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Judgment of the General Court in Case T-1077/23 | Bytedance v Commission

Digital Markets Act: The General Court dismisses the action brought by Bytedance (TikTok) against the decision of the Commission designating it as a gatekeeper

Bytedance Ltd is a company which, via its subsidiaries, provides the **online social networking platform TikTok**. By decision of 5 September 2023, the Commission designated Bytedance as a gatekeeper pursuant to the Digital Markets Act (DMA) ¹. In November 2023, Bytedance brought an action for annulment of that decision. The Court, at Bytedance's request, decided to rule on the present case under the expedited procedure.

By today's judgment, delivered eight months after the action was brought, the Court dismisses Bytedance's action.

The Court first recalled the legislative history and content of the DMA. It notably emphasised that the EU legislature decided to adopt the DMA in order, *inter alia*, 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, and for business users and end users of core platform services provided by gatekeepers in particular.

The Court next found that the Commission was fully entitled to consider that Bytedance was a gatekeeper. In that connection, it observed that it was common ground that Bytedance met the quantitative thresholds laid down in the DMA, regarding, *inter alia*, its global market value, the number of TikTok users within the European Union and the number of years during which that threshold relating to user numbers had been met, so that it could be presumed that it was a gatekeeper. It went on to consider that the arguments submitted by Bytedance were not sufficiently substantiated so as manifestly to call into question the presumption that Bytedance had a significant impact on the internal market, that TikTok was an important gateway allowing business users to reach their end users and that Bytedance enjoyed an entrenched and durable position.

In particular, first, the Court rejected Bytedance's argument that the fact that its global market value was mainly attributable to its activities in China showed that its impact on the internal market was not significant, as demonstrated by the fact that its EU turnover was low. According to the Court, the Commission was entitled to consider that Bytedance's high global market value, together with the large number of TikTok users in the European Union, reflected its financial capacity and its potential to monetise those users.

Second, the Court also rejected Bytedance's argument that the fact that it did not have an ecosystem and did not benefit from network or lock-in effects, and that the scale of TikTok – a significant proportion of users of which 'multi-home' – was smaller than that of some other online social networking services such as Facebook and Instagram, showed that TikTok was not an important gateway allowing business users to reach their end users. In that connection, the Court observed, *inter alia*, that, despite the circumstances relied on by Bytedance, since its launch in the European Union in 2018, TikTok had succeeded in increasing its number of users very rapidly and exponentially, reaching, in a short time, half the size of Facebook and of Instagram, and a particularly high engagement rate, with young users in particular, who spent more time on TikTok than on other social networks.

Third, the Court rejected Bytedance's arguments intended to demonstrate that it did not enjoy an entrenched and durable position. In that connection, Bytedance had argued that it was a challenger on the market and that its position had been successfully contested by competitors such as Meta and Alphabet, which had launched new services, like Reels and Shorts, which, by imitating the main features of TikTok, had enjoyed rapid growth. The Court emphasised, inter alia, that, although in 2018 TikTok was indeed a challenger seeking to contest the position of established operators such as Meta and Alphabet, it had rapidly consolidated its position, and even strengthened that position over the following years, despite the launch of competing services such as Reels and Shorts, to the point of reaching, in a short time, half the size, in terms of number of users within the European Union, of Facebook and of Instagram.

The Court also found that the standard of proof applied by the Commission was correct and that, even though the Commission had made some errors in its assessment of Bytedance's arguments, those errors had no bearing on the lawfulness of the contested decision.

Last, the Court rejected the arguments raised by Bytedance regarding the alleged infringement of its rights of defence and breach of the principle of equal treatment.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

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The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ [Regulation \(EU\) 2022/1925](#) of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act).