturers to build a wide range of devices at different price points that gives users unprecedented choice. And the Google Play Store delivers the world’s largest selection of apps and games, available in over 190 countries with personalized recommendations and easy discovery of high-quality apps. New Android platforms: We build platforms for new form factors such as Auto and TV to help developers increase their reach in new ways. Security: Consumers trust Android and Google Play because of its security, the reviews of apps to ensure they comply with policies around safety and privacy, and with automated security of Google Play Protect that scans over 100 billion apps per day. App distribution: Developers can instantly reach over three billion Android users with the ability to optimize delivery by device and functionality and provide ongoing updates. Developer tools: Developers can run experiments, beta test, optimize store listings, analyze performance, and more. Billing system: Users enjoy safe and trusted payments, while developers can easily transact with 700 million users using Google Play gift cards and locally relevant forms of payment.*”, available at <https://support.google.com/googleplay/android-developer/answer/11131145>, [...].

³⁰⁰ See for example the description of Amazon’s various developer resources, including app publishing, app monetization, app testing, discovery and engagement tools, available at <https://developer.amazon.com/apps-and-games/documentation>, [...], as well as at <https://developer.amazon.com/apps-and-games>, [...].

³⁰¹ See Alphabet’s submission of 14 April 2023, Google’s Compliance with Arts. 5(4), 5(5), 5(7), 6(4), and 6(12) DMA, [...], paragraph 48.

³⁰² See Apple’s Updates to the StoreKit External Purchase Link Entitlement, available at <https://developer.apple.com/news/?id=szrqxadx>, Union, (accessed on 16 October 2024), [...]. For the sake of completeness, Apple has since further revised and implemented its fee structure on 26 June 2025: Apple’s Alternative payment options on the App Store in the European available at <https://developer.apple.com/support/alternative-payment-options-on-the-app-store-in-the-eu/>, (accessed on 16 October 2024), [...]. This is without prejudice to the fact that Apple’s fee structure in relation to the App Store, including the initial acquisition fee charged by Apple on steered transactions, may be subject to further scrutiny by the Commission under Regulation (EU) 2022/1925 and in particular Article 5(4) thereof.

- (371) Fourth, Alphabet's comparison to alternative marketing costs³⁰³ does not constitute a suitable benchmark either.
- (372) In the first place, Alphabet has not provided any explanation why these benchmarks constitute better comparators for the purposes of determining the initial acquisition fee that would be compliant with Article 5(4) of Regulation (EU) 2022/1925.
- (373) In the second place, in any event, the Commission contends that the fees typically charged for offline intermediation services over a wide range of industries do not constitute an appropriate benchmark. This is because, due to the inherent differences vis-à-vis digital app markets, offline intermediation services mentioned by Alphabet in its submission as pertinent benchmarks, such as the individual and targeted service provided for the customer acquisition or matchmaking across a wide range of industries by literary agents, insurance intermediaries, head hunters, recruiting agencies and life protection assurance markets are very difficult, if not impossible to compare to services that Alphabet provides to an app developer for the facilitation of the initial acquisition of an (often free) app by an end user through Google Play.
- (374) In the third place, Alphabet's references to marketing costs are conceptually misguided, in particular when taking into account the legislative intent behind Article 5(4) of Regulation (EU) 2022/1925, which was to limit compensation to the value of the initial acquisition in relation to steering and steered transactions. Considering marketing campaigns of different distribution channels, such as distribution through the web or third-party app stores, is going significantly beyond the purpose of steering and steered transaction as pursued by Article 5(4) of Regulation (EU) 2022/1925.
- (375) In the fourth place, the Commission cannot accept Alphabet's submission that *"Play's CAC [customer acquisition costs] payback period of [proprietary CAC payback period metrics] represents extraordinarily good value when compared to other means for developers to acquire customers (i.e., normal marketing) and the industry benchmark of [proprietary CAC payback period metrics] for the CAC payback period."*³⁰⁴ According to Alphabet's own expert report, the customer acquisition costs payback period is [proprietary CAC payback period metrics].³⁰⁵ It is unclear, both from Alphabet's submission and also at a conceptual level, how Alphabet has taken into account its developers' gross margins, in line with the CAC payback period formula in Alphabet's expert report,³⁰⁶ when calculating the payback period referred to above.³⁰⁷
- (376) In any event, Alphabet's expert report is not only contradictory in itself, but also fundamentally contradicts Alphabet's own position. On the one hand, the expert

³⁰³ Alphabet's submission "Play's Fee Model For Its External Offers Program Value and Options", 21 May 2024, [...], paragraph 85 et seq.; Alphabet's response to RFI of 2 July 2024, submitted on 9 August 2024, paragraph 8 et seq., [...] and Annex II, [...].

³⁰⁴ Alphabet's response to the Commission's RFI of 2 July 2024, submitted on 9 August 2024, [...], paragraph 8.

³⁰⁵ See Alphabet's response to the Commission's RFI of 2 July 2024, submitted on 9 August 2024, Annex II, [...], paragraph 14.

³⁰⁶ See Alphabet's response to the Commission's RFI of 2 July 2024, submitted on 9 August 2024, Annex II, [...], paragraph 14.

³⁰⁷ See in this context also Alphabet's admission in paragraph 53 of its response to question 9 of the Commission's RFI of 3 July 2024, submitted on 9 August 2024, [...]: *"Google does not have granular data on the CAC payback period that would apply for each category of developer."*

report sets out that “[c]ompared to CLV [customer lifetime value], which provides a long-term view of customer profitability, the CAC [customer acquisition costs] payback period focuses on the initial period of a customer relationship and more immediate financial recovery.”³⁰⁸

- (377) On the other hand, the report also states that “[w]hile immediate customer acquisition is vital, long-term sustainability hinges on balancing acquisition costs with CLV. The CAC payback period provides a short- to medium-term view of investment recovery, which is crucial for planning and scaling operations. It is most relevant to initial customer acquisition, and coupled with metrics like CLV and retention rates, it helps businesses ensure that their growth strategies are not only aggressive but also sustainable over the long term.”³⁰⁹ In other words, the report seems to seek to distinguish CLV and CAC while at the same time acknowledging that CAC can only be assessed by reference to CLV and retention rates.
- (378) Fifth, the Commission notes that when determining the initial acquisition fee, a gatekeeper may only be remunerated “if applicable”, “directly” or “indirectly”, as set out in recital 40 of Regulation (EU) 2022/1925. Furthermore, according to Article 5(4) of Regulation (EU) 2022/1925 and recital 40 of that Regulation, an end user can be considered acquired for the purposes of that provision irrespective of the channel via which they were acquired by the business user. Therefore, a user acquired via Alphabet’s Play Ads service is considered acquired under Article 5(4) of Regulation (EU) 2022/1925, and Alphabet has already received remuneration for this acquisition via its Play Ads service by the developer for placing an ad. This means that when setting the initial acquisition fee, a gatekeeper needs to take into account all relevant forms of remuneration it received for the facilitation of the initial end user acquisition, including, for instance, revenues from advertising services. For instance, according to the data submitted by Alphabet, [Google’s internal figure] of all app downloads by paying users (median apps [Google’s internal figure]) originate from Play Ads.³¹⁰ This means that in the case of [Google’s internal figure] of all paying users, Alphabet is charging although it has previously, at least partially, already been remunerated by the app developer in terms of advertising spend in the context of the user acquisition.³¹¹
- (379) In light of all of the above, the Commission considers that an initial acquisition fee of 10% charged for purchases other than auto-renewing subscriptions and an initial acquisition fee of 5% for auto-renewing subscriptions over a two-year period goes beyond the value of the initial acquisition under Article 5(4) of Regulation (EU) 2022/1925.

5.2.3.3.2.2. Alphabet’s arguments

- (380) Alphabet contends that Google Play’s initial acquisition fee meets the requirements of Article 5(4) of Regulation (EU) 2022/1925. Alphabet understands that the initial acquisition fee must “(i) be related to the initial acquisition only; (ii) be

³⁰⁸ Alphabet’s response to the Commission’s RFI of 2 July 2024, submitted on 9 August 2024, Annex II, [...], paragraph 22.

³⁰⁹ Alphabet’s response to the Commission’s RFI of 2 July 2024, submitted on 9 August 2024, Annex II, [...], paragraph 38.

³¹⁰ See Alphabet’s response to the Commission’s RFI of 2 July 2024, submitted on 9 August 2024, Annex QIII.6, [...].

³¹¹ See Alphabet’s response to the Commission’s RFI of 2 July, submitted on 9 August 2024, Annex QIII.6, [...].

*commensurate with the value of the initial acquisition of the end user; and (iii) not remunerate the gatekeeper for its gatekeeper value”.*³¹²

- (381) First, Alphabet charges the initial acquisition fee as a “*time-limited fee for its initial acquisition service that is calculated as a revenue share of 5% on subscriptions and 10% on other digital content, for 2 years. Taking into account the average run time of non-time limited revenue shares, the effective rates under Play’s fees are [effective average fee modelling metrics] and [effective average fee modelling metrics], respectively.*”³¹³
- (382) Second, Alphabet argues that Apple’s proposed August 2024 fee is “*not a valid benchmark as it reflects regulatory intervention and was never implemented.*”³¹⁴ First, Alphabet contends that “*the PFs do not claim that Apple’s non-implemented fee is a valid benchmark*”.³¹⁵ Second, Alphabet contends that Apple’s fee proposal of August 2024 cannot be a valid benchmark as “*Apple proposed this non-implemented fee in the context of regulatory infringement proceedings under the threat of fines*” and therefore does not reflect “*market-based prices for initial acquisition services*”. Third, Alphabet has the view that it “*is impermissible for the PFs to invoke fees that Apple proposed to resolve ongoing infringement proceedings, especially when Google was not a party to those proceedings*”.³¹⁶
- (383) Further, Alphabet contends that Apple’s initial acquisition fee “*is in practice not lower than Play’s because Apple de facto compels users to take Apple’s ongoing service (which it calls a store service) in perpetuity and pay 20% for that service (or pay 10% and Apple’s core technology fee (CTF) of EUR 0.50 per install).*” According to Alphabet’s calculations, “*developers under Apple’s model pay 25% for the first year and then 20% in perpetuity after that (or 15% for first year, 10% after that, and pay the CTF on every install). That is considerably higher than Google’s fee*”.³¹⁷
- (384) Third, Alphabet argues that “*it is common ground that the way to establish compliance with the principles is through a benchmark exercise*”. Alphabet continues to formulate two steps for such benchmarking exercise: “*First, benchmark services must be identified that are comparable to the service at issue (here, facilitating the initial acquisition of the end user) and that are offered by non-gatekeepers. Second, the price and charging structure of those benchmark services must be compared to the prices that the gatekeeper charges for the service at issue.*”³¹⁸ Alphabet concludes that if the initial acquisition fee charged by Alphabet is within the range of comparable benchmark services, the fees are compliant.³¹⁹
- (385) In the first place Alphabet claims that the “*PFs identify app developer preinstallation deals with OEMs as the key benchmark for initial acquisition services of an app store*”. Even though Alphabet emphasises that OEM pre-installation agreements are not the right benchmark for Alphabet’s fees related to initial acquisition, Alphabet concludes that “*[e]ven assuming this is the right benchmark for Play (quod non),*

³¹² Alphabet’s response to the Preliminary Findings, [...], paragraph 125.

³¹³ Alphabet’s response to the Preliminary Findings, [...], paragraph 128.

³¹⁴ Alphabet’s response to the Preliminary Findings, [...], B.2.d.

³¹⁵ Alphabet’s response to the Preliminary Findings, [...], paragraph 177.

³¹⁶ Alphabet’s response to the Preliminary Findings, [...], paragraph 178.

³¹⁷ Alphabet’s response to the Preliminary Findings, [...], paragraph 179.

³¹⁸ Alphabet’s response to the Preliminary Findings, [...], paragraph 126.

³¹⁹ Alphabet’s response to the Preliminary Findings, [...], paragraph 127.

evidence from this benchmark demonstrates that Play's IA fee fully meets the PFs' stated principles."³²⁰

- (386) In the second place, Alphabet argues that it [Google's strategic commercial benchmarking information and agreement metrics].³²¹ Further, Alphabet considers that *"evidence from the preinstallation agreements for the 85 apps the EC collected demonstrates that [Google's strategic commercial benchmarking information and agreement metrics]."*³²²
- (387) In this context, Alphabet contends that, firstly, *"[c]harging a revenue share is consistent with common market practices for OEM preinstallation arrangements"* and *"it must therefore be open to Play to use a revenue share approach for its initial acquisition service."* Secondly, Alphabet claims that the Commission's benchmark evidence supports *"that the two year duration of Play's fee is well in line with a competitive, market-based remuneration for facilitating the initial acquisition of users"* as the [Google's strategic commercial benchmarking information and agreement metrics]. Thirdly, Alphabet continues to reason that [Google's strategic commercial benchmarking information and agreement metrics]. Lastly, Alphabet asserts that the [Google's strategic commercial benchmarking information and agreement metrics] as *"Play charges its IA fee [initial acquisition fee] solely based on developer revenue from transactions for digital content."* By contrast, according to Alphabet's assessment, [Google's strategic commercial benchmarking information and agreement metrics].³²³
- (388) In the third place, Alphabet asserts that its initial acquisition fee [Google's strategic commercial benchmarking information and agreement metrics]³²⁴ and thus, complies with the three principles set out in the Preliminary Findings. In particular, Alphabet claims that the initial acquisition fee is (1) *"commensurate to the value of the initial acquisition"*, (2) *"related to the initial acquisition only"*, and (3) *"does not remunerate for gatekeeper value."*³²⁵ Alphabet concludes that based on the *"PFs own preferred benchmark and the PFs' own fee principles, there are therefore no grounds for a claim that Play's IA fee infringes Art. 5(4)."*³²⁶
- (389) In the fourth place, Alphabet argues that the Commission's assessments of the OEM pre-installation agreements *"ignore the large majority of the 85 app preinstallation arrangements in the EC's file and selectively focus on just 4 of these agreements. Such cherry-picking is impermissible and prejudicial."* Alphabet further elaborates that Alphabet's own calculation based on the four OEM agreements [Google's strategic commercial benchmarking information and agreement metrics].³²⁷
- (390) In particular, Alphabet contests that the Commissions wrongly selected the pre-installation agreements for the benchmark analysis and mischaracterised the terms of the selected OEM app pre-installation agreements.³²⁸

³²⁰ Alphabet's response to the Preliminary Findings, [...], paragraph 129.

³²¹ Alphabet's response to the Preliminary Findings, [...], paragraph 133.

³²² Alphabet's response to the Preliminary Findings, [...], paragraph 136.

³²³ Alphabet's response to the Preliminary Findings, [...], paragraph 136 and 137.

³²⁴ Alphabet's response to the Preliminary Findings, [...], paragraph 134.

³²⁵ Alphabet's response to the Preliminary Findings, [...], paragraph 138.

³²⁶ Alphabet's response to the Preliminary Findings, [...], paragraph 139.

³²⁷ Alphabet's response to the Preliminary Findings, [...], paragraph 135 and 141.

³²⁸ Alphabet's response to the Preliminary Findings, [...], paragraph 140.

- (391) In this context, Alphabet argues that the “*PFs impermissibly discard preinstallation arrangements that charge fees based on a revenue share.*”³²⁹ Alphabet contests that pre-installation agreements based on revenue shares should be considered as a benchmark for the initial acquisition fee as the omission of these agreements by the Commission “*prejudges the outcome of the benchmark analysis which should be the basis for assessing the proper form of remuneration.*”³³⁰ Further, Alphabet has the view that “*the benchmark assessment must consider all forms of remuneration that developers pay as remuneration for that service.*”³³¹ Alphabet reasons that the Commission unjustifiably excluded other categories of OEM pre-installation agreements such as [Google’s OEM commercial strategy and agreement typologies].”³³²
- (392) Lastly, Alphabet contends that the Commission applied a flawed analysis to the four pre-installation agreements it selected for its benchmark analysis.³³³ According to Alphabet, the “*PFs mischaracterize the 4 agreements by failing to take into account key distinctions between how the fees are charged under those agreements and how Play’s fee is calculated. These differences distort the comparison by reducing, artificially, the implied percentage amounts that are purportedly paid under the preinstallation agreements.*”³³⁴ Alphabet concludes based on its own calculations for all four selected OEM pre-installation agreements that the fees charged in the OEM agreements are [Google’s strategic commercial benchmarking information and agreement metrics].³³⁵
- (393) In addition, Alphabet claims that based on several other benchmarks introduced by Alphabet in the course of the proceeding, Alphabet’s initial acquisition fee “*compares favorably to what non-gatekeepers charge for initial acquisition services*” and thus complies with the principles set out in the Preliminary Findings.³³⁶ According to Alphabet, these benchmarks included: “[1] *evidence from non-gatekeeper app stores*; [2] *evidence from [Third Party] [337] cost of acquiring users*; and [3] *cross-industry evidence on customary spend for initial user acquisition.*” Regarding these benchmarks, Alphabet considers that the “*PFs disregard this evidence for no good reason, and focus on Apple’s non-implemented and regulatory-imposed benchmark that says nothing about market-based prices.*”³³⁸
- (394) Fourth, Alphabet argues that the Commission wrongly disregards evidence from other non-gatekeeper app stores.³³⁹
- (395) Alphabet explains that “*Aptoide does break up its service by offering a “self-distribution” variant of its app store service where Aptoide only provides ongoing support and no initial acquisition, as an alternative to its standard offering (which includes an initial acquisition service). For the self-distribution variant, Aptoide*

³²⁹ Alphabet’s response to the Preliminary Findings, [...], paragraph 142.

³³⁰ Alphabet’s response to the Preliminary Findings, [...], paragraph 166 and 167.

³³¹ Alphabet’s response to the Preliminary Findings, [...], paragraph 144.

³³² Alphabet’s response to the Preliminary Findings, [...], paragraph 149.

³³³ Alphabet’s response to the Preliminary Findings, [...], paragraph 150 to 155.

³³⁴ Alphabet’s response to the Preliminary Findings, [...], paragraph 152.

³³⁵ Alphabet’s response to the Preliminary Findings, [...], paragraph 154.

³³⁶ Alphabet’s response to the Preliminary Findings, [...], paragraph 130 and 156.

³³⁷ [Description of Third Party]. [...].

³³⁸ Alphabet’s response to the Preliminary Findings, [...], paragraph 157.

³³⁹ Alphabet’s response to the Preliminary Findings, [...], paragraph 165.

Catapult [³⁴⁰] charges a perpetual 10% revenue share vs. a perpetual 25% share for its standard service.” According to Alphabet’s calculations, this results in, “*Aptoid Catapult is charging a perpetual revenue share of 15% for facilitating the initial acquisition of users, which is much higher than Play’s fee for the same service.*” ³⁴¹

- (396) In this context, Alphabet complains that the Commission failed to “*follow up with Aptoid about its IA fee*”, even though Alphabet supposedly suggested to the Commission to do so in a meeting on 20 June 2024.³⁴²
- (397) Fifth, Alphabet refers to other non-gatekeeper benchmarks from a report prepared “*by Deloitte on the rates of more than 20 different non-gatekeeper app stores and app-store-like platforms (like game consoles)*”³⁴³ that shows that “*Play’s IA fee is modest and well in line with market prices*”.³⁴⁴
- (398) In particular, Alphabet argues that fees charged by non-gatekeeper app stores are unlikely to incorporate gatekeeper value as (1) Alphabet’s evidence incorporates a “*large number of different app stores*”, (2) “*non-gatekeeper app stores are not gatekeepers, they are by definition not providing any “gatekeeper value”*”, (3) historical app stores fees show that “*app store fees were at a similar or higher level long before any app store obtained purported gatekeeper status*”, and (4) Alphabet “*also provided benchmark fee evidence from other app-store-like services, such as game consoles, which are consistent with the data for app stores*”.³⁴⁵
- (399) Sixth, Alphabet argues that [...] evidence from [Third Party] ³⁴⁶regarding their user acquisition cost demonstrates “*significant cost saving and value that Play’s initial acquisition service creates for developers. And it confirms the reasonable and modest nature of the fee that Play charges for that service*”.³⁴⁷
- (400) Seventh, Alphabet contends that an assessment of user acquisition costs across industries provided for Alphabet by [Third Party Expert], explains that [description of Google’s internal pricing research].³⁴⁸ According to the marketing expert report, [description of Google’s internal pricing research].³⁴⁹ Alphabet complains that the Commission wrongfully rejected the report “*on the ground that the calculation of the CAC payback period [proprietary CAC payback period metrics] (para. 233)*”.³⁵⁰ Alphabet concludes that Alphabet’s [strategic pricing calculations].³⁵¹

³⁴⁰ Aptoid Catapult is a platform that allows app developers to distribute and monetize their game apps across the Aptoid App Store and other alternative partner app stores. It was rebranded Aptoid Connect in late 2024. Aptoid Blog: Catapult Console is now Aptoid Connect. But what is Aptoid Connect?”, accessible at: <https://connect.aptoide.com/blog/aptoideConnect> (accessed on 9 March 2026), [...].

³⁴¹ Alphabet’s response to the Preliminary Findings, [...], paragraph 159.

³⁴² Alphabet’s response to the Preliminary Findings, [...], paragraph 160.

³⁴³ Alphabet’s response to the Preliminary Findings, [...], paragraph 162.

³⁴⁴ Alphabet’s response to the Preliminary Findings, [...], paragraph 163.

³⁴⁵ Alphabet’s response to the Preliminary Findings, [...], paragraph 165.

³⁴⁶ Alphabet provides this reference to the cited [...] evidence from [Third Party] in Alphabet’s response to the Preliminary Findings, [...], paragraph 168 and footnote 106: [...].

³⁴⁷ Alphabet’s response to the Preliminary Findings, [...], paragraph 171 and 168 to 170.

³⁴⁸ Alphabet’s response to the Preliminary Findings, [...], paragraph 172.

³⁴⁹ Alphabet’s response to the Preliminary Findings, [...], paragraph 173.

³⁵⁰ Alphabet’s response to the Preliminary Findings, [...], paragraph 175.

³⁵¹ Alphabet’s response to the Preliminary Findings, [...], paragraph 174.

5.2.3.3.2.3. The Commission's assessment of Alphabet's arguments

- (401) First, Alphabet is misguided when calculating effective rates for an initial acquisition fee of 5% on subscriptions and 10% on other digital content with a charging period of two years of [effective subscription average fee rate] and [effective digital content average fee rate], respectively³⁵², for the following reasons.
- (402) In the first place, it is unclear how Alphabet calculated these effective rates. The only indication that Alphabet provides in this respect is a footnote that refers to Alphabet's "May 2024 Paper", where Alphabet calculated diverging [effective average fee modelling metrics]³⁵³. In Alphabet's "May 2024 Paper", Alphabet explains that the [proprietary effective discount calculation methodology].³⁵⁴ The Commission notes that a calculation based on only a fraction of apps subject to Alphabet's initial acquisition fee – namely [specific high-value developer cohort parameters] – cannot be a meaningful metric for the initial acquisition fee as Alphabet charges the initial acquisition fee independently of the amount of an app's revenue and Article 5(4) of Regulation (EU) 2022/1925 applies without any distinction to all app developers that distribute their apps through Google Play.
- (403) In this context, Alphabet indicates in an RFI response of 7 October 2024 in relation to the initial acquisition fee that "*the effective average fee for Play's facilitation service is under [effective average subscription fee] (autorenewing subscriptions) and under [effective average content fee] (other content), given that [specific user spend distribution parameters] of user spend falls outside the [alternative temporal charging parameters].*"³⁵⁵, implying that the calculation is based on the proportion of user spend that falls inside the shorter initial acquisition period under 2 years. The effective rates cited in the RFI response are therefore subject to a shortened initial acquisition period under 2 years and thus not comparable to the effective rates cited in Alphabet's response to the Preliminary Findings and those cited in Alphabet's "May 2024 Paper".
- (404) In the second place, the Commission considers that a two-year period for the initial acquisition fee, which is also the basis for the calculation of Alphabet's effective rates, is not compliant with Article 5(4) of Regulation (EU) 2022/1925, since it goes beyond what could objectively be considered remuneration for the "initial" acquisition as the temporal scope extends into covering or even exceeding the commercial lifetime of the end user that results from such acquisition.
- (405) Specifically, the word *initial* in itself indicates that the time period that is covered by the initial acquisition fee should not be excessively long. This holds notably true in the context of app stores, where the lifetimes of the commercial relationships between end users and business users are rather short. As mentioned in recitals (336) to (340) of this Decision, an analysis of data provided by Alphabet of average active user and buyer lifetimes of Google Play showed that an initial acquisition period of two years would in many cases encompass and even go beyond the average user and

³⁵² In Alphabet's submission "Play's Fee Model For Its External Offers Program Value and Options", 21 May 2024, [...], paragraph 82, Alphabet refers to 3.6% and 5.8%, respectively.

³⁵³ Alphabet's submission "Play's Fee Model For Its External Offers Program Value and Options", 21 May 2024, [...], paragraph 82.

³⁵⁴ Alphabet's submission "Play's Fee Model For Its External Offers Program Value and Options", 21 May 2024, [...], footnote 49.

³⁵⁵ Alphabet's response to the Commission's RFI of 18 September 2024, submitted on 7 October 2024, [...], Q1, paragraph 11.

buyer lifetimes of Google Play end users and therefore cannot be considered to be related to the initial acquisition.

- (406) The Commission does not agree with Alphabet’s contention that end user spend, and not end user lifetime, is the appropriate metric to analyse whether the initial acquisition period is excessively long.³⁵⁶ As mentioned in recital (345) of this Decision, user spend is primarily a consequence of the commercial relationship built by the app developer with the app user by way of an attractive product offering and is not a direct result of the initial user acquisition by way of an app download. For the sake of clarity, in the context of app stores, any possible fee for the initial acquisition must be linked in time to the actual facilitation of such initial acquisition of the end user by the app developer. Even if end user spend was the appropriate metric (*quod non*), Alphabet’s initial acquisition period would still not be initial, as [specific user spend distribution percentage] of the average EEA user spend across all apps in 2023 fell within two years from the initial acquisition and only [specific user spend distribution percentage] outside of it. An initial acquisition period that captures [proportion of platform revenues] of all revenues generated by app developers cannot be considered initial.³⁵⁷
- (407) It follows that the two-year temporal scope of Alphabet’s initial acquisition fee goes beyond what can be considered remuneration for the “initial” acquisition.
- (408) Second, contrary to Alphabet’s assertion, the Commission, in addition, considers that the only other app store CPS provided by a gatekeeper, i.e. the App Store provided by Apple³⁵⁸, is an appropriate benchmark for the initial acquisition fee in view of its size in terms of business users and end users and its gatekeeper status.
- (409) Further, the Commission notes that, on 8 August 2024, Apple announced that it was planning to implement an initial acquisition fee amounting to 5% over the period of one year. The Commission further notes in this context that Apple further amended and implemented a new fee structure on 26 June 2025 including a substantially reduced initial acquisition fee, both in terms of fee level and temporal scope.³⁵⁹ Irrespective of whether such initial acquisition fee is compliant with Regulation (EU) 2022/1925, Alphabet’s initial acquisition fee of 10% charged for purchases other than auto-renewing subscriptions is significantly higher and, both, the 10% and 5% initial acquisition fees for all digital purchases including auto-renewing subscriptions over a two-year period is substantially longer with respect to the temporal scope, than the initial acquisition fee proposed by the only other relevant gatekeeper with a comparable service subject to Article 5(4) of that Regulation.

³⁵⁶ Alphabet’s response to the Commission’s RFI of 2 July 2024, submitted on 9 August 2024, [...], paragraph 12 et seq. and Q3 paragraph.

³⁵⁷ Alphabet’s response of 15 September 2024 to the Commission’s RFI of 30 August 2024, [...], paragraph 14.

³⁵⁸ Decision C(2023) 6100 final.

³⁵⁹ See Apple’s Updates to the StoreKit External Purchase Link Entitlement, available at <https://developer.apple.com/news/?id=szrqxadx>, Union, (accessed on 16 October 2024), [...]. For the sake of completeness, Apple has since further revised and implemented its fee structure on 26 June 2025: Apple’s Alternative payment options on the App Store in the European available at <https://developer.apple.com/support/alternative-payment-options-on-the-app-store-in-the-eu/>, (accessed on 16 October 2024), [...]. This is without prejudice to the fact that Apple’s fee structure in relation to the App Store, including the initial acquisition fee charged by Apple on steered transactions, may be subject to further scrutiny by the Commission under Regulation (EU) 2022/1925 and in particular Article 5(4) thereof.

- (410) In addition, Alphabet is misguided when stating that Alphabet's initial acquisition fee is in practice lower than Apple's initial acquisition fee when taking into account additional fees such as Apple's Store Services Fee (SSF) or the Core Technology Fee (CTF). The relevant benchmark here is the initial acquisition fee that Apple charges and not other fees that Apple may charge for services provided, as far as these are not acquisition related. This is without prejudice to the compliance of Apple's initial acquisition fee, SSF or CTF with Regulation (EU) 2022/1925.
- (411) Further, the Commission further disagrees that Apple's initial acquisition fee cannot be a valid benchmark as it reflects regulatory intervention, since the Commission did not impose or prescribe the concrete fee level or temporal scope of the initial acquisition fee on Apple.
- (412) As mentioned in recital (365) of this Decision, Apple operates the App Store which is a software application store CPS within the meaning of Article 2(14) of Regulation (EU) 2022/1925. Apple has been designated pursuant to Article 3 of that Regulation as gatekeeper for that CPS. The App Store, in view of its size in terms of business users and end users, is a relevant and comparable benchmark to Google Play when it comes to assessing the initial acquisition fee.
- (413) Further, Apple's initial acquisition fee was introduced following an evaluation by Apple of the initial acquisition value that Apple's matchmaking services provide in the context of the facilitation of the initial acquisition of end users. Consequently, the App Store and the initial acquisition fee announced by Apple on 8 August 2024 and further amended and implemented on 26 June 2025 is therefore the most suitable and comparable benchmark for the initial acquisition fee charged by Alphabet on Google Play in terms of business users and end users and the nature of the service it provides.
- (414) Third, the Commission accepts Alphabet's arguments that OEM pre-installation agreements are not the most suitable benchmark given that they do not properly reflect the concept of initial acquisition under Regulation (EU) 2022/1925 and in particular Article 5(4) thereof.
- (415) The Commission understands that OEM pre-installation agreements feature a very wide range of ways in which OEMs and developers negotiate remuneration for pre-installation of apps, both in terms of the method of remuneration (e.g., temporal or perpetual revenue shares or fixed fees), the revenue-base for revenue shares (e.g., physical goods and services, in-app purchases of digital goods and services, or ad-revenue), and the trigger for the remuneration (e.g., pre-installation, vs. user sign-up, vs. subscription). In addition, such OEM pre-installation agreements have not been negotiated in the specific context of Regulation (EU) 2022/1925 and therefore in particular do not reflect the legal concept of initial acquisition as provided for by Article 5(4) and further clarified in recital 40 of Regulation (EU) 2022/1925. Therefore, OEM pre-installation agreements, while arguably a possible comparable benchmark, are nonetheless an imperfect approximation for the concept of initial acquisition.
- (416) Therefore, the Commission concludes that, in light of Alphabet's arguments in this regard, the OEM pre-installation agreements are not suitable benchmarks to determine whether Alphabet's initial acquisition fee is commensurate to the value of the initial acquisition and does not go beyond the remuneration for the initial acquisition that is justified under Article 5(4) of Regulation (EU) 2022/1925.

- (417) Fourth, the Commission considers that none of Alphabet’s arguments regarding other non-gatekeeper app stores described in recitals (394) to (398) of this Decision convincingly put into question the Commission’s assessment as described in Section 5.2.3.3.2.1 of this Decision.
- (418) Contrary to Alphabet’s assertions, the Commission finds that while other non-gatekeeper app stores, such as Aptoide Catapult (now Aptoide Connect), may also provide services related to the acquisition of end users, the way they are remunerated for these services is not comparable to what Alphabet is entitled to charge as a gatekeeper subject to Article 5(4) of Regulation (EU) 2022/1925. Although other non-gatekeeper app store providers may unbundle some of their app stores services, they are not subject to Article 5(4) Regulation (EU) 2022/1925 and thus, can charge fees irrespective of any limitation to the value of the initial acquisition, and charge a perpetual commission fee, for example but not limited to, app discovery and matchmaking services, payment processing, marketing, and app and update distribution services even if this commission fee vastly exceeds the value for the initial acquisition.
- (419) In this context, Alphabet claims the difference in fees between Aptoide’s full app store services with a perpetual standard commission fee of 25% and Aptoide’s “self-distribution” variant with a perpetual commission fee of 10% would result in Aptoide *“charging a perpetual revenue share of 15% for facilitating the intital acquisition of users [...]”*³⁶⁰ The Commission rejects Alphabet’s notion that the delta in fees between Aptoide’s full app store services under the standard commission fee and the “self-distribution” variant is solely the value of the initial acquisition and does not include remuneration for any other service such as for example but not limited to ongoing app discovery services (e.g., re-engagement), APIs, marketing, and app and update distribution. Rather, it cannot be excluded that the delta of fees includes, among others, some remuneration for the value of the initial acquisition in the Aptoide Store. Even if Alphabet asserts that Aptoide’s *“standard offering ([...] includes an initial acquisition service)”*, Alphabet has not sufficiently demonstrated that the delta of fees is limited to the value of the initial acquisition service in order to constitute a relevant benchmark³⁶¹.
- (420) Further, the Commission did not *“follow up with Aptoide about its IA fee”*³⁶² as suggested by Alphabet because Aptoide Catapult does not charge an initial acquisition fee that could serve as a benchmark for Alphabet’s Initial Acquisition Fee under the legal framework established by Article 5(4) of Regulation (EU) 2022/1925.
- (421) Fifth, the Commission disagrees with Alphabet that it wrongly disregards Alphabet’s other app store evidence. In this context, it is unclear from Alphabet’s response to the Commission’s Preliminary Findings, what *“evidence prepared by Deloitte”*³⁶³ Alphabet is referring to.³⁶⁴ In any event, regarding other non-gatekeeper app stores,

³⁶⁰ Alphabet’s response to the Preliminary Findings, [...], paragraph 159.

³⁶¹ Alphabet’s response to the Preliminary Findings, [...], paragraph 159.

³⁶² Alphabet’s response to the Preliminary Findings, [...], paragraph 159.

³⁶³ Alphabet’s response to the Preliminary Findings, [...], paragraph 162.

³⁶⁴ In Alphabet’s response of 7 October 2024 to the Commission’s RFI of 18 September 2024, [...], Q1, paragraph 7.a.ii and footnote 4, Alphabet states that an *“analysis by Deloitte reached the same conclusion”* and refers to: https://www.deloitte.com/content/dam/assets-zone2/fr/no-index/docs/services/financial-advisory/2024/deloitte_etude-distribution-platforms.pdf, [...]

and as Alphabet rightly states, “*non-gatekeeper app stores are not gatekeepers*”³⁶⁵. Hence, other non-gatekeeper app stores or app-store-like platforms, such as game consoles, are not subject to Article 5(4) of Regulation (EU) 2022/1925, and, thus, not obliged to limit their remuneration to the value of the initial acquisition. Consequently, it is impossible to assess the appropriateness of Alphabet’s initial acquisition fee in the context of a direct comparison with general app store fees of non-gatekeeper app stores, independent of whether or not these general app store fees include gatekeeper value or not, as they are likely not limited to nor do they have to be limited to the value of the initial acquisition as opposed to Alphabet, as a gatekeeper, subject to Article 5(4) of Regulation (EU) 2022/1025. General app store fees are likely to include other services beyond the value of the initial acquisition such as for example but not limited to developer tools, app analytics, payment processing for in-app purchases, app store marketing, or ongoing app store services (e.g., update distribution).

- (422) Sixth, Alphabet’s arguments regarding [Third Party]’s cost of acquiring users is likewise unconvincing as Alphabet has not sufficiently substantiated why marketing campaign expenditures by [Third Party] should be an appropriate benchmark for the initial acquisition fee. Furthermore, under Regulation (EU) 2022/1925, online intermediation services are a different category of core platform services from online advertising services. This is also confirmed by recital 10 and Article 1(3) of Regulation (EU) 2019/1150 (P2B Regulation). Therefore, while online advertising services also enable user acquisition, the remuneration for services related to the initial acquisition charged by online intermediation services is not comparable with what other advertising channels charge for user acquisition since they offer substantially different services to business users.
- (423) Further, even assuming that [Third Party]’ customer acquisition costs in the case’s context is the right comparison for Alphabet’s initial acquisition fee, Alphabet overlooks that [Third Party]’s customer acquisition cost in terms of marketing and user acquisition expenditures are not limited to the value of the initial acquisition fee, as it is not the only costs app developers incur when launching, distributing, or marketing their apps. App developers will likely have other user acquisition costs including but not limited to advertising costs across various channels (e.g., in-app advertising, email, social media, or TV), brand building activities, paid pre-installation on OEM devices, discount promotions, or other marketing expenses on or off app stores by developers. It is therefore not correct to simply compare [Third Party]’s overall customer acquisition costs and respective break-even period with Alphabet’s initial acquisition fee, which is likely only subset of [Third Party]’s customer acquisition costs.
- (424) In this context, as mentioned in recital (378) of this Decision, data submitted by Alphabet, for example, shows that [Google’s internal figure] of all app downloads by paying users (median [Google’s internal figure]) originate from Play Ads, additional marketing capabilities offered to developers by Alphabet for additional fees beyond the initial acquisition fee.
- (425) Further, and as explained in recital (290) of this Decision, the concept of the initial acquisition value has been included in Article 5(4) of Regulation (EU) 2022/1925 by the legislature and mandates, together with recital 40, that the initial acquisition fee

³⁶⁵ Alphabet’s response to the Preliminary Findings, [...], paragraph 165.

must relate to the value of the services provided by Alphabet for facilitating the initial user acquisition. Other companies than gatekeepers are not bound by this limitation. It is therefore no contradiction that [Third Party] may have to – or may even be willing to – pay more for customer acquisition services (that might go well beyond the services that Alphabet provides in the context of the facilitation of the initial user acquisition on Google Play) than the initial acquisition fee.

- (426) Seventh, the Commission finds that Alphabet has failed to explain why the customer acquisition cost as indicated in the report by [Third Party Expert] is relevant to assess Alphabet’s initial acquisition fee under Article 5(4) or Regulation (EU) 2022/1925.
- (427) In the first place, Article 5(4) of Regulation (EU) 2022/1925 does not refer to customer acquisition costs or the related customer acquisition cost payback period discussed in the report. As discussed in recitals (423) and (424) of this Decision, customer acquisition expenditures can go well beyond the services provided through Alphabet’s matchmaking services covered by the initial acquisition fee. Consequently, higher total acquisition costs and a resulting longer payback period of the total customer acquisition costs cannot be compared with Alphabet’s initial acquisition fee, both in terms of scope of services covered or temporal scope.
- (428) In the second place, Alphabets misrepresents the Commission’s position when stating that the Commission’s “*PFs reject the expert evidence on the ground that the calculation of the CAC [customer acquisition cost] payback period [effective pricing modelling parameters] (para. 233).*”³⁶⁶ Recital 233 of the Commission’s Preliminary Findings merely mentions that it is “*unclear, both from Alphabet’s submission and also at a conceptual level, [effective pricing modelling parameters]*” and does not reject the report solely on that basis.³⁶⁷ The Commission solely questioned whether Alphabet followed the calculation suggested in the marketing expert report, as it seems that Alphabet is [effective pricing modelling parameters].
- (429) In the third place, Alphabet does not rebut the Commission’s arguments made in the Preliminary Findings that “*the report seems to seek to distinguish CLV [customer lifetime value] and CAC while at the same time acknowledging that CAC can only be assessed by reference to CLV and retention rates.*”³⁶⁸ As noted in recitals (375) to (377) of this Decision, the marketing report contradicts itself by stating that the customer acquisition cost payback period is a meaningful metric to assess the appropriateness of Alphabet’s initial acquisition period while at the same time acknowledging that the customer acquisition cost payback period “*is most relevant to initial customer acquisition, and coupled with metrics like CLV and retention rates, it helps businesses ensure that their growth strategies are not only aggressive but also sustainable over the long term.*”³⁶⁹, supporting that customer acquisition costs can only be assessed in the context with other metrics such as the customer lifetime value or retention rates.
- (430) In the fourth place, even assuming that the customer acquisition payback period is the right metric for Google Play (*quod non*), Alphabet omits that it has limited insight into developers marketing and sales spend to calculate the customer

³⁶⁶ Alphabet’s response to the Preliminary Findings, [...], paragraph 175.

³⁶⁷ The Commission’s Preliminary Findings, [...], recital 233.

³⁶⁸ The Commission’s Preliminary Findings, [...], recital 235.

³⁶⁹ See Alphabet’s response to the Commission’s RFI of 2 July 2024, submitted on 9 August 2024, Annex II, [...], paragraph 38.

acquisition payback period for its developers. According to the report, the customer acquisition payback period “*is a standard metric in marketing*”³⁷⁰ that helps developers to “*understand the time it takes to recover the costs associated with acquiring a new customer*”.³⁷¹ Customer acquisition cost in that context represent the total marketing and sales cost a company incurs to acquire new customers, including Alphabet’s initial acquisition fee, marketing spend for Google Play Ads, in-app advertising, short-term promotions, paid pre-installation on OEM devices, or other marketing and sales expenses on or off the platform by developers. Thus, Alphabet’s reference to marketing and sales costs is conceptually misguided, as a metric that analyses the marketing and sales cost of developers that “*directly correlates with a company’s ability to generate returns on its marketing and sales investments*”³⁷², cannot be considered relevant to assess Alphabet’s initial acquisition fee as they are not comparable in terms of the scope of the services covered.

- (431) Eighth, Alphabet did not contest in its response to the Preliminary Findings, that when determining the initial acquisition fee, a gatekeeper may only be remunerated “if applicable”, “directly” or “indirectly”, as set out in recital 40 of Regulation (EU) 2022/1925. As discussed in detail in recital (378) of this Decision, the Commission notes that when setting the initial acquisition fee, a gatekeeper needs to take into account all relevant forms of remuneration it received for the facilitation of the initial end user acquisition, including, for instance, revenues from advertising services. Therefore, in the context of downloads resulting from Google Play Ads, Alphabet is charging an initial acquisition fee although it has previously, at least partially, already been remunerated by the app developer in terms of advertising spend in the context of the user acquisition.³⁷³

5.2.3.4. Alphabet’s Ongoing Services Fee does not allow app developers to effectively steer end users and to conclude steered transactions free of charge

5.2.3.4.1. The Commission’s position

- (432) In addition to the Initial Acquisition Fee, the Commission considers that Alphabet’s Ongoing Services Fee of 17% / 7% does not allow app developers to effectively steer end users and to conclude steered transactions free of charge within the meaning of Article 5(4) and recital 40 of Regulation (EU) 2022/1925.
- (433) The Ongoing Services Fee is related to steering and steered transactions, as it only starts applying if a user completes a transaction within 120 hours of following an external offer (i.e. a steered transaction, as it follows steering).³⁷⁴ It thus falls under Article 5(4) of Regulation (EU) 2022/1925.
- (434) The Commission finds that the Ongoing Services Fee does not allow app developers to effectively steer end users and to conclude steered transactions free of charge, because it is triggered by the completion of a steered transaction and, at least in part,

³⁷⁰ See Alphabet’s response to the Commission’s RFI of 2 July 2024, submitted on 9 August 2024, Annex II, [...], paragraph 12.

³⁷¹ See Alphabet’s response to the Commission’s RFI of 2 July 2024, submitted on 9 August 2024, Annex II, [...], paragraph 17.

³⁷² See Alphabet’s response to the Commission’s RFI of 2 July 2024, submitted on 9 August 2024, Annex II, [...], paragraph 35.

³⁷³ See Alphabet’s response to the Commission’s RFI of 2 July, submitted on 9 August 2024, Annex QIII.6, [...].

³⁷⁴ See recital 52 and also “Enrolling in the external offers program, accessible at: [Enrolling in the external offers program - Play Console Help \(google.com\)](#)”, accessed on 10 December 2024, [...].

renumerates Alphabet for services which are user acquisition-related. This is not allowed under Article 5(4) of Regulation (EU) 2022/1925, as such acquisition related services in relation to steering and steered transactions may only be remunerated for an initial period of time. The Ongoing Services Fee however is not limited in time and Alphabet is compensated for the value of the initial acquisition already via the Initial Acquisition Fee.

- (435) Alphabet explains that among the services provided under the label of ongoing services, it also provides “*Tools for ongoing interaction with existing users [...] of tools that enable developers to promote new content to existing users to keep them engaged and encourage transactions on an ongoing basis.*”³⁷⁵ The Commission considers that these tools, and the part of the Ongoing Services Fee associated with them, essentially amount to an ongoing user acquisition service, charged to developers that opted into the New Business Terms, for (steered) transactions with end users that were concluded following steering. Gatekeepers are prevented under Article 5(4) of Regulation (EU) 2022/1925 to charge any fee in relation to steering and steered transactions (except an initial acquisition fee).
- (436) Notably, Alphabet explicitly mentions on its website that the promotional content service which forms part of these ongoing services³⁷⁶ “*allows you to promote fresh and timely content on Google Play such as special offers, limited-time events, new content, and major updates. This helps you to engage with users outside of your app and drive them to open or reinstall your app or take advantage of offers such as discounts or special deals for new buyers.*” (emphasis added)
- (437) In other words, Alphabet is of the view that the promotional content feature relates to either the initial acquisition of new users or the re-acquisition of existing users. Both of such acquisition services squarely fall within Article 5(4) of Regulation (EU) 2022/1925 and are either subject to the initial acquisition fee or to the free of charge requirement.
- (438) For the sake of completeness, this Decision does not assess the Ongoing Services Fee in as far as it remunerates Alphabet for services unrelated to steering and steered transactions. Alphabet may be remunerated for other services it provides via its Google Play CPS to app developers, as long as such remuneration is compliant with Regulation (EU) 2022/1925.

5.2.3.4.2. Alphabet’s arguments

- (439) Alphabet contests the Commission’s interpretation of Article 5(4) of Regulation (EU) 2022/1925, with regard to the Ongoing Services Fee.
- (440) According to Alphabet, the Preliminary Findings “*seek impermissibly to depress Play’s fee for its ongoing service*”.³⁷⁷ Alphabet disputes the Commission’s position that elements of Play’s ongoing services are acquisition related (“ongoing user acquisition service”) and thus would be impermissible under Article 5(4) of Regulation (EU) 2022/1925 in relation to steering and steered transactions.³⁷⁸

³⁷⁵ See Alphabet’s response to the Commission’s RFI of 17 April 2024, submitted on 21 May 2024, [...], paragraph 133.

³⁷⁶ See Alphabet’s response to RFI of 17 April 2024, submitted on 21 May 2024, [...], footnote 73.

³⁷⁷ Alphabet’s response to the Preliminary Findings, [...], paragraph 206.

³⁷⁸ Alphabet’s response to the Preliminary Findings, [...], paragraph 206.

(441) Alphabet asserts that “[t]he concept of “ongoing user acquisition service” is a contradiction in terms. In reality, the tools in question are a means to promote content to users that are already acquired so as to keep these users retained and engaged. They are properly part of Play’s ongoing service that Play provides for existing users of developers. Providing the ability to promote content to existing users is valuable for developers. The idea that Play cannot provide such tools or cannot be properly remunerated for them would be arbitrary and expropriatory.”³⁷⁹

5.2.3.4.3. The Commission’s assessment of Alphabet’s arguments

(442) The Commission disagrees with Alphabet’s claim that the Commission “seek(s) impermissibly to depress Play’s fee for its ongoing service”. As set out in recitals (432) to (438), what the Commission objects to, is Alphabet charging a fee that is triggered by the completion of a steered transaction and relates to users’ acquisition following steering under the disguise of the Ongoing Service Fee which goes beyond the Initial Acquisition Fee.

(443) As set out in recital (284), reasoned in recitals (286) to (293) of this Decision and as clarified in recital 40 of Regulation (EU) 2022/1925 and taking into account the “free of charge” requirement set out in Article 5(4) of that Regulation, a fee in relation to steering and steered transactions may only be charged for the “initial” acquisition and the initial acquisition fee in relation to steering and steered transactions must be related to the initial acquisition only, which means that it cannot be extended to an already acquired user.

(444) The wording of Regulation (EU) 2022/1925 is thus clear. There is no other exemption to the “free of charge” rule of Article 5(4) of Regulation (EU) 2022/1925 in the Regulation in relation to steering and steered transactions. This includes a fee in relation to steering and steered transactions for any other acquisition related service than the “initial” acquisition.

(445) Moreover, a systematic reading of Article 5(4) and recital 40 of Regulation (EU) 2022/1925 shows that the only fee in relation to steering and steered transactions that is acquisition-related which is carved out from the “free of charge” rule, is that for the “initial” acquisition. It follows that any other acquisition related service is not exempt from the “free of charge rule”.

5.2.3.5. Alphabet does not allow the steering to and the conclusion of contracts on websites displayed within an app via web view free of charge

5.2.3.5.1. The Commission’s position

(446) The Commission takes the view that Alphabet does not allow the steering to and the conclusion of contracts on websites displayed within an app via web view, free of charge.

(447) As set out in recital (62) above, Alphabet only allows steering to web view subject to the standard fee under Google Play’s standard fee model. Transactions following steering to web view thus do not fall under the fee structure for steering under Alphabet’s New Business Terms. By consequence, Alphabet does not allow steering to web view free of charge within the meaning of Article 5(4) of Regulation (EU) 2022/1925. This is because the standard fee model cannot be considered as

³⁷⁹ Alphabet’s response to the Preliminary Findings, [...], paragraph 207.

remunerating Alphabet for facilitating the initial acquisition in relation to steering and steered transactions of the end user by app developers.

- (448) For app developers to be able to choose freely the channel through which they communicate and promote their offers, as well as conclude contracts, as required by Article 5(4) enlightened by recital 40 of Regulation (EU) 2022/1925, they should also be able to direct end users by means of a technology of their choice, for example via web view. Web view is a technology that apps leverage to display web content more conveniently, thus avoiding making the navigation of web content unduly difficult for end users.
- (449) The Commission recognizes that according to Alphabet, developers that have opted into the External Offers Program are able to promote offers and lead users to web pages via web view.³⁸⁰ However, Alphabet does not treat transactions following steering that take place on web view as “steered transactions” which would fall under the scope of Article 5(4) DMA (and thereby the “free of charge” obligation). Instead, as set out in recital (62) of the Decision, such transactions on apps downloaded via Google Play are subject to the standard charges under Google Play’s standard fee model under the General Business Terms.
- (450) In the Commission’s view, for the reasons set out below, the steering to web-pages on the basis of web view functionalities as well as the conclusion of contracts via web view are subject to the rules set out in Article 5(4) of Regulation (EU) 2022/1925 as further clarified in recital 40 and must therefore be free of charge, with the exception of an initial acquisition fee that may be charged in relation to steering and steered transactions, where applicable. In this respect, the Commission rejects Alphabet’s argument that because web view would create the experience of an in-app purchase, it would be outside the scope of Article 5(4) of Regulation (EU) 2022/1925 and therefore subject to Google Play’s standard fee which applies on a recurrent basis and is thus not limited in time, as opposed to its Initial Acquisition Fee.³⁸¹
- (451) First, as set out in recital (73) above, Article 5(4) of Regulation (EU) 2022/1925 does not differentiate between communication, promotion and conclusion of contracts concerning in-app and out-of-app offers. Rather, Article 5(4) explicitly refers to “*regardless of whether, for that purpose, they use the core platform services of the gatekeeper*” and thus leaves it to the developer to decide where to steer its users and where to conclude steered transactions. In addition, recital 40 refers to “*any form of communication*” and thus makes clear that app developers may have recourse to steering “*including through a software application of the business user*”, which read in conjunction with Article 13(4) of Regulation (EU) 2022/1925 clarifies that the process of benefiting from promoted offers and concluding contracts must not be unduly difficult for end users.
- (452) In other words, Alphabet should not restrict the app developer’s freedom to engage with end users in any way. If an app developer believes that the best way to communicate, promote or conclude contracts with end users is via web view, Alphabet cannot restrict this choice and there is nothing in Regulation (EU)

³⁸⁰ Alphabet’s response to the Commission’s RFI of 30 July 2024, submitted on 26 August 2024, [...], paragraph 46 et seq.

³⁸¹ Alphabet’s response to the Commission’s RFI of 30 July 2024, submitted on 26 August 2024, [...], paragraph 49.

2022/1925 in general as well as Article 5(4) thereof in particular that would justify such restriction.

- (453) Furthermore, allowing for web view is in line with the objective of Article 5(4) of Regulation (EU) 2022/1925, as explained in recital 40 of that Regulation, namely to allow app developers to be free to promote and choose the channel that they consider the most appropriate for interacting with end users.
- (454) Web view acts as a bridge between the app environment and the broader web, allowing app developers to integrate external web content directly into their applications without redirecting users to a separate browser. This functionality enables developers to direct users more easily to external distribution channels and content, such as special offers, or contract forms, without disrupting the user experience.
- (455) The Commission rejects that Article 5(7) of Regulation (EU) 2022/1925 would in any way allow Alphabet to exclude web view transactions following steering from the scope of Article 5(4) DMA. Article 5(7) of Regulation (EU) 2022/1925 concerns the free choice of *payment systems* for in-app purchases. Article 5(7) does not concern the way in which app developers can promote offers and conclude contracts either within an app or through steering.
- (456) Therefore, the Commission rejects Alphabet’s claim that “*treating web view transactions as external transactions for the purpose of its fee model would conflict with the systems established in Arts. 5(4), 5(7) and 6(12) for regulating app stores*”.³⁸² According to Alphabet, this is because transactions in web view do not take place on “other channels” (i.e., outside the app) within the meaning of Article 5(4) of Regulation (EU) 2022/1925 since a “payment system” within the meaning of Article 5(7) of Regulation (EU) 2022/1925 is not another “channel”. Furthermore, the definition of payment systems in Article 2(18) of Regulation (EU) 2022/1925 refers to in-app purchases. Alphabet considers that transactions in web view should therefore be treated as “in-app transactions” and would therefore fall under Article 5(7) and not Article 5(4) of Regulation (EU) 2022/1925. As a result, such transactions should be subject to Google Play’s standard fee model.
- (457) These arguments are misguided. Nothing in the wording and context of Articles 5(4) and 5(7) of Regulation (EU) 2022/1925 implies that these two provisions are mutually exclusive. To the contrary, pursuant to Article 5(1) of Regulation (EU) 2022/1925 a gatekeeper has to comply with all applicable obligations in Article 5 in respect of all designated CPSs. By consequence, Article 5(7) of Regulation (EU) 2022/1925 does not preclude the application of Article 5(4) of that Regulation in any way.
- (458) In addition, Alphabet’s argument is also based on the false premise that links to web pages in web view would always lead the user to payment processing services. This view is mistaken, as app developers can steer end users to any destination web page via web view namely to render dynamic content that would otherwise be technically demanding to integrate in the app, not only to payment processing services.
- (459) Second, it follows from the above that steering to web view destinations constitutes a means to communicate, promote offers and conclude contracts within the meaning of

³⁸² Alphabet’s response to the Commission’s RFI of 30 July 2024, submitted on 26 August 2024, [...], paragraphs 49-53.

Article 5(4) of Regulation (EU) 2022/1925 and that therefore it must be allowed by Alphabet free of charge, as described in detail in Section 5.2.3.1 above.

- (460) Notably, Alphabet's standard fee model consists of a perpetual 30% / 15% commission fee on any revenues generated by an app developer with an end user within the app as well as following steering to a web view. As set out in Section 5.2.3.2 and Section 5.2.3.3 above, such a perpetual 30% / 15% commission fee goes beyond the value of facilitating the initial acquisition. The standard fee model is thus not compliant with Article 5(4) of Regulation (EU) 2022/1925 in relation to steering and steered transactions and may thus not be applied to any steered transaction.
- (461) Third, the Commission takes the view that applying the fee requirements of Article 5(4) of Regulation (EU) 2022/1925 to web view transactions would not impermissibly expropriate Google Play in violation of basic constitutional principles.
- (462) The Commission takes the view that, except for a sweeping statement, Alphabet has not provided a justification as to why it considers that the application of Article 5(4) of Regulation (EU) 2022/1925 to transactions concluded in web view following steering represents a violation of basic constitutional principles. Alphabet makes no serious attempt to substantiate this generalisation. It is equally unclear if Alphabet contests, in that regard, the legality of Article 5(4) of Regulation (EU) 2022/1925.
- (463) Fundamentally, the rights and freedoms recognised by the Union legal order do not constitute unfettered prerogatives and may be restricted, provided that the restrictions in fact correspond to objectives of general interest pursued by the measure in question and that they do not involve, with regard to the objectives pursued, a disproportionate and intolerable interference which infringes upon the very substance of the rights guaranteed.³⁸³ Where several rights and fundamental freedoms protected by the Union legal order are at issue, the assessment of the possible disproportionate nature of a measure of Union law must be carried out with a view to reconciling the requirements of the protection of those different rights and freedoms and striking a fair balance between them.³⁸⁴
- (464) In relation to Article 16 of the Charter, the Court has already made clear that "*in the light of the wording of Article 16 of the Charter, which differs from the wording of the other fundamental freedoms enshrined in Title II thereof, yet is similar to that of certain provisions of Title IV of the Charter, the freedom to conduct a business may be subject to a broad range of interventions on the part of public authorities that may limit the exercise of economic activity in the public interest*".³⁸⁵ In this regard, the legislator has already weighed the public interests the legislation at issue seeks to protect against the private interests of economic operators impacted by that legislation, as clarified by recital 109 of Regulation (EU) 2022/1925. Moreover, when legislating, the legislator has already had regard to the principle of proportionality and to the fundamental rights at stake.
- (465) The finding that Alphabet does not comply with Article 5(4) of Regulation (EU) 2022/1925 respects the requirement that a fair balance be struck between the

³⁸³ See e.g., Case C-544/10, *Deutsches Weintor*, EU:C:2012:526, paragraph 54, and Case C-348/12 P, *Council of the European Union v Manufacturing Support & Procurement Kala Naft Co., Tehran*, EU:C:2013:776, paragraph 122.

³⁸⁴ See e.g., Case C-283/11, *Sky Österreich*, EU:C:2013:28, paragraph 60.

³⁸⁵ Case C-201/15, *Anonymi Geniki Etairia Tsimenton Iraklis (AGET Iraklis) v Ypourgos Ergasias, Koinonikis Asfalisis kai Koinonikis Allilengyis*, EU:C:2016:972, paragraph 86.

different rights and freedoms protected by the Union legal order.³⁸⁶ In conducting this balancing exercise, the Commission has, in line with Article 52(1) of the Charter, in this Decision assessed whether the restriction on Alphabet’s fundamental rights brought about by this Decision: (i) is provided for by law; (ii) corresponds to objectives of general interest recognised by the Union; (iii) does not constitute a disproportionate and intolerable interference, impairing the very substance of those rights; and (iv) is necessary to protect the rights and freedoms of others.

- (466) In the first place, the restriction is provided for by law. In order for the act of a Union institution imposing a restriction on an undertaking’s exercise of the rights and freedoms recognised by the Charter to be provided for by law, it must have a specific legal basis in Union law.³⁸⁷ This Decision is based on Article 5(4) of Regulation (EU) 2022/1925, a provision of secondary Union law. Further, this legal basis is sufficiently clear and precise and affords a measure of legal protection against any arbitrary interference since its scope is limited.³⁸⁸ Indeed, that provision concerns only the requirement that steering and steered transactions must be free of charge. It therefore targets a subset of ways in which app developers can use the Google Play CPS.
- (467) In the second place, the restriction corresponds to an objective of general interest pursued by the Union, recognised by the General Court in the context of Regulation (EU) 2022/1925, “*to contribute to the proper functioning of the internal market by laying down rules to ensure the contestability and fairness of markets in the digital sector in general*”.³⁸⁹ Article 3(3) of the Treaty on European Union³⁹⁰ states that the “*Union shall establish an internal market*”. It follows that Regulation (EU) 2022/1925 is a necessary tool for the proper functioning of the internal market.³⁹¹ Consequently, restrictions, such as pursuant to Article 5(4) of Regulation (EU) 2022/1925, may be applied on the freedom to conduct a business, provided that they are not disproportionate and do not impair the substance of those rights. The restriction therefore corresponds to an objective of general interest pursued by Union law.
- (468) In the third place, the restriction does not involve a disproportionate and intolerable interference that infringes upon the very substance of Alphabet’s fundamental rights:
- As mentioned above in recital (466), the scope of Article 5(4) of Regulation (EU) 2022/1925 is limited.
 - App developers can still choose Google Play Billing and, when they do, they pay a commission fee, thus contributing to the monetisation of Google Play.
 - Alphabet may still be remunerated for the initial acquisition in case of steering.

³⁸⁶ While the Commission must conduct this balancing exercise when applying the laws of the European Union, it is not for the Commission to opine on the legality of said laws.

³⁸⁷ See e.g., Case C-407/08 P, *Knauf Gips*, EU:C:2010:389, paragraph 91.

³⁸⁸ Case C-419/14, *WebMindLicenses kft v Nemzeti Adó*, EU:C:2015:832, paragraph 81.

³⁸⁹ Case T-1077/23, *Bytedance v Commission*, EU:T:2024:478, paragraph 21.

³⁹⁰ OJ C 83, 30.3.2010, p. 1–388.

³⁹¹ See also Case T-1077/23, *Bytedance v Commission*, EU:T:2024:478, paragraph 308: Regulation (EU) 2022/1925, Art.1 lit.1: The Regulation’s “*purpose is to contribute to the proper functioning of the internal market by laying down harmonised rules ensuring ‘for all businesses’ contestable and fair markets in the digital sector across the Union where gatekeepers are present, to the benefit of business users and end users.*”

- Alphabet may also be remunerated for other services it provides via its Google Play CPS to app developers, as long as such remuneration is compliant with Regulation (EU) 2022/1925.

(469) It follows that Alphabet has ample room to differentiate the Google Play CPS to make it as attractive as possible. Alphabet cannot therefore claim that the “free of charge” requirement for app developers that want to conclude contracts with end users via web view would impermissibly expropriate Google Play in violation of basic constitutional principles.³⁹²

(470) In the fourth place, the restriction pursuant to Article 5(4) of Regulation (EU) 2022/1925 is necessary to protect the rights and freedoms of business users and end users. Regulation (EU) 2022/1925 makes clear that app developers should be able to steer free of charge in order to ensure fairness and contestability in the digital sector to the benefit of business users and end users. Absent the restriction, app developers would be barred from such possibility thus hindering the general aim of that Regulation. The restriction is also aimed at protecting the right of end users to receive promotions of cheaper/more attractive offers and to conclude contracts on that basis.

(471) Therefore, this Decision’s limitation of Alphabet’s freedom to conduct a business strikes a fair balance between the fundamental rights and freedoms at stake.

5.2.3.5.2. Alphabet’s arguments

(472) Alphabet states that because it has proposed to enable web view and subject web view transactions to the Article 5(4) charging model in its [Google’s non-public compliance proposal], it did not discuss further these points in its response to the Commission’s Preliminary Findings, to “allow focus on the core issues.”³⁹³

5.2.3.5.3. The Commission’s assessment of Alphabet’s arguments

(473) Alphabet has not contested that the conclusion of steered transactions on websites displayed within an app via web view are not offered “free of charge” in relation to steering and steered transactions.

5.2.3.6. The Commission’s interpretation of Article 5(4) of Regulation (EU) 2022/1925 is not expropriatory and does not undermine an efficient revenue-share based charging model that benefits developers

5.2.3.6.1. The Commission’s Position

(474) As stated in recital (465) and further substantiated in recitals (466) to (471), the Commission respects the requirement that a fair balance be struck between the different rights and freedoms protected by the Union legal order, notably the freedom of Alphabet to conduct a business.

³⁹² See also Case T-745/20, *Symphony Environmental Technologies and Symphony Environmental v Parliament and Others*, EU:T:2024:45, paragraph 322: “However, according to the case-law, no economic operator can claim a right to property in a market share, even if that operator held it at the time before the introduction of a measure affecting the market, since such a market share constitutes only a momentary economic position exposed to the risks of changing circumstances. Nor can an economic operator claim an acquired right or even a legitimate expectation that an existing situation which is capable of being altered by measure taken by the EU institutions within the limits of their discretion will be maintained (judgment of 12 July 2005, *Alliance for Natural Health and Others*, C-154/04 and C-155/04, EU:C:2005:449, paragraph 128).”.

³⁹³ PF Response para 22 and footnote 1.

5.2.3.6.2. Alphabet's arguments

- (475) Alphabet contends that the Commission's interpretation of Article 5(4) of Regulation (EU) 2022/1925, as expressed in recitals (283) to (298), is expropriatory and undermines an efficient revenue share based charging model that benefits developers.
- (476) According to Alphabet, “[b]y reading into Art. 5(4) price control rules that impermissibly sidestep Art. 6(12) and by systematically ignoring relevant benchmark evidence, the PFs seek to impose a fee on Play that is below competitive market prices and FRAND rates. This approach is expropriatory because it denies Play the ability to be properly remunerated for the value of the service that it renders. It, moreover, undermines Play's revenue share model that promotes growth and benefits developers and consumers.”³⁹⁴
- (477) For that reason, Alphabet argues that “[t]he PFs violate Google's fundamental right to property and its fundamental freedom to conduct a business. The PFs do not pursue the DMA's objective of contestability and fairness. Instead, they seek to subsidise a particular class of large developers at the expense of Play and many other developers (notably smaller developers) in conflict with the principles of a market-based economy.”³⁹⁵
- (478) First, Alphabet argues that the Preliminary Findings are expropriatory because they deny Google Play the ability to obtain remuneration for its initial acquisition service that is commensurate with the value of that service. Alphabet contends that the Preliminary Finding's price control mechanism is “unmoored from any objective reference point” and “impose[s] a fee that is below the benchmark market price for an initial acquisition service”. This, in Alphabet's view, makes this approach “arbitrary and expropriatory” by denying Play “the ability to obtain remuneration for its initial acquisition service that is commensurate with the value of that service.”³⁹⁶
- (479) Second, Alphabet argues that the Commission's interpretation is expropriatory because it seeks to impose numerous restrictive requirements and pricing constraints, thereby depriving Google Play of a fair and reasonable fee for its initial acquisition service in relation to steering and steered transactions that would remunerate Google Play for the value of that service.
- (480) In the first place, Alphabet argues that the time window constraint is artificial, impermissible and expropriatory.³⁹⁷ Alphabet argues that this time window is imposed “on top of the ceiling that is already set by benchmark rates and FRAND principles and, as a result, the PFs depress the price below benchmark rates and FRAND levels.”³⁹⁸
- (481) On the one hand, Alphabet contends that as a revenue share arrangement is the product of both the rate and duration of the fee, both cannot be dissociated and be dealt with separately. The Commission's position is therefore “irreconcilable with mathematics, basic economic principles, and market realities.”³⁹⁹ On the other hand,

³⁹⁴ Alphabet's response to the Preliminary Findings, [...], paragraph 184.

³⁹⁵ Alphabet's response to the Preliminary Findings, [...], paragraph 185.

³⁹⁶ Alphabet's response to the Preliminary Findings, [...], paragraph 186.

³⁹⁷ Alphabet's response to the Preliminary Findings, [...], paragraphs 195-199 and footnote 116.

³⁹⁸ Alphabet's response to the Preliminary Findings, [...], paragraph 192.

³⁹⁹ Alphabet's response to the Preliminary Findings, [...], paragraph 193.

Alphabet reasons that Article 5(4) of Regulation (EU) 2022/1925 does not provide a legal basis for imposing a time constraint. In Alphabet’s view, the Commission may also not rely on recital 40 for its reasoning, since a recital “*cannot serve to introduce regulatory obligations and the wording of the recital in any case contains no reference to a short or limited time window as the PFs pretend.*”⁴⁰⁰

- (482) In the second place, Alphabet argues that the exclusion of users who pay for downloading an app from the initial acquisition fee in relation to steering and steered transactions would be impermissible and expropriatory. According to Alphabet, such view “*confuses facilitating the initial acquisition of the user with the time window for remunerating that facilitation*” and would further narrow the time window imposed in the Preliminary Findings to the very first transaction that the mediated user performs with the developer. According to Alphabet, no sound basis is given for this reasoning. Therefore, “[t]he PFs’ position would simply deprive Play of a proper remuneration for its service in an arbitrary and expropriatory manner”.⁴⁰¹
- (483) Alphabet further argues that given the different monetisation options for developers, a revenue share on the transactions with an intermediated user (both at and after the download), “*represents a reasonable remuneration for the intermediation, as long as the rate and duration of the fee is in line with benchmark market levels.*”⁴⁰² Alphabet lastly argues that the Commission’s position carries a significant risk of circumvention, by which developers could charge a small upfront download fee to avoid paying anything thereafter.⁴⁰³
- (484) In the third place, Alphabet argues that taking into account revenue derived from advertising services when determining the initial acquisition fee in relation to steering and steered transactions is impermissible and expropriatory. According to Alphabet, this is misguided as “*revenue from “advertising services,” as the PFs own language attests, is revenue for a different service from the initial acquisition service—it is remuneration for the service of placing advertising*”. Alphabet furthermore points out that the provider of such advertising services is not the same CPS (Google Play), but Google’s Ads CPS.⁴⁰⁴ Alphabet concludes by stating that there is no basis for deducting ad revenue from Play’s Initial Acquisition Fee.⁴⁰⁵
- (485) Third, Alphabet argues that the Preliminary Findings undermine Google Play’s ability to charge on a revenue share basis, which will damage Google Play’s business and harm developers and consumers.
- (486) According to Alphabet, by imposing pricing constraints (see Section 5.2.3.2), the Commission denies Google Play the ability to charge developers a revenue share at a rate and for a duration that is in line with benchmark market rates, which in Alphabet’s view, would be a requirement “[f]or a revenue share to work”. Instead, the constraints “*render a fee based on a revenue share economically unviable*”.⁴⁰⁶
- (487) Alphabet argues that the consequence is that a revenue share model, which would be “*beneficial for developers and lead to lower prices for consumers*” would not be

⁴⁰⁰ Alphabet’s response to the Preliminary Findings, [...], paragraph 194.

⁴⁰¹ Alphabet’s response to the Preliminary Findings, [...], paragraph 201.

⁴⁰² Alphabet’s response to the Preliminary Findings, [...], paragraph 202.

⁴⁰³ Alphabet’s response to the Preliminary Findings, [...], paragraph 203.

⁴⁰⁴ Alphabet’s response to the Preliminary Findings, [...], paragraph 204.

⁴⁰⁵ Alphabet’s response to the Preliminary Findings, [...], paragraph 205.

⁴⁰⁶ Alphabet’s response to the Preliminary Findings, [...], paragraph 209.

feasible.⁴⁰⁷ For that reason, “*the outcome would therefore be opposed to the DMA’s objectives of contestability and fairness*”.⁴⁰⁸

- (488) In sum, according to Alphabet, “[t]he PFs would impose an arbitrary regulatory pricing regime on Play that would be disconnected from an objective, market-based reference criteria. The PFs would irreparably damage Play’s business by precluding Play from applying an efficient pricing model that expands output. And they would harm developers and consumers by shifting financial risk and cash flow burden to developers. The ultimate consequence would be less growth and less innovation.”⁴⁰⁹

5.2.3.6.3. The Commission’s assessment of Alphabet’s arguments

- (489) First, the Commission disagrees with Alphabet’s claim that its interpretation of the law is expropriatory because it denies Play the ability to obtain remuneration for its initial acquisition service that is commensurate with the value of that service.⁴¹⁰ To the contrary, the Commission’s position is that “*a fee can be justified as remuneration for facilitating an initial acquisition*” as long as it is “*commensurate to the value of the initial acquisition*”, as also set out in recitals (290) to (293) of this decision.⁴¹¹ Alphabet specifically criticises the Commission’s statements that “*Alphabet can still monetise the Google Play CPS outside commission fees. There are still a myriad of opportunities for Alphabet to monetise its services*” and that “*App developers do not need to steer and can therefore still choose Google Play Billing instead of their own in-app payment system*.”⁴¹² Alphabet takes these statements out of context. In reality, these statements form part of a wider proportionality assessment in the context of the assessment of Alphabet’s assertions regarding the breach of fundamental rights. As established in recitals (464) to (471), this assessment justifies why the Commission’s interpretation of Article 5(4) and recital 40 of Regulation (EU) 2022/1925 does not infringe upon the very substance of Alphabet’s fundamental freedom to conduct business, because in addition to being remunerated for the initial acquisition, Alphabet is also able to monetise the services it provides to developers. Therefore, the remuneration for the initial acquisition can be limited as indicated in Section 5.2.3.2, without preventing Alphabet from obtaining a fair value for its services, as not all of this value provided by Alphabet to developers in relation to steering and steered transactions has to be remunerated via the Initial Acquisition Fee.
- (490) Second, the Commission disagrees with Alphabet’s claim that the Commission’s interpretation of Article 5(4) and recital 40 of Regulation (EU) 2022/1925 is expropriatory because it seeks to impose numerous restrictive requirements and pricing constraints, thereby depriving Google Play of a fair and reasonable fee for its initial acquisition service that would remunerate Play for the value of that service.
- (491) In the first place, Alphabet’s claim that the time window constraint imposed by is artificial, impermissible and expropriatory is without merit. For the reasons set out in Section 5.2.3.2, the duration over which the initial acquisition fee in relation to

⁴⁰⁷ Alphabet’s response to the Preliminary Findings, [...], paragraph 210.

⁴⁰⁸ Alphabet’s response to the Preliminary Findings, [...], paragraph 211.

⁴⁰⁹ Alphabet’s response to the Preliminary Findings, [...], paragraph 211.

⁴¹⁰ Alphabet’s response to the Preliminary Findings, [...], paragraph 186.

⁴¹¹ See also, The Commission’s Preliminary Findings, [...], recital 137.

⁴¹² Alphabet’s response to the Preliminary Findings, [...], paragraphs 187 and 188.

steering and steered transactions can be charged must be limited based on a proper reading of recital 40 of Regulation (EU) 2022/1925.

- (492) Moreover, the Commission does not agree with Alphabet’s artificial differentiation between the remuneration for facilitating the initial acquisition of a user and the period over which the Initial Acquisition Fee may be applied. The wording of recital 40 of Regulation (EU) 2022/1925 explains that the gatekeeper may be “*directly or indirectly remunerated by the business user for facilitating the initial acquisition of the end user by the business user.*” The recital thus directly connects the remuneration of the gatekeeper to the “initial” point in time.
- (493) Further, the Commission contests Alphabet’s claim that the imposition of a short time window for the initial acquisition fee in relation to steering and steered transactions would increase the likelihood that developers “*circumvent*” a revenue share and “*deprive Play of any remuneration whatsoever*”.⁴¹³ Alphabet fails to provide any actual evidence that would support such a claim. Moreover, should developers in fact only contract with end users after the expiry of said time window, it would stand to reason that such a contract would not be the result of the initial acquisition anymore, but rather of the efforts of the developer, who managed to continuously engage or re-engage its end user. Article 5(4) and recital 40 of Regulation (EU) 2022/1925 clearly do not intend for gatekeepers to be remunerated for the developers’ efforts.
- (494) In the second place, Alphabet’s argument that any separation of the initial acquisition value from the lifetime value is misguided and defies the laws of economics and basic mathematics, is immaterial to the duration or scope of the initial acquisition fee in relation to steering and steered transactions. As explained in recitals (286) and (290), the initial acquisition fee in relation to steering and steered transactions should be a) linked in time to facilitation of the initial acquisition of the end user by the app developer and b) reflect the value of the services provided by Alphabet for the developer related to the initial acquisition (i.e. the matchmaking between the developer and the end user).
- (495) In the third place, Alphabet’s claim that the exclusion of users who pay for downloading an app from the initial acquisition fee in relation to steering and steered transactions would be impermissible and expropriatory, is incorrect. As explained in recital (287), “*end users are initially “acquired” by app developers of Google Play when they enter into a commercial relationship with the developer, for example by way of the installation of a free app or the purchase of a paid app*”. As clearly indicated in recital 40 of Regulation (EU) 2022/1925, the gatekeeper is only allowed to charge for the initial acquisition once. For paid apps, this would already happen through the payment of the initial acquisition fee on the purchase price of the app. These users are therefore very clearly not excluded from the initial acquisition fee. Alphabet is merely not allowed to charge developers a second time for the “initial” acquisition of users who downloaded a paid app. This is a mere expression and necessary logical consequence of the fact that gatekeepers may only charge developers for the initial acquisition of end users once under Article 5(4) of Regulation (EU) 2022/1925.
- (496) According to Alphabet, such a reading of recital 40 of Regulation (EU) 2022/1925 would undermine Alphabet’s ability to adopt a revenue share remuneration model.

⁴¹³ Alphabet’s response to the Preliminary Findings, [...], paragraph 196.

Alphabet does not present any evidence as to why this is the case. Alphabet furthermore cites the risk of circumvention of the Initial Acquisition Fee in relation to steering and steered transactions by developers. Once again, beyond a theoretical argument, Alphabet does not substantiate their claim that such a reading of recital 40 of Regulation (EU) 2022/1925 would be expropriatory.

- (497) In the fourth place, Alphabet’s claim that taking into account revenue derived from advertising services when determining the initial acquisition fee in relation to steering and steered transactions would be impermissible and expropriatory, is based on an incorrect understanding of the Commission’s argument set out in recital 237 of the Preliminary Findings. The Commission does not claim that Alphabet should not be remunerated for an initial acquisition service, if the developer has previously paid for advertising services provided by Alphabet. Rather, the Commission merely clarified that an initial acquisition fee in relation to steering and steered transactions should only be charged by the gatekeeper “*if applicable*”, as clearly set out in recital 40 of Regulation (EU) 2022/1925. Where a user has however already been acquired through other means (such as advertising), charging for the initial acquisition is thus not be appropriate.
- (498) Third, the Commission disagrees with Alphabet’s argument that the Commission’s position undermines Google Play’s ability to charge on a revenue share basis which will damage Google Play’s business and harm developers and consumers. Alphabet’s argument is based on the premise that for a revenue share to work, “*the app store must be able to charge a revenue share at a rate and for a duration that is in line with benchmark market rates*” and that “[t]he PFs deny Play this ability.”⁴¹⁴ As shown in Section 5 of this Decision, the Commission contests the latter claim, namely that a revenue share model based on the parameters set out in Section 5 of this Decision cannot work or that Google Play’s ability to charge based on a revenue share model is undermined. For the sake of clarity, Article 5(4) and recital 40 of Regulation (EU) 2022/1925 do not mandate a particular fee structure in relation to steering and steered transactions nor exclude a revenue share model for the remuneration of the initial acquisition.

5.2.4. *Conclusion on Alphabet’s restrictions to steering and conclusion of contracts*

- (499) In light of recitals (69) to (498) of this Decision, the Commission concludes that neither the General Business Terms nor the External Offers Program comply with Article 5(4) of Regulation (EU) 2022/1925.
- (500) First, the General Business Terms, to the extent they continue to apply, do not allow for any form of steering within the app, thus prohibiting for example, any communication about prices or the possibility for the app developer to include calls to action.
- (501) Second, the External Offers Program does not comply with Article 5(4) of Regulation (EU) 2022/1925 in that it does not allow app developers to freely communicate and promote offers using any form of communication and does not allow the conclusion of contracts in view of the restrictions those terms contain in relation to (i) the destination page and offer after steering, (ii) the recurrent presentation of an information prompt after steering and (iii) the inclusion of additional data in the URL. The External Offers Program also does not allow the

⁴¹⁴ Alphabet’s response to the Preliminary Findings, [...], paragraph 209.

conclusion of contracts following steering “*free of charge*” since Alphabet imposes an Initial Acquisition Fee that cannot be considered remuneration for facilitating the initial acquisition of the end user by the app developers, Alphabet charges an Ongoing Services Fee that is triggered by the completion of a steered transaction and further remunerates Alphabet for services which are user acquisition-related, and Alphabet charges its standard commission fee on transactions concluded in web view following steering.

6. ALPHABET’S ALLEGATIONS OF PROCEDURAL SHORTCOMINGS ARE UNFOUNDED

(502) Alphabet alleges that the Commission’s investigation suffers from procedural errors. Alphabet raises two main arguments:

- The investigation was in breach of the principle of sound administration.
- Alphabet’s rights of defence were breached because it did not have proper access to file.

(503) Alphabet’s claims are unfounded. The Commission’s investigation was fully in scope, conducted in line with the principle of sound administration and in full respect of Alphabet’s rights of defence.

6.1. The Commission carried out extensive, impartial and genuine investigation

6.1.1. Alphabet’s arguments about the alleged breach of the principle of sound administration

(504) In response to the Preliminary Findings, Alphabet claims that the evidence in the Commission’s file demonstrates a procedurally deficient investigation and that the Commission’s investigation violates the principle of sound administration enshrined in Article 41 of the Charter of Fundamental Rights.⁴¹⁵ Alphabet raises the following two points.

(505) In the first place, Alphabet alleges that the Commission’s mind was made up from the outset and, as a result, it did not conduct a proper review that sought evidence from all relevant stakeholders, including small developers and non-gatekeeper app store. The Commission never issued questionnaires to developers and chose not to take any minutes of three workshops where small developers expressed positions that contradicted the claims of the large developers.⁴¹⁶

(506) In the second place, Alphabet alleges the Commission did not gather “the most complete and reliable information possible” to assess the case, as it was required, considering the *Valencia Club de Fútbol* judgement on state aid.⁴¹⁷ The Commission issued a single Request for Information over the course of the investigation, to 12 OEMs, with just 6 questions, to support a theory that Google Play’s value is equivalent to a preinstallation deal, following a suggestion from a large developer, and it subsequently cherry-picked from this evidence. The Commission failed to consult app stores (especially non-gatekeeper app stores such as Aptoide) that could serve as a precise benchmark for the initial acquisition fees.⁴¹⁸

⁴¹⁵ Alphabet’s response to the Preliminary Findings, [...], paragraphs 213 to 215.

⁴¹⁶ Alphabet’s response to the Preliminary Findings, [...], paragraph 215.a.

⁴¹⁷ Judgement of 10 November 2022, *Valencia Club de Fútbol*, Case C-211/20 P, ECLI:EU:C:2022:862, paragraph 78.

⁴¹⁸ Alphabet’s response to the Preliminary Findings, [...], paragraph 215.b.

6.1.2. *The Commission carried out extensive, impartial and genuine investigation*

- (507) First, Alphabet's claims that the Commission's mind was made up from the outset are unfounded. The file which Alphabet's external legal counsel and external economic advisors had access to, demonstrates that the Commission engaged with a multitude of stakeholders from various sectors and with various business models to understand their concerns regarding Alphabet's compliance.
- (508) Second, the Commission carried out an extensive, impartial and genuine investigation which dealt with all aspects of Alphabet's compliance solution.
- (509) In the first place, contrary to Alphabet's assertion, the Commission sought to obtain input from app developers with a wide range of different business models, including third-party app stores and associations representing a variety of interests of individual app developers as well as OEMs. The Commission held more than 20 meetings with third parties since 2023, at least 12 meetings with Alphabet, attended 3 workshops organised by Alphabet with third parties as observer and organised itself 2 workshops (which Alphabet attended).
- (510) The Commission's extensive engagement with Alphabet and various types of stakeholders took place in various formats:
- (1) Bilateral meetings with Alphabet: The Commission held at least 12 meetings with Alphabet ensuring a continuous regulatory dialogue.
 - (2) Meetings with third parties: The Commission held a substantial number of meetings with third parties which cover various types of business models such as gaming, video streaming, third-party app stores, media, and online dating. In particular, the Commission held more than 20 meetings, where the issues described in Section 5.2 in this Decision were discussed.
 - (3) Third-party submissions: The Commission received and assessed more than 25 submissions concerning Alphabet's compliance with Article 5(4) of Regulation (EU) 2022/1925. These submissions cover various types of business models such as gaming, video streaming, third-party app stores, media, online dating app.
 - (4) Workshops carried out: the Commission allocated the time and resources to organise two workshops concerning Alphabet's compliance with Regulation (EU) 2022/1925, including Article 5(4) thereof, in order to hear all views of the various stakeholder groups, which were attended by Alphabet and where Alphabet had the opportunity to present its position.⁴¹⁹ In addition, the Commission participated as observer in three workshops that Alphabet organised.⁴²⁰
- (511) In the second place, and in addition to the above, requests for information are just one of the tools that the Commission has at its disposal to conduct investigations under Regulation (EU) 2022/1925. It is evident from the use of the word "may" in Article 21 of Regulation (EU) 2022/1925 and contrary to what Alphabet seems to claim, that the Commission "may" issue requests, for information to investigate a specific conduct. However, the Commission may use other tools to gather information for its investigation such as meetings and interviews with third parties

⁴¹⁹ Namely, these took place on 6 March 2023 and 21 March 2024.

⁴²⁰ Alphabet's workshops took place on November 2023, June 2024, and November 2024.

and Alphabet, attending workshops organised by Alphabet with third parties as observer and organising workshops as outlined in recitals (509) and (510).⁴²¹ The fact that the Commission did not issue requests for information to third parties is, therefore, not proof that the Commission's investigation is not genuine. In light of the above, the Commission carried out a genuine investigation in full respect of the principle of sound administration.

6.2. Alphabet had proper access to the Commission's file

6.2.1. *Alphabet's arguments about the Commission allegedly improperly denying access to the file*

(512) Alphabet claims that the Commission improperly denied Alphabet personnel the ability to review any evidence the Commission collected in violation of Alphabet's rights of defence.⁴²²

(513) Alphabet also claims that according to Article 34 of Regulation (EU) 2022/1925 the gatekeeper is "*entitled to have access to the Commission's file*", not merely to documents cited in the Preliminary Findings. The Commission cannot override the right of access to the file via its Implementing Regulation. Alphabet refers to the *Aalborg Portland* and *Bulgaria Energy Holding* antitrust judgments on access to the file.⁴²³

6.2.2. *Alphabet had proper access to the Commission's file*

(514) The Commission considers that Alphabet's claim alleging a breach of its right of access to the file under Article 34 of Regulation (EU) 2022/1925 is unfounded. The Commission followed strictly the procedure set out in the law in full respect of Alphabet's rights of defence.

(515) First, Regulation (EU) 2022/1925 establishes a distinct procedural framework from that applicable to antitrust cases. The Commission Implementing Regulation (EU) 2023/814 on detailed arrangements for the conduct of certain proceedings by the Commission pursuant to Regulation (EU) 2022/1925 establishes a specific procedural framework for gatekeepers' access to file, tailored to the nature of Regulation (EU) 2022/1925. This framework balances the need for efficient and timely investigations with the preservation of the gatekeeper's rights of defence. The General Court confirmed in its *ByteDance* judgment that Regulation (EU) 2022/1925 is characterised by a regulatory structure that differs from traditional competition law proceedings.⁴²⁴

(516) Second, according to Article 8(2) of Commission Implementing Regulation (EU) 2023/814, when providing access to file and upon request, the Commission shall provide the addressee of the Preliminary Findings with all documents mentioned in the Preliminary Findings subject to the redaction of confidential information. Following Alphabet's requests, the Commission provided Alphabet with access to

⁴²¹ See Chapter V of Regulation (EU) 2022/1925 which provides for investigative, enforcement and monitoring powers of the Commission. In particular, Article 22 Regulation (EU) 2022/1925 states that "*In order to carry out its duties under this Regulation, the Commission may interview any natural or legal person which consents to being interviewed, for the purpose of collecting information, relating to the subject-matter of an investigation. [...]*".

⁴²² Alphabet's response to the Preliminary Findings, [...], paragraphs 216 and 217.

⁴²³ Alphabet's response to the Preliminary Findings, [...], paragraph 216.

⁴²⁴ Judgment of the General Court of 17 July 2024, *ByteDance Ltd v European Commission*, Case T-1077/23.

the non-confidential versions of the documents mentioned in the Preliminary Findings on 21 March 2025.

- (517) Third, Article 8(3) Regulation (EU) 2023/814 provides for access to the full file — including confidential and non-cited documents — to a limited number of specified external advisers, under strict terms of disclosure which are established in a Commission decision. This procedure ensures confidentiality while offering the undertaking under investigation access to the full file through its specified external advisers.
- (518) Fourth, as explained in recital (19) of this Decision, the Commission adopted the Terms of Disclosure Decision, which specified the modalities for access in a data room setting, in accordance with Article 8(3)(e) of Commission Implementing Regulation (EU) 2023/814. Pursuant to the Terms of Disclosure Decision, Alphabet’s specified external advisers were granted, at the Commission’s premises, access to unredacted versions of all documents in the case file with the exception of correspondence with the CMA. The specified external advisers were entitled to prepare a data room report summarising their findings and were also authorised to include an annex setting out their interpretation of the file, a non-confidential version of which was subsequently shared with Alphabet.⁴²⁵
- (519) Therefore, access to the file procedure under Regulation (EU) 2022/1925 provided for a maximum disclosure of information for the purpose of exercising of Alphabet’s right to be heard. The specified external advisers examined the entire Commission file, including unredacted and confidential versions of documents.
- (520) Fifth, Alphabet’s argument that the “*Commission’s file contains documents unrelated to the case against Google*”, thus “*raising questions on the production of the file*” and creating “*concerns that exculpatory evidence has not been included*” is unspecific.⁴²⁶
- (521) Indeed, Alphabet merely makes a general observation about the possibility that there could be documents missing from the Commission’s files. Alphabet has not referred to specific documents or excerpts from which it may be inferred that certain documents would be missing.
- (522) Alphabet has not submitted any substantiated arguments, in line with Implementing Regulation (EU) 2023/814, to request access to additional information beyond the documents mentioned in the Preliminary Findings on grounds that these are indispensable for Alphabet’s right of defence. Therefore, Alphabet’s general non-substantiated claims about access to documents that are not clearly identified do not meet the indispensability standard set out in Implementing Regulation (EU) 2023/814. The information contained in the Commission’s file in this case (i.e. Case DMA.100075) comprised – from the outset – all documents which had been obtained, produced and/or assembled during the Commission’s investigation and that related to the subject matter of its investigation, i.e. all documents concerning Alphabet’s non-compliance with Article 5(4) of Regulation (EU) 2022/1925. All the

⁴²⁵ Alphabet’s response to the Preliminary Findings, [...], Appendixes 4A to 4D.

⁴²⁶ Alphabet’s response to the Preliminary Findings, [...], Appendix 4A, paragraph 36

evidence related to the facts or law set out in the Preliminary Findings were included in the file.⁴²⁷

- (523) Following Alphabet's request, in the spirit of efficiency and good cooperation during the investigation, the Commission provided Alphabet's specified external advisers with additional documents that did not relate to the subject matter of Case DMA.100075 but that made passing references to Alphabet's compliance with Article 5(4) of Regulation (EU) 2022/1925.
- (524) The Commission explained to Alphabet's specified external advisers why those documents were not part of the case file in Case DMA.100075, how the Commission identified them, and why the Commission nonetheless decided to make them available in the Data Room.
- (525) In addition to reviewing a complete file, Alphabet's specified external advisers were also able to review, and did review, those additional documents in the Data Room, and had the opportunity to make submissions to the Commission in relation to those documents but did not.
- (526) Alphabet's specified external advisers were able to review all of these documents, demonstrating that the documents did not contain any evidence that could be favourable to Alphabet and thus could have been of use for its defence.
- (527) Sixth, none of the workshops referred to by Alphabet qualifies as an interview under Article 22 of Regulation (EU) 2022/1925, since none of them had the purpose of collecting information relating to the subject matter of the investigation relating to Alphabet's compliance with Article 5(4) of Regulation (EU) 2022/1925. In any event, these workshops were organised and moderated by Alphabet. Therefore, Alphabet cannot be unaware of discussion in those workshops and there cannot be any infringement to Alphabet's rights of defence even though the Commission did not take minutes.
- (528) Seventh, the redactions in the OEM pre-installation agreements in the Commission's file are not excessive.⁴²⁸ Alphabet's specified external advisers have, as explained in recital 3 of Implementing Regulation (EU) 2023/814, access to all documents on the Commission's file. This includes confidential as well as non-confidential versions of documents received by the Commission, the latter having only been provided for the purpose of potential use in the Commission's Preliminary Findings. In this context, in some cases, the Commission has only received partially redacted documents, and specified external advisers have received proper access to those partially redacted documents. In any event, Alphabet has withdrawn its request by email of 31 March 2025, to be provided with non-confidential versions of all the OEM pre-installation agreements in the Commission's file in Case DMA.100075.
- (529) Lastly, in the present case, Alphabet has not substantiated that any alleged limitation on access to file prevented it from effectively exercising its right to defence or affected the outcome of the procedure.
- (530) In light of the above, the Commission concludes that it complied fully with the procedural requirements of Regulation (EU) 2022/1925 and Commission Implementing Regulation (EU) 2023/814, and that Alphabet was afforded an

⁴²⁷ See, for instance, and by analogy, Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, *Aalborg Portland A/S*, EU:C:2004:6, paragraph 126.

⁴²⁸ Alphabet's response to the Preliminary Findings, [...], Appendix 4A, paragraph 38.

effective opportunity to exercise its right to be heard. The claim of a violation of Article 34 of Regulation (EU) 2022/1925 is therefore without merit.

7. DURATION OF ALPHABET’S NON-COMPLIANCE

- (531) The Commission finds that Alphabet’s non-compliance with Article 5(4) of Regulation (EU) 2022/1925 commenced on the date that that provision became applicable to it, that is on 7 March 2024, which is six months after Google Play was listed in the Alphabet Designation Decision. This non-compliance lasted at least until 8 December 2025, the day before Alphabet fully rolled out the Revised External Offers Program. The Commission notes the partial implementation of the Revised External Offers Program on 19 August 2025 outlined in recitals (22) and (23). This partial implementation does not affect the duration of Alphabet’s non-compliance because it is clear that it does not address several non-compliance issues described in Section 5, including the issues raised in Section 5.2.2.1.1, as well as the issues raised in Section 5.2.3.4. with regard to the Ongoing Services Fee. Therefore, the duration of Alphabet’s non-compliance, as established in this Decision, is approximately 21 months.
- (532) The determination of the duration of Alphabet’s non-compliance for the purposes of this Decision is without prejudice to the Commission’s assessment as to whether the Revised External Offers Program, introduced by Alphabet on 9 December 2025 as well as the changes rolled out on 4 June 2026 or any further changes that may be rolled out in the future, comply with Article 5(4) of Regulation (EU) 2022/1925.

8. ADDRESSEES

- (533) The Commission concludes that the non-compliance with Article 5(4) of Regulation (EU) 2022/1925 should be imputed to Alphabet as (i) the undertaking designated as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925, (ii) the company which – for the entire period of the infringement – issued and was (and continues to be) party to the External Offers Program, formulated and continues to formulate the External Offers Program, and conducted and continues to conduct app reviews based on them and as (iii) the entity which (directly or indirectly) wholly owns Google Ireland Ltd, which is the entity providing the Google Play CPS in the Union⁴²⁹.

9. FINES

9.1. Principles

- (534) Under Article 30(1)(a) of Regulation (EU) 2022/1925, the Commission may by decision impose fines on gatekeepers where it finds that the gatekeeper, intentionally or negligently, fails to comply with any of the obligations laid down in Articles 5, 6, and 7 of that Regulation. Fines under Regulation (EU) 2022/1925 are ultimately aimed at ensuring effective compliance by the gatekeepers with their obligations under applicable laws and prevention of non-compliant conduct that could undermine the objectives of applicable law (i.e., in the present case Regulation (EU) 2022/1925).

⁴²⁹ Alphabet’s Gatekeeper Designation Form (Form GD), 3 July 2023, [...], paragraph 2.

- (535) According to Article 30(4) of Regulation (EU) 2022/1925, in fixing the amount of a fine, the Commission shall take into account the gravity, duration, and recurrence of the non-compliance. In general, fines shall be effective, proportionate, and dissuasive.⁴³⁰ The Commission must ensure that any aggravating or mitigating circumstances are also reflected in the fines imposed.
- (536) Any fine imposed by the Commission shall not exceed 10% of the gatekeeper's total worldwide turnover in the preceding financial year. Additionally, the Commission must ensure that its fines are compatible with the principles of equal treatment and proportionality,⁴³¹ while having, at the same time, the necessary deterrent effect.⁴³²

9.2. Intent or negligence

- (537) As mentioned in recital (534) of this Decision, a fine may be imposed on gatekeepers that “intentionally or negligently” fail to comply with any of the obligations laid down in Articles 5, 6 and 7 of Regulation (EU) 2022/1925.

9.2.1. *The Commission's position*

- (538) The Commission finds that Alphabet has acted at the very least negligently, as it could not have been unaware⁴³³ that the measures described in Section 4 of this Decision did not comply with Article 5(4) of Regulation (EU) 2022/1925.
- (539) First, Alphabet could not have been unaware that such measures could lead to a breach of Article 5(4) of Regulation (EU) 2022/1925 given the clear language of Article 5(4) and recital 40 of that Regulation, as well as the stated objectives thereof. In particular, the conditions to ensure compliance with Article 5(4) of Regulation (EU) 2022/1925 are clearly set out in that provision, according to which the gatekeeper shall allow business users, free of charge, to communicate and promote offers, including under different conditions, to end users acquired via its core platform service or through other channels, and to conclude contracts with those end users.
- (540) Recital 40 of Regulation (EU) 2022/1925 clarifies, in essence, that according to Article 5(4) of that Regulation, app developers must be free to promote and choose the distribution channel that they consider most appropriate for the purpose of interacting with end users, to promote offers and to engage in “*any form of communication and conclusion of contracts*” with end users and that the gatekeeper may only be remunerated by the business user for facilitating the initial acquisition of the end user by the business user.
- (541) Second, the Commission discussed Alphabet's compliance with Article 5(4) of Regulation (EU) 2022/1925 with Alphabet on many occasions, both before and after the 7 March 2024 compliance deadline. Throughout these communications, for

⁴³⁰ See, for instance and by analogy, Judgment of 8 July 2020, Case T-203/18, *VQ v ECB*, EU:T:2020:313, in particular paragraphs 13, 61 to 68, and 85; Judgment of 8 July 2020, Case T-578/18, *CA Consumer Finance v ECB*, EU:T:2020:306, in particular paragraphs 13, 122, and 138, and Judgment of 8 July 2020, Case T-576/18, *Crédit Agricole v ECB*, EU:T:2020:304, in particular paragraphs 14, 135, and 153.

⁴³¹ See, for instance and by analogy, Judgment of 9 September 2015, Case T-92/13, *Philips v Commission*, EU:T:2015:605, paragraph 194 and the case-law cited therein.

⁴³² See, for instance and by analogy, Judgment of 13 July 2011, Case T-59/07, *Polimeri Europa v Commission*, EU:T:2011:361, paragraph 243 and the case-law cited therein.

⁴³³ See e.g., Case C-807/21, *Deutsche Wohnen SE*, EU:C:2023:950, paragraph 76 and the case-law cited therein.

example during the meetings between the Commission and Alphabet of 3 October 2023, 22 February 2024, 4 April 2024, 20 June 2024, 22 August 2024 and 9 April 2025, the Commission, in essence, explained to Alphabet the reasons why the measures that it put in place in March 2024 (or was planning to put in place in March 2024, where the meeting took place before that date), as described in the Alphabet Compliance Report 2024, were not sufficient to comply with Article 5(4) of Regulation (EU) 2022/1925, and discussed with Alphabet possible ways of bringing such non-compliance to an end.

- (542) Additionally, in the Preliminary Findings, the Commission set out a series of measures that Alphabet should adopt to effectively address the Preliminary Findings and to cease its non-compliance with Article 5(4) of Regulation (EU) 2022/1925.
- (543) Despite these communications and the Preliminary Findings, Alphabet did not make any further changes to the measures that it put in place in March 2024, as confirmed in the Alphabet Compliance Report 2025.⁴³⁴
- (544) Third, following the 7 March 2024 compliance deadline, Alphabet made a number of submissions which indicated potential changes to the compliance solution in relation, in particular, to the possibility of opting out of the Ongoing Services Fee immediately rather than after an initial period of two years, use web view to complete transactions under the Article 5(4) fee model, show links to any of developers' own offers, as well as changes to the initial acquisition charging period.⁴³⁵ In August, Alphabet also announced the Revised External Offers program (see recital (22) of this Decision) which was followed by the immediate roll-out of a number of changes to External Offers Program, while several further changes were announced.⁴³⁶ These proposals sought to address the issues regarding Alphabet's compliance solution of March 2024 as communicated by the Commission in the course of the meetings referred to in recital (541) of this Decision. Accordingly, not only was Alphabet already aware, early on, of the need to adopt certain changes to bring at least some aspects of its non-compliance with Article 5(4) of Regulation (EU) 2022/1925 to an end, but also of what type of steps it could take in order to do so.

9.2.2. *Alphabet's arguments*

- (545) Alphabet claims that it has not acted "intentionally or negligently".⁴³⁷ In support of its arguments, Alphabet relies on the "highly contentious" nature of the interpretation of Article 5(4) of Regulation (EU) 2022/1925,⁴³⁸ the claim that the Commission has allegedly produced, during the regulatory dialogue, no "*compelling arguments showing non-compliance*",⁴³⁹ the absence of "*clear language in the legislation or*

⁴³⁴ Alphabet Compliance Report 2025 – Google Play Chapter, [...], paragraph 17 and 26.

⁴³⁵ See Alphabet's response to the Commission's RFI of 17 April 2024, submitted on 21 May 2024, "Play's Fee Model For Its External Offers Program. Value and Options", [...], paragraph 21 and Alphabet's submission on "Play's Revised Compliance Proposal for its External Offers Program Expands Developer Flexibility and Reduces Fees", 26 October 2024, [...], paragraphs 1-2.

⁴³⁶ Alphabet, Changes to the external offers program for users in the EEA, accessible at <https://support.google.com/googleplay/android-developer/answer/16505463>, (accessed on 4 March 2026), [...].

⁴³⁷ Alphabet's response to the Preliminary Findings, [...], paragraph 219.

⁴³⁸ Alphabet's response to the Preliminary Findings, [...], paragraph 219.

⁴³⁹ Alphabet's response to the Preliminary Findings, [...], paragraph 220.

*guidance from the Court*⁴⁴⁰ and the fact that Alphabet has allegedly made an “active and good faith effort to comply with Art. 5(4) by implementing the EOP and then constructively engaging with the EC over 12 months”.⁴⁴¹ Alphabet also argues that no fine (or at most only a symbolic fine) is required in line with the Commission’s “own past practice in novel cases, as well as the General Court’s case law.”⁴⁴²

9.2.3. *The Commission’s assessment of Alphabet’s arguments*

- (546) First, Alphabet does not dispute that the General Business Terms do not comply with Article 5(4) of Regulation (EU) 2022/1925 in that they totally prohibit steering within the app. Nonetheless, Alphabet still maintains these terms. As regards the External Offers Program, Alphabet could not be unaware that all the conditions imposed by it, as described in Section 4 of this Decision, restrict the developer’s ability to steer, for the reasons stated in recitals (538) to (544).
- (547) Second, Alphabet’s claim that the nature of the interpretation of Article 5(4) of Regulation (EU) 2022/1925 is “*highly contentious*”, does not mean that Alphabet did not at the very least act negligently.
- (548) Third, Alphabet’s claim that the Commission has allegedly produced, during the regulatory dialogue, no compelling arguments showing non-compliance, is without merit. During the regulatory dialogue, including at the meetings set out in recital (541), the Commission, explained why Alphabet’s measures set out in Section 4 were not sufficient to comply Article 5(4) of Regulation (EU) 2022/1925. Contrary to Alphabet’s view,⁴⁴³ such intent or negligence does not require that Alphabet was aware of every single piece of evidence relied on in the Preliminary Findings prior to the adoption.
- (549) Fourth, while it is true that Regulation (EU) 2022/1925 constitutes a new legal instrument and that the present proceedings represent one of the first cases in which the Commission is applying Article 5(4) thereof, this does not call into question the conclusion that Alphabet acted at the very least negligently, for the reasons set out in recitals (538) to (544) of this Decision.
- (550) Additionally, these circumstances do not, by any means, prevent the Commission from imposing a fine on Alphabet. Regulation (EU) 2022/1925 itself provides for the possibility to impose fines for non-compliance with Article 5 thereof. The Regulation does not condition the imposition of a fine on the existence of established precedents. The Court has confirmed that the fact that “*the Commission and the EU Courts have not yet had the opportunity to rule specifically on particular conduct does not preclude, in itself, the possibility that an undertaking may have to expect its conduct to be declared incompatible*” with Union law.⁴⁴⁴ “*That fact is therefore not such as to exempt the undertaking concerned from its liability*”.⁴⁴⁵ Alphabet refers to the novelty of the case, without explaining to what extent the alleged novelty, if any, justifies no fine for established non-compliance.

⁴⁴⁰ Alphabet’s response to the Preliminary Findings, [...], paragraph 221.

⁴⁴¹ Alphabet’s response to the Preliminary Findings, [...], paragraph 222.

⁴⁴² Alphabet’s response to the Preliminary Findings, [...], paragraph 221.

⁴⁴³ Alphabet’s response to the Preliminary Findings, [...], paragraph 219.

⁴⁴⁴ Case C-746/21 P, *Altice Group Lux Sàrl*, EU:C:2023:836, paragraph 197.

⁴⁴⁵ Case C-746/21 P, *Altice Group Lux Sàrl*, EU:C:2023:836, paragraph 197.

- (551) Furthermore, Alphabet's references to the *Compagnie Générale Maritime*⁴⁴⁶ judgment and to the Commission decisions in *Clearstream*,⁴⁴⁷ *Motorola*,⁴⁴⁸ and *Organic Peroxides*⁴⁴⁹ do not support its claim that no fine is warranted in the present case due to its novel nature. Alphabet has not explained how those cases would be transposable to the situation at stake. The judgment of the General Court in *Bytedance*, regarding Regulation (EU) 2022/1925 specifically, is relevant in this regard since the General Court ruled that “[t]hat conclusion [that the applicant’s arguments are inadmissible] is not called into question by the applicant’s argument that, by referring to certain judgments concerning competition law and State aid, such arguments and evidence are admissible, even if they are submitted for the first time before the Court. [...] However, that case-law concerns legal frameworks and fields of law which are different from those covered by the DMA, the latter being characterised, [...] by strict requirements governing the rebuttal of the presumptions laid down in Article 3(2) of the DMA, in terms of procedural requirements as well as burden and standard of proof. That case-law is therefore not applicable in the present case.”⁴⁵⁰
- (552) In any event, in the Commission’s view, the cases referred to by Alphabet do not support its claim. Contrary to what Alphabet suggests, in *Compagnie Générale Maritime*, the General Court found that the infringement had been committed either intentionally or negligently, as the object of the contested agreement was to restrict competition.⁴⁵¹ Despite that finding, the General Court decided not to impose a fine on the applicants, in the exercise of its unlimited jurisdiction, taking into account, in particular, the complex interplay between different sets of rules, as well as the fact that a Commission declaration had led the applicants to believe that the contested agreement was not unlawful.⁴⁵² These circumstances are absent in the present case.
- (553) As regards the Commission decisions in *Clearstream* and *Motorola*, suffice it to note that novelty was only one of several criteria that led the Commission not to impose fines. In *Clearstream*, the Commission additionally relied on the fact that the infringement had terminated (at least already at the time of the statement of objections) and the fact that cross-border clearing and settlement in the Union were at a crossroads.⁴⁵³ In *Motorola*, the Commission also took into account that national courts had reached diverging conclusions on the contentious legal questions.⁴⁵⁴ In its decision in *Organic Peroxides*, the Commission imposed a low fine on AC Treuhand

⁴⁴⁶ Judgment of 28 February 2002, Case T-86/95, *Compagnie Générale Maritime and Others v Commission*, EU:T:2002:50, paragraph 488.

⁴⁴⁷ Commission Decision of 2 June 2004, Case COMP/38.096, *Clearstream (Clearing and Settlement)*, paragraphs 342, 344.

⁴⁴⁸ Commission Decision of 29 April 2014, Case AT.39985, *Motorola - Enforcement of GPRS standard essential patents*, paragraph 561.

⁴⁴⁹ Commission Decision of 10 December 2003, Case COMP/E-2/37.857, *Organic Peroxides*, paragraph 454.

⁴⁵⁰ Case T-1077/23, *Bytedance v Commission*, EU:T:2024:478, paragraphs 236 and 237.

⁴⁵¹ Judgment of 28 February 2002, Case T-86/95, *Compagnie Générale Maritime and Others v Commission*, EU:T:2002:50, paragraph 479.

⁴⁵² Judgment of 28 February 2002, Case T-86/95, *Compagnie Générale Maritime and Others v Commission*, EU:T:2002:50, paragraphs 484, 485, 488.

⁴⁵³ Commission Decision of 2 June 2004, Case COMP/38.096, *Clearstream (Clearing and Settlement)*, paragraphs 342, 344.

⁴⁵⁴ Commission Decision of 29 April 2014, Case AT.39985, *Motorola - Enforcement of GPRS standard essential patents*, paragraph 561.

because it acted as a mere facilitator of the cartel.⁴⁵⁵ This lies in stark contrast with Alphabet's role in the present case as the undertaking which has the obligation to comply with Article 5(4) of Regulation (EU) 2022/1925.

- (554) Nonetheless, as set out in Section 9.3.1.4.2 below, the Commission has taken into account as a mitigating circumstance in fixing the level of the fine the fact that this Decision is among the very first non-compliance decisions under Regulation (EU) 2022/1925, and specifically Article 5(4) thereof.
- (555) Finally, whether or not Alphabet's External Offers Program and subsequent engagement with the Commission represented a good faith effort to comply with Article 5(4) of Regulation (EU) 2022/1925, and while Alphabet introduced certain changes on 19 August 2025 as outlined above in recital (22) to (24) a number of clear grievances with regard to compliance with Article 5(4) of Regulation (EU) 2022/1925 remained unaddressed and thus the non-compliance persisted over the non-compliance period as defined in Section 9 of this Decision. Thus the Commission considers that Alphabet has remained non-compliant with Article 5(4) of Regulation (EU) 2022/1925 at least until 8 December 2025, that such non-compliance impacted a significant number of, in particular, app developers and end users throughout the entire Union and that Alphabet violated Article 5(4) of Regulation (EU) 2022/1925 through a number of measures described in Section 5 of this Decision. Furthermore, with regard to Alphabet's claim that the Commission has allegedly asked Alphabet not to implement a revised compliance solution,⁴⁵⁶ as indicated in recital (33) of this Decision and as repeatedly communicated to Alphabet, including by a letter of 15 April 2025 and email of 11 August 2025, pursuant to Article 8(1) of Regulation (EU) 2022/1925, it is for the gatekeeper to ensure and demonstrate compliance with the obligations laid down in Articles 5, 6 and 7 of that Regulation.
- (556) It follows from the above that Alphabet has not put forward any convincing arguments calling into question the Commission's conclusion that it could not have been unaware that the measures described in Section 4 of this Decision did not comply with Article 5(4) of Regulation (EU) 2022/1925.

9.3. Calculation of the fine

9.3.1. Determination of the fine

9.3.1.1. Gravity of the non-compliance

9.3.1.1.1. The Commission's position

- (557) Regulation (EU) 2022/1925 lists the gravity of the non-compliance as one of the key criteria to determine the level of the fine for non-compliance. In the present case, the Commission concludes that several factors are relevant to assess the gravity of Alphabet's non-compliance with Article 5(4) of Regulation (EU) 2022/1925 in relation to the Google Play CPS.
- (558) First, Alphabet's non-compliance with Article 5(4) of Regulation (EU) 2022/1925 concerns users in all Member States and thus covers the whole of the Union.

⁴⁵⁵ Commission Decision of 10 December 2003, Case COMP/E-2/37.857, *Organic Peroxides*, paragraph 454.

⁴⁵⁶ Alphabet's response to the Preliminary Findings, [...], paragraph 19.

- (559) Second, Alphabet’s non-compliance with Article 5(4) of Regulation (EU) 2022/1925 potentially affects a significant number of end users established or located in the Union. Pursuant to the latest Transparency Report prepared by Alphabet in relation to its obligations under Regulation (EU) 2022/2065, Google Play had on average 298 000 000 users, encompassing both business users and end users, in the Union during the relevant period.⁴⁵⁷
- (560) Alphabet’s non-compliance with Article 5(4) of Regulation (EU) 2022/1925 also potentially affects a significant number of app developers (over 335 300 yearly active business users with apps in the Union in 2022 according to data provided by Alphabet itself) offering or intending to offer apps with a steering possibility within the Union.⁴⁵⁸
- (561) Third, the Commission considers that Alphabet has violated Article 5(4) of Regulation (EU) 2022/1925 through a number of measures described in Section 5 of this Decision. The Commission notes that Alphabet does not contest that its General Business Terms do not comply with Article 5(4) of Regulation (EU) 2022/1925 in that they totally prohibit steering within the app. Similarly, Alphabet does not contest that the External Offers Program (a) does not allow steering to any type of offers (see recital (53)(a) of this Decision); (b) subjects steered transactions concluded via web view to its standard commission fee which is higher than its Initial Acquisition Fee and which goes beyond the remuneration for the initial acquisition (see recitals (446) to (473) of this Decision); and (c) imposes an ongoing services fee for steered transactions which again goes beyond the remuneration for the initial acquisition (see recitals (432) to (445) of this Decision).
- (562) Fourth, in its gravity assessment, the Commission has favourably considered that the changes rolled out between August 2025 and 8 December 2025 may have enabled developers’ ability to exercise under Article 5(4) of (EU) Regulation 1925/2022.
- (563) Fifth, when assessing the gravity of Alphabet’s non-compliance with Article 5(4) of Regulation (EU) 2022/1925, the Commission must ensure that fines have a sufficiently deterrent effect in relation to Alphabet, but also in relation to other designated gatekeepers to avoid future breaches of Regulation (EU) 2022/1925. In that regard, the link between, on the one hand, the undertaking’s size and global resources and, on the other, the need to ensure that a fine has a deterrent effect cannot be denied. Accordingly, when the Commission calculates the amount of the fine it may take into consideration, inter alia, the size and the economic power of the undertaking concerned.⁴⁵⁹
- (564) Alphabet is one of the largest technology companies in the world by turnover. Alphabet’s total worldwide turnover in the business year ending 31 December 2025 was USD 402 836 000 000 (approximately EUR 356 509 860 000).⁴⁶⁰ Alphabet had

⁴⁵⁷ Based on “Average monthly counts based on distinct signed-in accounts of recipients”. See Information about Monthly Active Recipients under the Digital Services Act (EU), accessible at: https://storage.googleapis.com/transparencypdfreport-downloads/pdf-report-24_2025-7-1_2025-12-31_en_v1.pdf, (accessed on 13 February 2026), [...].

⁴⁵⁸ Decision C(2023) 6101 final, recital 64.

⁴⁵⁹ See, by way of analogy, Case T-332/09, *Electrabel*, EU:T:2012:672, paragraph 282.

⁴⁶⁰ Alphabet’s Form 10-K Annual Report Pursuant To Section 13 or 15(D) of the Securities Exchange Act of 1934 for the fiscal year ended 31 December 2025, pages 32, 33, 49, 60, 67, and 87, accessible at https://s206.q4cdn.com/479360582/files/doc_financials/2025/q4/GOOG-10-K-2025.pdf, (accessed on 20 February 2026), [...]. The ECB exchange rate for 2025 was on average USD 1 = EUR 0.8850, [...].

an estimated market capitalisation of approximately USD 3 672 000 000 000 on 20 February 2026 (approximately EUR 3 124 137 600 000),⁴⁶¹ making it the third most valuable company in the world in terms of market capitalisation on that date.⁴⁶² As a result, Alphabet can be regarded as a very large company with significant economic power.

- (565) In light of the above, the gravity of Alphabet’s non-compliance with Article 5(4) of Regulation (EU) 2022/1925 should be considered as serious.

9.3.1.1.2. Alphabet’s arguments

- (566) First, Alphabet contests the seriousness of its non-compliance because the Commission has not provided any information about how the fine will be calculated and has thus denied Alphabet any possibility to comment on the applicable methodology.⁴⁶³
- (567) Second, Alphabet also argues that the Commission was under an obligation to make an assessment of the impact of the non-compliance
- (568) Third, Alphabet argues that the Commission was under an obligation to take into consideration the “*significant steps Google has taken to comply with Art. 5(4)*” and the fact that “*there is no dispute that the core obligation under Art. 5(4) (i.e., to allow business users to communicate offers to end users) has been complied with.*”⁴⁶⁴
- (569) Third, Alphabet argues that it could not have known about the OEM pre-installation agreements or Apple’s initial acquisition fee announced in August 2024, which the Preliminary Findings cite, when it launched the External Offers Program in March 2024.⁴⁶⁵

9.3.1.1.3. The Commission’s assessment of Alphabet’s arguments

- (570) First, Regulation (EU) 2022/1925 does not contain more specific rules regarding the relevant criteria for imposing fines than what is described in Article 30 thereof. It is settled case law that “*in assessing the gravity of an infringement for the purpose of fixing the amount of the fine, the Commission must take into consideration not only the particular circumstances of the case but also the context in which the infringement occurs and must ensure that its action has the necessary deterrent effect, especially as regards those types of infringement which are particularly harmful to the attainment of the objectives of the Community.*”⁴⁶⁶
- (571) There is no obligation in Regulation (EU) 2022/1925 for the Commission to establish a binding or exhaustive list of relevant criteria to determine the gravity of non-compliance. The Union Courts have established, even when fining guidelines exist, such as in the area of Union competition rules, that there is no need for a binding or exhaustive list of the criteria to be applied when determining the gravity of an

⁴⁶¹ Companies Market Cap, Alphabet (Google), accessible at <https://companiesmarketcap.com/alphabet-google/marketcap/>, (accessed on 20 February 2026), [...]. The ECB exchange rate on 19 February 2026 was USD 1 = EUR 0.8508, [...].

⁴⁶² Companies Market Cap, ‘Largest Companies by Marketcap’, accessible at: <https://companiesmarketcap.com/>, (accessed on 20 February 2026), [...].

⁴⁶³ Alphabet’s response to the Preliminary Findings, [...], paragraphs 223 and 224.

⁴⁶⁴ Alphabet’s response to the Preliminary Findings, [...], paragraph 226.

⁴⁶⁵ Alphabet’s response to the Preliminary Findings, [...], paragraph 227.

⁴⁶⁶ See, for instance and by analogy, joined cases 100 to 103/80, *SA Musique Diffusion française and others v Commission*, EU:C:1983:158, paragraph 106.

infringement.⁴⁶⁷ Alphabet has not put forward any arguments explaining why this should be the case in the context of Regulation (EU) 2022/1925.

- (572) Second, the Commission is under no duty to investigate the impact or effect of non-compliance when determining its gravity under Regulation (EU) 2022/1925. Article 30(4) of Regulation (EU) 2022/1925 only lists gravity, duration, recurrence, not the impact or effect of the infringement as relevant criteria. It is apparent from recital 11 of that Regulation that the assessment to be carried out by the Commission is independent “*from the actual, potential or presumed effects of the conduct of a given gatekeeper covered by this Regulation on competition on a given market*”.
- (573) Third, whether or not Alphabet’s External Offers Program and subsequent engagement with the Commission can be considered as “*significant steps*” taken by Alphabet to comply with Article 5(4) of Regulation (EU) 2022/1925, the fact remains that Alphabet’s non-compliance impacted a significant number of businesses and users throughout the entire Union (see recitals (559) to (561) of this Decision).
- (574) Furthermore, as explained in recital (546) of this Decision, Alphabet does not dispute that the General Business Terms do not comply with Article 5(4) of Regulation (EU) 2022/1925 in that they totally prohibit steering within the app. Alphabet could also not be unaware that all the conditions imposed by it under the External Offers Program restrict the developer’s ability to steer its users.
- (575) It follows from the above that Alphabet has not put forward any convincing arguments calling into question the serious gravity of the non-compliance.

9.3.1.2. Duration

- (576) The Commission finds that Alphabet’s non-compliance with Article 5(4) of Regulation (EU) 2022/1925 in relation to Google Play, as established by this Decision, commenced on 7 March 2024, when the obligations of that Regulation, including those pursuant to Article 5(4) thereof, began to apply to Alphabet. Alphabet’s non-compliance lasted at least until 8 December 2025, the day before Alphabet fully rolled out the Revised External Offers Program. Therefore, the duration of Alphabet’s non-compliance, as established in this Decision, is approximately 21 months.
- (577) Therefore, the Commission considers that Alphabet’s non-compliance is of medium duration.

9.3.1.3. Recurrence

- (578) The recurrence factor is not relevant in the present case, since this is the first decision addressed to Alphabet under Article 29 and Article 30 of Regulation (EU) 2022/1925.

9.3.1.4. Other relevant factors for the amount of the fine

9.3.1.4.1. Aggravating circumstances

- (579) The Commission considers that there are no aggravating circumstances in this case.

⁴⁶⁷ See, for instance, Joined Cases T-259/02 to T-264/02 and T-271/02, *Raiffeisen Zentralbank Österreich and Others v Commission*, paragraph 238 and the case-law cited.

9.3.1.4.2. Mitigating circumstances

9.3.1.4.2.1. The Commission's position

(580) The Commission concludes that there is a mitigating circumstance in this case. Regulation (EU) 2022/1925 has established a new framework governing the designation of gatekeepers and the obligations applicable to them.⁴⁶⁸ This Decision is also among the very first non-compliance decisions under Regulation (EU) 2022/1925. The Commission takes this into account when assessing Alphabet's non-compliance with Regulation (EU) 2022/1925 at this point in time. The Commission therefore takes this factor into account when fixing the level of the fine.

9.3.1.4.2.2. Alphabet's arguments

(581) Alphabet claims that the Commission must take into account several mitigating factors when determining whether to impose a fine or, in the alternative, when determining the size of the fine. Alphabet considers as mitigating factors the fact that it has *“repeatedly engaged with the EC in good faith, and continues to do so, in order to comply with the law”*, it has *“always been open with the [Commission]”*, *“the [Commission] has not established that Google's conduct harms consumers”*, and that it actually *“aims at protecting end users from significant security risks”*, and *“the state of the law is unclear and the interpretation questions at stake are highly contentious.”*⁴⁶⁹

9.3.1.4.2.3. The Commission's assessment of Alphabet's arguments

(582) None of Alphabet's arguments for not imposing a fine, or for reducing the fine, are convincing.

(583) First, as regards Alphabet's assertion that it has openly engaged with the Commission in good faith to comply with Regulation (EU) 2022/1925, the Commission does not consider that Alphabet's interactions with the Commission amount to a mitigating factor in the present case that should lead to further reduction of the fine. Alphabet's interactions with the Commission correspond to good faith interactions with the Commission as the regulator enforcing Regulation (EU) 2022/1925, but did not otherwise go beyond its obligation stemming from the duty to cooperate in a non-compliance investigation. The Commission recalls that Alphabet introduced changes on 19 August 2025, which may have enabled developers to exercise some their rights under Article 5(4) of Regulation (EU) 1925/2022, and which the Commission favourably considers in the context of its assessment of the gravity of Alphabet's non-compliance.

(584) This conclusion is not called into question by Alphabet's reference, by analogy, to paragraph 29, fourth bullet, of the Commission's Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EU) 1/2003, which recognises, as a mitigating circumstance, the fact that an undertaking has effectively cooperated with the Commission outside the scope of the Leniency Notice and beyond its legal obligation to do so. Indeed, these guidelines refer to competition law infringements, not to non-compliance with Regulation (EU) 2022/1925. In any event, Alphabet has not explained why, in its view, it has cooperated with the Commission beyond its legal obligation to do so, within the meaning of those guidelines.

⁴⁶⁸ Case T-1077/23, *Bytedance v Commission*, EU:T:2024:478, paragraph 233.

⁴⁶⁹ Alphabet's response to the Preliminary Findings, [...], paragraph 231.

Additionally, according to the case-law of the EU Courts, this mitigating circumstance can only be accepted exceptionally, in particular when an undertaking's cooperation facilitates the Commission's task of finding and bringing infringements to an end.⁴⁷⁰ No such exceptional circumstances exist in the present case.

- (585) Second, as explained in recital (572) of this Decision, the Commission is under no duty to investigate the possible impact, effect, or harm deriving from non-compliance with Regulation (EU) 2022/1925. In these circumstances, even if the Commission did not identify any tangible evidence of consumer harm, this would not justify a reduction of the fine. Additionally, while Alphabet argues that it has sought to protect end users from significant security risks, the fact remains that, in doing so, it has restricted steering, both through technical and commercial means, in violation of Article 5(4) Regulation (EU) 2022/1925.
- (586) Third, as regards Alphabet's argument that the state of the law is unclear and that the problems presented by the new regulatory regime established in Regulation (EU) 2022/1925 are complex, the Commission has already taken into account in Section 9.3.1.4.2 as a mitigating circumstance in fixing the level of the fine the fact that this Decision is among the very first non-compliance decisions under Regulation (EU) 2022/1925. However, for the reasons set out in recitals (539), (540) and (541) of this Decision, these circumstances do not, by any means, prevent the Commission from imposing a fine on Alphabet.
- (587) It follows from the above that Alphabet has not put forward any convincing arguments showing that, in determining whether to impose a fine or the amount thereof, the Commission should have taken into account mitigating circumstances beyond those described in recital (580) of this Decision.

9.3.2. *Conclusion*

- (588) In view of the above, the Commission considers that Alphabet has, at the very least negligently, not complied with Article 5(4) of Regulation (EU) 2022/1925. Alphabet's non-compliance with Regulation (EU) 2022/1925 is serious as it covered the entirety of the Union and potentially affected a significant number of business and end users in the Union. Alphabet's non-compliance is of medium duration. Furthermore, Alphabet is a large undertaking, with substantial resources, including legal resources. Finally, the Commission has taken into account the mitigating circumstance that this Decision is among the very first non-compliance decisions adopted under Regulation (EU) 2022/1925.

9.4. **Amount of the fine**

- (589) In view of the criteria described in recitals (534) to (588) of this Decision, the Commission considers it appropriate to impose a fine under Article 30(1) of Regulation (EU) 2022/1925 representing EUR 430 000 000.
- (590) Alphabet's turnover in the business year ending 31 December 2024 was USD 350 018 000 000 (approximately EUR 323 381 630 200). The final amount of the fine set is thus below 10 % of that figure which is the maximum fine that could be imposed pursuant to Article 30(1) of Regulation (EU) 2022/1925.

⁴⁷⁰ Judgment of 8 July 2024, Case T-44/00, *Mannesmannröhren-Werke v Commission*, EU:T:2004:218, paragraph 308.

- (591) This amount is proportionate, as it represents a relatively small proportion of Alphabet’s annual worldwide turnover (approx. 0.13%) and in any event significantly less than the maximum fine cap of 10% referred to in recital (536) of this Decision.

10. CEASE AND DESIST

- (592) Pursuant to Article 29(5) of Regulation (EU) 2022/1925, “[i]n the non-compliance decision, the Commission shall order the gatekeeper to cease and desist with the non-compliance within an appropriate deadline and to provide explanations on how it plans to comply with that decision.”
- (593) In Section 7 of this Decision, the Commission established that Alphabet’s non-compliance with Article 5(4) of Regulation (EU) 2022/1925 commenced on 7 March 2024 and lasted until 8 December 2025, the day before Alphabet fully rolled out the Revised External Offers Program. The amendments described in Alphabet’s Revised External Offers Program as well as the changes rolled out on 4 June 2026 are not covered by this Decision. Consequently, the Commission has not assessed whether these later adjustments terminate Google’s breach of Article 5(4) of Regulation (EU) 2022/1925. Moreover, because no assessment has been made it cannot be excluded that Google’s non-compliance may continue not at least in relation to steering that leads to third party offers.
- (594) On that basis, to the extent that Alphabet has not done so, it is necessary to order Alphabet to bring its non-compliance described in this Decision effectively to an end within 60 calendar days from the date of the notification of this Decision (the ‘Cease and Desist Order’).
- (595) In addition, it is necessary to ensure that Alphabet shall refrain from repeating any conduct constituting non-compliance with Article 5(4) of Regulation (EU) 2022/1925, as well as from any conduct having the same or equivalent object or effect.
- (596) To comply with the Cease and Desist Order, and in line with the objectives of Regulation (EU) 2022/1925 to ensure contestable and fair markets in the digital sector as expressed in Article 1(2) of that Regulation and in particular with the objectives of Article 5(4) of Regulation (EU) 2022/1925, namely to allow app developers to effectively communicate, promote offers, including under different conditions and conclude contracts without restrictions and to allow app developers to conclude those contracts “free of charge”, Alphabet should:

Effective communication, promotion of offers and conclusion of contracts

- (1) Ensure that app developers are allowed in practice (i.e. including technically and contractually) to engage in any form of communication, promotion of offers, and conclusion of contracts with end users both within and outside their app. This includes, for instance, enabling app developers to:
- (1) steer end users to any destination or channel of their choice (including, but not limited to, websites or app stores the app developer operates, or websites or app stores that are operated by third parties). In this regard, Alphabet should not, for instance, limit the type of destination to which the app developer can steer to or prohibit the app developer from including additional data in the URL of the destination page;

- (2) steer end users to any types of offers of their choice, including offers for digital content, services and apps provided by third parties, including on third-party app stores and on other apps;
- (3) conclude contracts following steering, within or outside the app, via any form of technology, including web view, and allow the installation of apps or app stores without prejudice to the possible compliance measures under Article 6(4) Regulation (EU) 2022/1925;
- (4) ensure that any conditions surrounding the app developers' ability to effectively communicate, promote offers, and conclude contracts, regardless of the distribution channel, such as prompts/disclosure sheets, are developed and implemented in a neutral, non-detering manner, based on tangible, verifiable data collected by Alphabet, and do not go beyond what is objectively necessary and proportionate to inform the end users that they will be transacting with the app developer instead of Alphabet;

Conclusion of contracts "free of charge"

- (2) Ensure that both (i) the communication and promotion of offers, and (ii) the conclusion of contracts, including via web view, with end users acquired through Google Play, are free of charge. This includes ensuring that no fee is imposed for steering.
 - (3) Ensure that any potential remuneration for facilitating the initial acquisition of end users in relation to steering and steered transactions by the app developers (i) is related to the initial acquisition only, which means that it cannot be extended to already acquired end users; (ii) is commensurate to the value of the acquisition and must take into account any other, direct or indirect, remuneration received from business users for facilitating the initial acquisition; and (iii) does not remunerate the gatekeeper for its gatekeeper value. Alphabet is prohibited from imposing any other type of fee (in addition to a potential fee for initial acquisition) that covers services linked to the acquisition of end users.
- (597) Alphabet should also not engage in conduct that has an equivalent object or effect as the measures set out above.

11. PERIODIC PENALTY PAYMENTS

11.1. The Commission's position

- (598) In view of the seriousness of Alphabet's non-compliance with Article 5(4) of Regulation (EU) 2022/1925, as established in this Decision, the Commission concludes that it is necessary to impose periodic penalty payments pursuant to Article 31(1), point (h), of Regulation (EU) 2022/1925, in case Alphabet were to fail to implement measures that bring the non-compliance effectively to an end within 60 calendar days from the date of notification of this Decision.
- (599) Any periodic penalty payments that may be definitively set should be sufficient to ensure compliance by Alphabet with this Decision and may take account of Alphabet's significant financial resources (see recitals (563) and (564) of this Decision).

11.2. Alphabet's arguments

- (600) Alphabet argues, in essence, that imposing periodic penalty payments in the present case is unwarranted, let alone imposing the maximum amount thereof.⁴⁷¹
- (601) First, Alphabet contends that, in the Preliminary Findings, the Commission did not provide any reasoning for imposing the maximum amount of periodic penalty payments.⁴⁷²
- (602) Second, Alphabet claims that imposing the maximum amount of periodic penalty payments would be contrary to Commission precedent.⁴⁷³
- (603) Third, Alphabet alleges that imposing the maximum amount of periodic penalty payments is only appropriate in 'the most egregious cases', when a gatekeeper refuses to comply in any way whatsoever with an obligation.⁴⁷⁴
- (604) Fourth, Alphabet maintains that when imposing periodic penalty payments in the present case, the Commission should take into account the mitigating factors set out in recital (581) of this Decision.⁴⁷⁵

11.3. The Commission's assessment of Alphabet's arguments

- (605) First, contrary to what Alphabet maintains, the Commission did provide sufficient reasoning on the imposition of periodic penalty payments in the Preliminary Findings. Indeed, in recital 291 of the Preliminary Findings, the Commission justified the imposition of periodic penalty payments, as well as the level thereof, in view of the seriousness of Alphabet's non-compliance and referred to the recitals of the Preliminary Findings regarding the gravity of Alphabet's non-compliance.
- (606) Second, as regards the Commission precedent mentioned by Alphabet, namely the Commission decision in *Microsoft*,⁴⁷⁶ it must be noted that, according to the case-law of the EU Courts, the Commission is required to carry out an individual appraisal of the circumstances of each case, without being bound by previous decisions concerning other undertakings or other CPSs.⁴⁷⁷ Additionally, Alphabet has not demonstrated that the circumstances in that case were comparable to those in the present case. In any event, the Commission's approach in the present case, with regard to periodic penalty payments, is, in essence, the same as that followed in the *Apple (Art. 5(4))*⁴⁷⁸ and *Meta (Art. 5(2))*⁴⁷⁹ cases.
- (607) Third, Alphabet's argument that imposing the maximum amount of periodic penalty payments is only appropriate when a gatekeeper refuses to comply in any way whatsoever with an obligation must be rejected. Indeed, according to the case-law of the EU Courts, a number of factors may be taken into account when imposing and fixing the definitive amount of periodic penalty payments, including amongst others

⁴⁷¹ Alphabet's response to the Preliminary Findings, paragraphs 232-234, [...].

⁴⁷² Alphabet's response to the Preliminary Findings, paragraph 233, [...].

⁴⁷³ Alphabet's response to the Preliminary Findings, paragraph 233, [...].

⁴⁷⁴ Alphabet's response to the Preliminary Findings, paragraph 233, [...].

⁴⁷⁵ Alphabet's response to the Preliminary Findings, paragraph 234, [...].

⁴⁷⁶ Commission Decision of 10 November 2005, Case COMP/C-3/37.792, *Microsoft*.

⁴⁷⁷ Judgment of 17 July 2024, Case T-1077/23, *Bytedance v Commission*, EU:T:2024:478, paragraph 68 and the case-law cited therein.

⁴⁷⁸ Commission Decision of 23 April 2025, Case DMA.100109, *Apple – Online Intermediation Services – app stores – AppStore – Art. 5(4)*.

⁴⁷⁹ Commission Decision of 23 April 2025, Case DMA.100055, *Meta - Article 5(2)*.

the relevant undertaking's size in terms of turnover and the need to ensure deterrence.⁴⁸⁰

- (608) In the present case, while aspects of the Revised External Offers Program were implemented in connection with Alphabet's efforts to comply with Regulation (EU) 2022/1925, this Decision does not assess the compliance of the Revised External Offers Program or the changes rolled out on 4 June 2026 with Article 5(4) of that Regulation. Additionally, as established in recitals (557) to (565) of this Decision, the gravity of Alphabet's non-compliance in the present case must be considered as serious, and it is important to ensure deterrence, bearing in mind that Alphabet is one of the largest technology companies in the world.
- (609) Fourth, Alphabet's argument that the Commission should take into account the mitigating circumstances set out in recital (581) of this Decision must be rejected for the reasons set out in recitals (582) to (587) of this Decision.
- (610) It follows from the above that Alphabet has not put forward any convincing arguments against the imposition of periodic penalty payments by the Commission.

HAS ADOPTED THIS DECISION:

Article 1

Alphabet has not complied with Article 5(4) of Regulation (EU) 2022/1925 from 7 March 2024 and persisted until 8 December 2025.

Article 2

For the non-compliance referred to in Article 1, a fine of EUR 430 000 000 is imposed on Alphabet.

The fine shall be credited, in euros, within three months of the date of notification of this Decision, to the following bank account held in the name of the European Commission:

BANQUE CENTRALE DU Luxembourg
2, Boulevard Royal
L-2983 Luxembourg

IBAN: LU27 9990 0001 1400 100E
BIC: BCLXLULL
Ref.: EC/BUFI/DMA.100075

After the expiry of the period referred to in the second paragraph, interest shall automatically be payable at the interest rate applied by the European Central Bank to its main refinancing operations on the first day of the month in which this Decision is adopted, plus 3.5 percentage points.

Where an action pursuant to Article 263 of the Treaty is brought before the Court of Justice of the European Union against this Decision, the fine shall be covered by its due date, either by providing an acceptable financial guarantee or by making a provisional payment of the fine in

⁴⁸⁰ See, for instance and by analogy, Judgment of 27 June 2012, Case T-167/08, *Microsoft v Commission*, EU:T:2012:323, paragraph 220.

accordance with Article 108 of Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council.⁴⁸¹

Article 3

Alphabet shall within 60 calendar days of notification of this Decision, bring effectively to an end the non-compliance with Article 5(4) of Regulation (EU) 2022/1925 referred to in Article 1.

Alphabet shall provide the Commission with explanations on how it plans to comply with this Decision within 60 calendar days from the date of notification of this Decision.

Alphabet shall refrain from repeating any conduct described in Article 1, and from any conduct having the same or equivalent object or effect.

Article 4

If the addressee of this Decision fails to comply with Article 3 within 60 calendar days from the date of notification of this Decision, it shall incur periodic penalty payments not exceeding the limit stipulated in Article 31(1) of Regulation (EU) 2022/1925, from the date on which it is required to bring the non-compliance effectively to an end pursuant to Article 3, until the date on which it complies with the Decision.

Article 5

This Decision is addressed to Alphabet Inc., 251 Little Falls Drive, Wilmington, DE, 19808, United States.

This Decision shall be enforceable pursuant to Article 299 of the Treaty on the Functioning of the European Union.

Done at Brussels, 23.7.2026

For the Commission

(signed)

*Teresa RIBERA
Executive Vice-President*

⁴⁸¹ Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (OJ L, 2024/2509, 26.9.2024, ELI: <http://data.europa.eu/eli/reg/2024/2509/oj>).