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Opinion of the Advocate General in Cases C-496/23 P | Meta Platforms Ireland v Commission (Facebook Marketplace) and C-497/23 P | Meta Platforms Ireland v Commission (Facebook Data)

Advocate General Rantos proposes the dismissal of the appeals by Meta Platforms Ireland relating to an investigation into abuse of a dominant position concerning the use of Facebook Data and the Facebook Marketplace service

Meta Platforms Ireland Ltd brought two appeals against the judgments of the General Court of the European Union which upheld the lawfulness of European Commission decisions requesting it to provide internal documents identified by means of combinations of electronic search terms. Those requests for information were made in the context of an investigation into abuse of a dominant position, relating in particular to the use of data (Facebook Data) and to the Facebook Marketplace service.

The disputes stemmed from two Commission decisions adopted in 2020, ¹ by which the Commission, on the basis of the procedural Regulation for competition matters, ² had requested that internal documents held by certain senior company staff covering a number of years be provided. Following interlocutory proceedings, ³ the Commission adopted amending decisions incorporating a virtual data room procedure intended to regulate access to certain documents containing sensitive personal data. By two judgments dated 24 May 2023, ⁴ the General Court dismissed the appeals by Meta Platforms Ireland, ruling in particular that the requests for information were sufficiently reasoned, necessary and proportionate, and that they complied with the right to privacy and the principle of good administration.

In his Opinion, **Advocate General Athanasios Rantos proposes that the Court of Justice dismiss both appeals and uphold the judgments of the General Court.** He considers that the General Court did not err in law in assessing the necessity of the information requested or in examining the safeguards for its provision.

The Advocate General points out that, under the procedural Regulation for competition matters, the Commission has broad powers of investigation which enable it to request all necessary information in order to carry out its tasks. The obligation to state reasons requires the Commission to indicate the subject matter of its investigation and the suspected infringement it intends to investigate, without having to make an exhaustive legal assessment or demonstrate, at that stage, the individual relevance of each document requested.

The Advocate General considers that the General Court correctly upheld the Commission's decisions as lawful, finding that the search terms used complied with the principle of necessity laid down in the procedural Regulation on competition matters. He states that the General Court found, with no distortion having occurred, that the Commission could reasonably conclude that the documents thereby identified might enable it to investigate the suspected infringements, despite the presence of many irrelevant documents.

He also notes that the examination of necessity and proportionality cannot be based on purely quantitative criteria, that the Commission has a margin of discretion in its choice of investigation techniques and that the procedural safeguards surrounding requests for information, which are distinct from those applicable to inspections, were sufficient, with the result that the General Court did not err in law in rejecting the pleas raised.

The Advocate General considers that the General Court did not err in law in acknowledging that the Commission may

request mixed documents, that is to say documents containing both personal data and other information, without applying the virtual data room procedure, as that processing is inherent to its public interest tasks in competition matters. He notes that the proportionality test was applied correctly, as the documents referred to by the applicant did not contain sensitive data and the Commission's access was subject to strict limits and safeguards, with no disproportionate interference with privacy.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

Unofficial document for media use, not binding on the Court of Justice.

The full text of the Opinion ([C-496/23 P](#) and [C-497/23 P](#)) is published on the CURIA website on the day of delivery.

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Images of the delivery of the Opinion are available on '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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¹ Commission Decision C(2020) 3011 final of 4 May 2020 relating to a proceeding pursuant to Article 18(3) and Article 24(1)(d) of Council Regulation (EC) No 1/2003, as amended by Decision C(2020) 9231 of 11 December 2020 – Facebook Data; and Commission Decision C(2020) 3013 final of 4 May 2020 relating to a proceeding under Article 18(3) and Article 24(1)(d) of Council Regulation (EC) No 1/2003, as amended by Decision C(2020) 9229 of 11 December 2020 – Facebook Marketplace.

² [Council Regulation \(EC\) No 1/2003](#) of 16 December 2002 on the implementation of the rules on competition laid down in Articles 101 and 102 TFEU.

³ Orders of the General Court of 29 October 2020, *Facebook Ireland v Commission*, [T-451/20 R](#) and [T-452/20 R](#).

⁴ Judgments of the General Court of 24 May 2023, *Meta Platforms Ireland v Commission*, [T-451/20](#) (see press release [No 83/23](#)) and [T-452/20](#).