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Judgment of the General Court in Case T-1078/23 | Meta Platforms v Commission

Digital Markets Act: the General Court annuls the decision designating Meta as a gatekeeper as regards Marketplace

At the same time, it maintains Meta's designation for its interpersonal communications service Messenger

Meta Platforms, Inc. is an American technology company which operates the social networks Facebook and Instagram and other digital services. By decision of 5 September 2023, the European Commission designated Meta as a gatekeeper on the basis of the Digital Markets Act (DMA).¹ It found that several services provided by Meta were distinct core platform services, in particular Facebook as an online social network, Messenger as an interpersonal communications service, and Marketplace as an online intermediation service.

The Commission considered that Meta met the quantitative thresholds laid down in the DMA, which meant that it was possible to presume that it satisfied the conditions for being designated as a gatekeeper and that the aforementioned services were important gateways for business users to reach end users. It also found that the arguments put forward by Meta were not such as manifestly to call into question those presumptions.

Meta brought an action for the annulment in part of that decision in so far as it classifies Messenger and Marketplace as important gateways within the meaning of the DMA.

By its judgment today, the General Court of the European Union annuls the decision designating Meta as a gatekeeper as regards Marketplace, while maintaining Meta's designation for its interpersonal communications service Messenger.

As regards Messenger, the General Court confirms that it is a number-independent interpersonal communications service² that is distinct from the Facebook social network. It finds that Messenger is offered by means of standalone applications, that it can be used independently of the social network and that Meta promotes tools that are specific to that service, which allow businesses to engage with users. Arguments based on integration between the services do not call that finding into question.

The General Court also rules that the Commission did not err in finding that Messenger individually is an important gateway. In fact, when the Commission calculates the end users of Messenger in order to determine whether their number meets the quantitative threshold laid down by the DMA, it is not required to take account only of the users of Messenger who are not also users of Facebook. In addition, the General Court states that the Commission was not obliged to open a market investigation before finding that Messenger is an important gateway, in the absence of sufficiently substantiated arguments presented by Meta manifestly calling into question the presumptions laid down in the DMA. Lastly, the General Court finds that there has been full respect for Meta's rights of defence.

As regards Marketplace, in the first place, the General Court observes that the legality of an EU act must be assessed on the basis of the facts and the law as they stood at the time when the measure was adopted. It finds that the Commission, in its assessment of the classification of Marketplace as a core platform service that is an online intermediation service, **erred in law since it had considered that it could rely solely on data concerning the last three years preceding designation, without taking account of changes made at the end of July 2023.**³

In the second place, the General Court finds that the decision lacks sufficient reasoning since the Commission did not provide any concrete analysis of those changes or explain their effect on its finding that Marketplace enabled business

users to offer goods and services to consumers, a necessary condition for classifying a service as an online intermediation service. The factors relied on in the decision in that respect are in particular hypothetical and incomplete. In those circumstances, the General Court concludes that **the decision does not satisfy the requirements in terms of reasoning as regards Marketplace, in that it allows neither Meta to understand the reasons for its classification as a core platform service that is an online intermediation service nor the Courts of the European Union to exercise their power of review.**

As a consequence, the decision is annulled in so far as it designates Meta as a gatekeeper for Marketplace.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union 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 extract](#) of the judgment is published on the CURIA website on the day of delivery.

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Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106.

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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).

² A 'number-independent interpersonal communications' service refers to an online communication service which allows people to communicate with each other via the Internet, without using a traditional telephone number. That includes, for example, instant messaging services, chat applications or audio and video calls made via an application.

³ The changes, implemented on 31 July 2023, consisted in a limitation of the number of listings that can be published per user and led to the disappearance of the criterion used by the Commission to identify business users.