



# Digital Markets Act

Catch up

CONNECT University  
Autumn School  
12 October 2023

# Central ideas of the DMA

## Fair and contestable digital markets

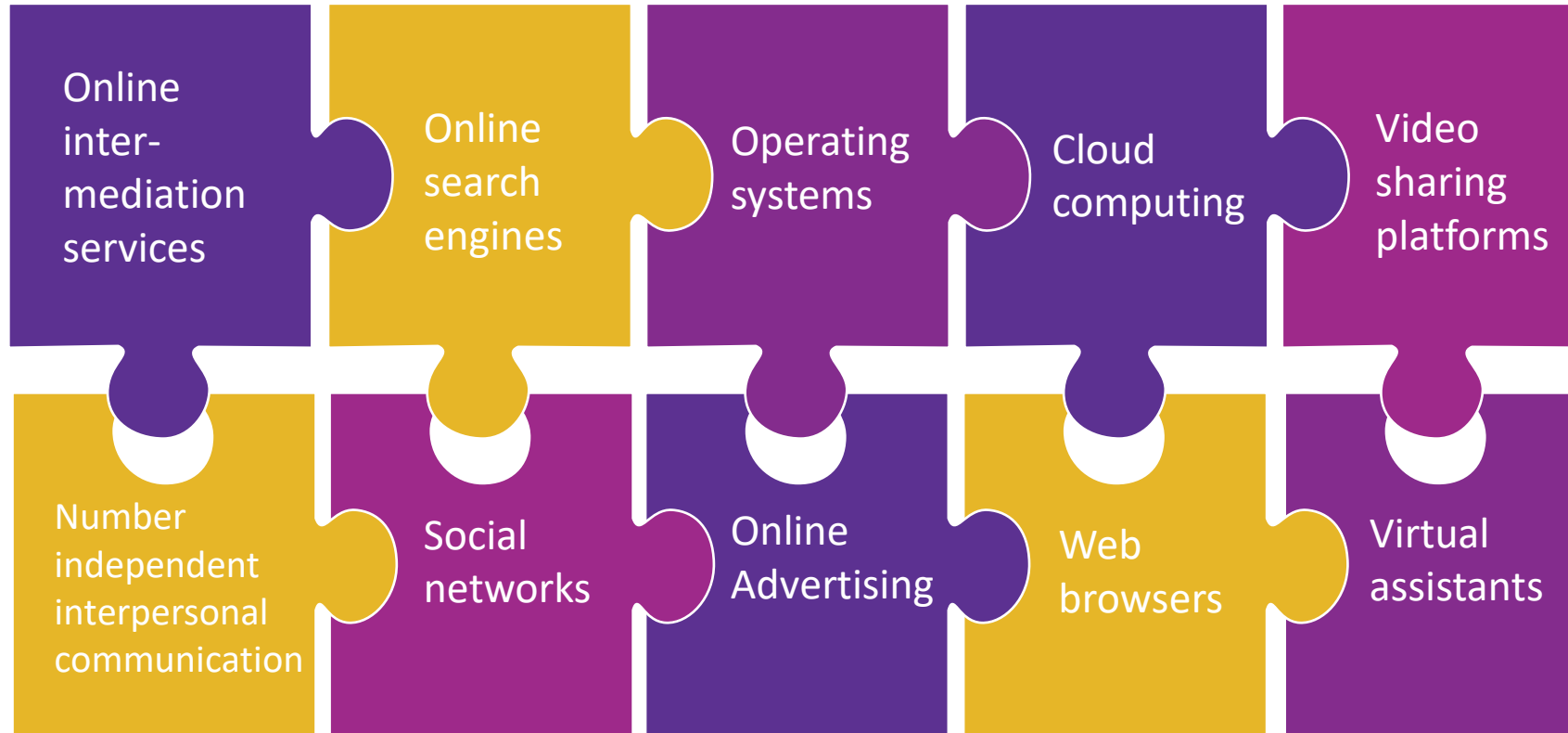
**Gatekeepers, the most powerful actors in the digital ecosystem –**  
Designation based on quantitative and qualitative criteria

Directly applicable and clearly defined **ex ante obligations**  
– Internal Market harmonisation

Comprehensive **remedies**, including structural measures –  
Exclusive **EU-level enforcement** by the Commission

**Complementarity** alongside competition law, P2B Regulation and DSA

# Core platform services (CPS)





# Focus on gatekeepers and the core platform services

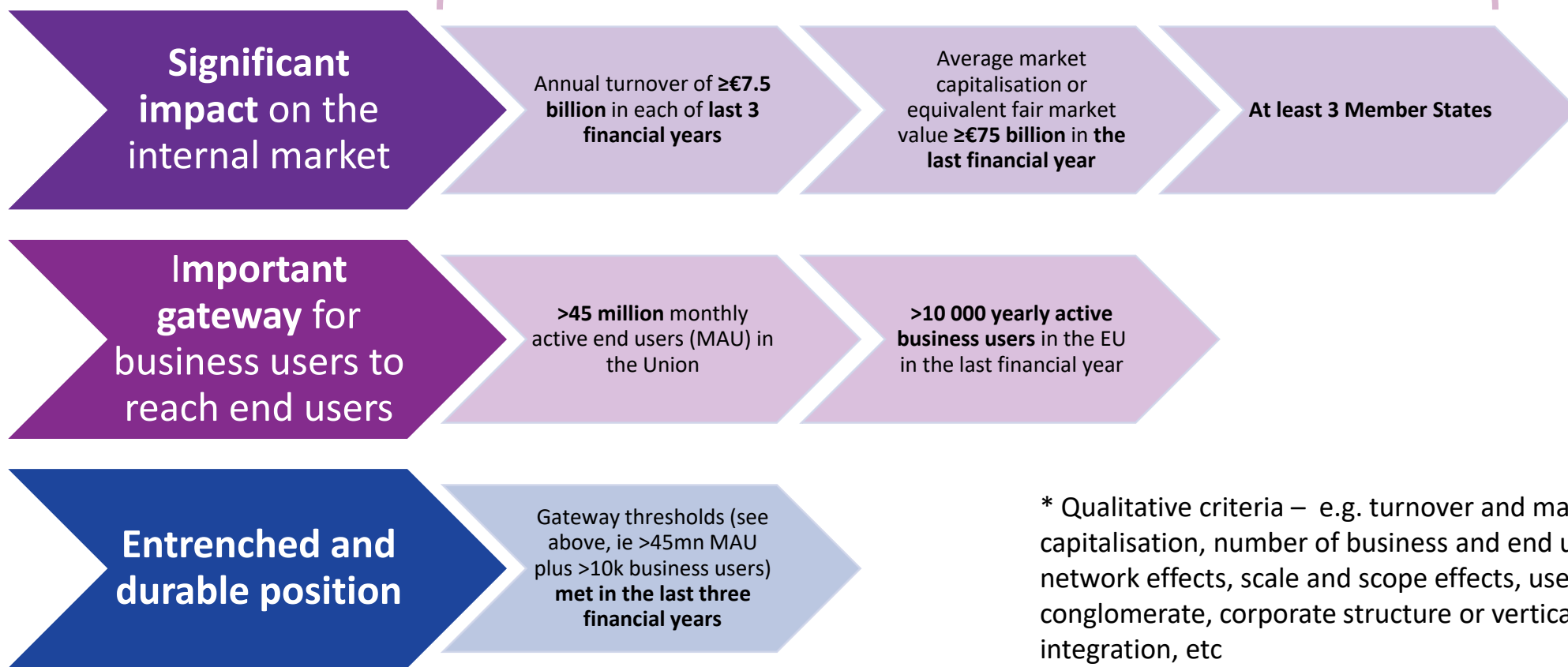
- Highly concentrated platform services
- One or very few large digital platforms set the commercial conditions irrespective of their competitors, customers or consumers
- Few large digital platforms act as gateways for business users to reach their consumers and vice-versa
- Gatekeeper power often misused by means of unfair behaviour



# Criteria for the designation of gatekeepers

## Quantitative criteria (rebuttable presumption)

Qualitative criteria\*



\* Qualitative criteria – e.g. turnover and market capitalisation, number of business and end users, network effects, scale and scope effects, user lock-in, conglomerate, corporate structure or vertical integration, etc

# Timeline DMA – general outline



Entry into force of  
the Regulation



1 Nov  
2022



Entry into  
application of the  
Regulation



2 May  
2023



Notification of user  
numbers



3 July  
2023



Designation of  
gatekeepers + market  
investigations



5 Sep  
2023

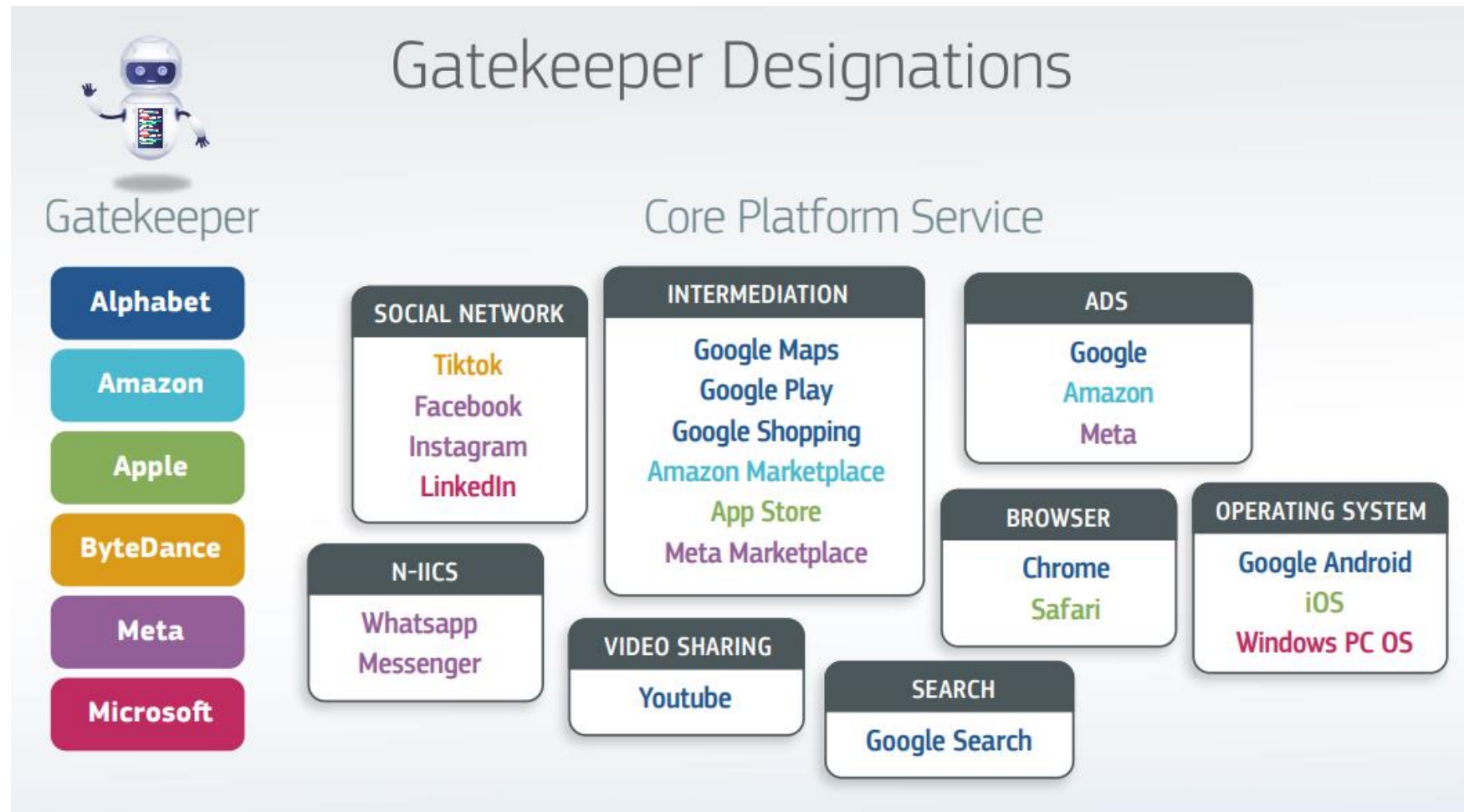


Application of  
the obligations



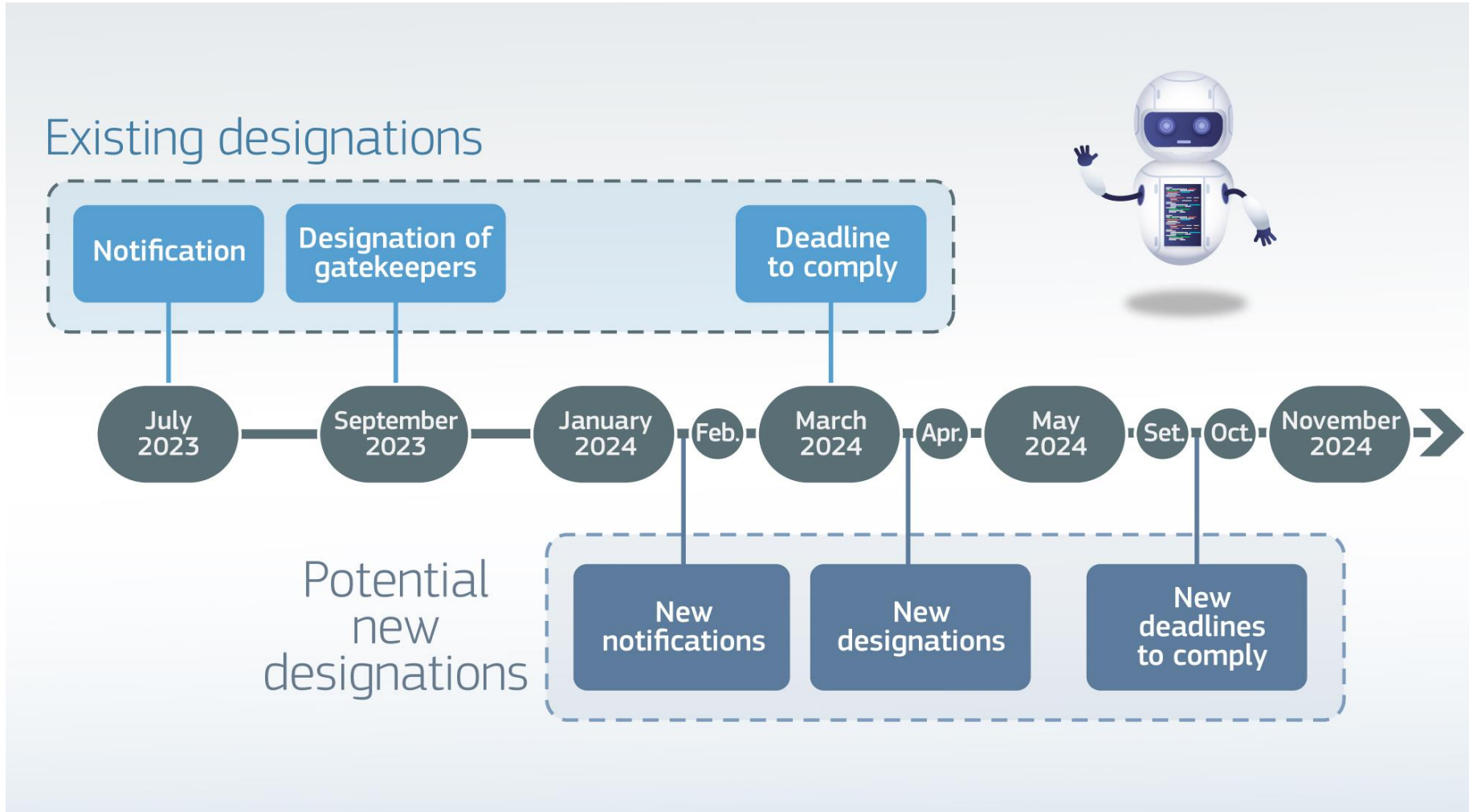
7 March  
2024

# Summary of designations





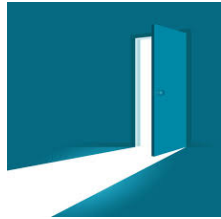
# Timeline for quantitative designations





# Rebuttal – exceptional mechanism

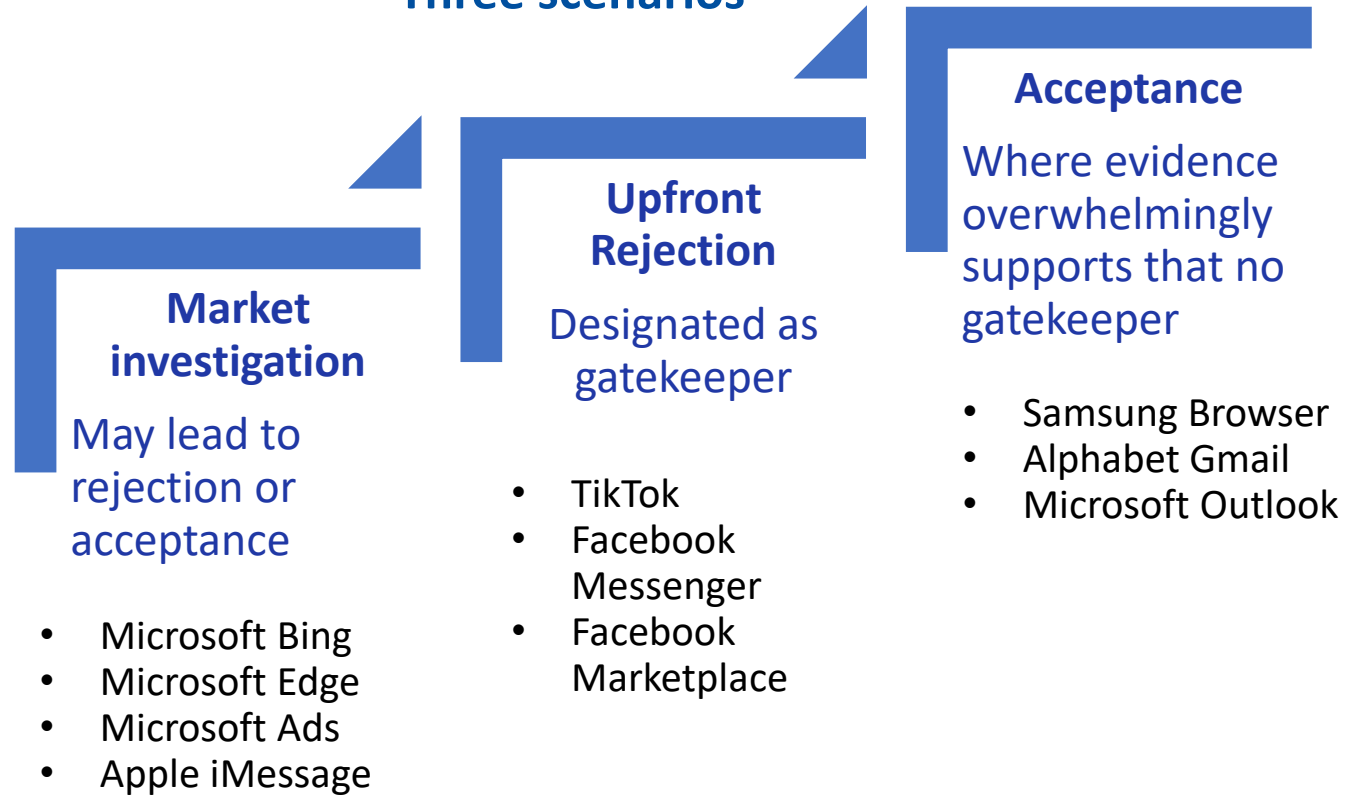
## Rebuttal mechanism



Exceptional tool

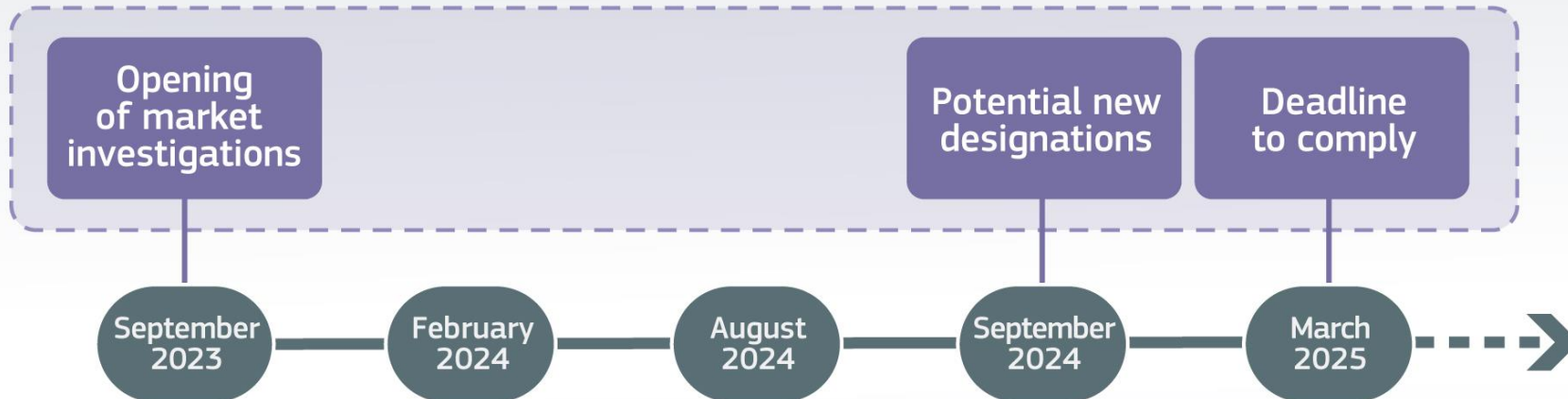
High burden of proof  
 (“**sufficiently substantiated**  
 + **manifestly putting**  
 **presumption into**  
 **question**”)

## Three scenarios



# Timeline for market investigations











## Qualitative Market Investigation on iPad OS



## Market investigation on rebuttals



# Alphabet

	Platform	CPS category	 Comments
	Google Search	Search	Delineation clarified based on Recital 51 DMA
	Google Shopping	Intermediation	
	Google Maps	Intermediation	
	Play Store	Intermediation	Designated irrespective of the device on which it is accessed
	YouTube	Video sharing	
	Android	Operating system	Delineation clarified re. the middleware
	Google Chrome	Web browser	
	Online Ads Services	Advertising	All the advertising services, tools, features, and functionalities that interact with each other
	Gmail	NIICS	Rebuttal accepted

# Amazon

Online intermediation service **Amazon marketplace** provided through Amazon Store



Online advertising service **Amazon Advertising**

- Constitutes a distinct CPS from the Amazon marketplace;
- Comprises all the advertising services, tools, features, interfaces, and functionalities that interact with each other.

amazon  
advertising



# Apple

 App Store



Designation of the **AppStore** and **Safari browser** each as **one CPS across devices**

- One and the same purpose irrespective of the device (intermediation of app sales and offering / accessing web content)



Designation of the **iOS operating system** (for iPhones)

- The operating system is intrinsically linked to the device it enables
- iOS for iPhones serves a distinct purpose
- Launch of qualitative market investigation into iPadOS



**Launch of a rebuttal market investigation for iMessage (NIICS)**

- Rebuttal sufficiently substantiated, in particular the relative scale of iMessage
- But need to further assess the arguments through a market investigation

# ByteDance



## Designation of **TikTok** as an **Online Social Networking Service**

- TikTok is an Online Social Networking Service
- ByteDance's **rebuttal** arguments did not meet the threshold for opening a market investigation.

# Meta



- Meta notified the NIICS **Whatsapp** and a single “ad-supported OSN” including **Facebook, Instagram, Meta Ads, Messenger, Marketplace**
- Commission disagreed with this all-encompassing approach and considered each of these services to be a distinct CPS based on the DMA Annex



In particular:

- **Facebook** and **Instagram** are provided as clearly distinct services & are not used for the same purpose
- **Messenger** distinct from Facebook as it meets the definition of “NIICS” and is a self-standing service



Rejection of **rebuttal arguments** re. **Messenger** and **Marketplace** as insufficiently substantiated

# Microsoft



Designation of the operating system **Windows PC OS**

- Processor neutral
- It includes OS installed on PCs and those delivered as DaaS solution



Designation of the online social networking service **LinkedIn**

- With particular analysis of certain integrated services within the social network



Non-designation of the NIICS **Outlook.com**

- Sufficiently substantiated arguments demonstrating Outlook.com does not meet the criteria in Article 3(1) DMA (i.e., being an important gateway)



Sufficiently substantiated rebuttal arguments but need for a market investigations to further assess them for **Microsoft Edge**, **Microsoft Bing**, and the online advertising service **Microsoft Advertising**



# Samsung



## Non-Designation of the Samsung Web Browser

- **High rebuttal threshold:** sufficiently substantiated arguments to manifestly call into question the quantitative presumptions
- Samsung's arguments **meet this threshold**
  - Samsung Web Browser overall scale of activity in the CPS category very small
  - Very specific operational circumstances

# And now what?

## On-going process

**Intensified  
compliance  
discussions –  
all-inclusive  
process**

**Possible new  
notifications  
and  
designations**

**On-going and  
possible new  
market  
investigations**

**Possible legal  
challenges?**

# Gatekeepers have to:

- ✓ Allow third parties to **inter-operate with the gatekeeper's own services** in certain specific situations
- ✓ Allow their business users to **access the data that they generate** in their use of the gatekeeper's platform
- ✓ **Provide** companies advertising on their platform with the **tools and information** necessary for advertisers and publishers to carry out their own **independent verification** of their advertisements hosted by the gatekeeper
- ✓ Allow their business users to promote their offer and **conclude contracts** with their customers **outside the gatekeeper's platform**



# Gatekeepers may not:



Treat their own services and products more favourably in ranking than similar services or products offered by third parties on the gatekeeper's platform



Prevent consumers from linking to businesses outside their platforms



Prevent users from un-installing any pre-installed software or app



Track end users outside of the gatekeepers' core platform service for targeted advertising, without having been granted consent





# Governance and enforcement



## Governance

- Commission sole enforcer
- Close **cooperation** and coordination with **national competition authorities**
- Pre-investigation into DMA infringements



## Investigatory powers

- Known toolbox, such as:
  - Compliance reports
  - Requests for information
  - On-site inspections
  - Ability to take interviews



## Enforcement powers

- Fines up to 20% of annual turnover in case of repeated infringements
- Systematic non-compliance can lead to structural measures and a “*merger moratorium*”

**Thank You**