



Opinion of the Advocate General at the Court Andrea Biondi in Case C-627/24 P | ByteDance v Commission

Press release No 151/26

Luxembourg, 15 October 2026

Advocate General Biondi: the Court should dismiss the action brought by ByteDance (TikTok) against the decision of the Commission designating it as a gatekeeper under the Digital Markets Act ¹

In the first Digital Markets Act case to reach the Court of Justice, the Advocate General clarifies when the Commission must investigate a company's objections to being designated as a gatekeeper and how its right to be heard must be respected

The Digital Markets Act seeks to ensure that digital markets are fair and contestable. It imposes obligations on undertakings designated as 'gatekeepers' in respect of core platform services. An undertaking that meets the Act's quantitative thresholds is presumed to be a gatekeeper, but may submit arguments and evidence challenging the applicable presumptions.

In September 2023, the European Commission designated ByteDance ² as a gatekeeper in respect of TikTok, which it classified as an online social networking service. ByteDance had argued that, despite meeting the relevant thresholds, it should not be designated. The Commission considered that its arguments did not sufficiently call the resulting presumptions into question and decided without opening a market investigation. The General Court subsequently dismissed ByteDance's action against that decision. ³ ByteDance appealed to the Court of Justice.

In his Opinion, Advocate General Andrea Biondi examines, at the Court's invitation, ⁴ particular parts of that appeal.

The Advocate General considers that **the Commission has no discretion as to whether open a market investigation where an undertaking presents arguments that manifestly call the presumption in question.** In those circumstances an investigation is required unless it is clear that the undertaking does not satisfy the qualitative requirements for its designation as a 'gatekeeper'. Where the arguments are not sufficiently substantiated, the Commission may reject them without an investigation.

The Advocate General then explains the standard of proof required to challenge the presumptions. He argues that merely casting doubt on a presumption is insufficient. The undertaking must put forward sufficiently convincing arguments that seriously challenge those presumptions. It does not, however, have to prove conclusively, at this preliminary stage, that it is not a gatekeeper. In this regard, the Advocate General considers that, read as a whole, the judgment applied the correct standard when reviewing the Commission's assessment of ByteDance's arguments.

ByteDance also challenged the finding that TikTok serves as an important gateway through which business users can reach end users. Its arguments concerned, among other matters, the absence of a wider ecosystem, users' use of several competing services, and TikTok's scale relative to other platforms. The Advocate General considers that the General Court did not make the errors of law alleged by ByteDance in rejecting those arguments. In particular, the fact that users also use other social networks does not, in itself, show that TikTok is not an important gateway.

As regards the right to be heard, the Advocate General considers that ByteDance was entitled to submit arguments against its designation and to have those arguments examined carefully and impartially by the Commission. However, the

Commission was not required to give ByteDance a further opportunity to comment on its provisional assessment before adopting its decision. The General Court was therefore wrong to find that the right to be heard had been infringed, although it was correct to dismiss ByteDance's claim.

The Advocate General accordingly proposes that the Court of Justice dismiss the parts of ByteDance's appeal examined in his Opinion, substituting different reasons for the General Court's reasoning on the right to be heard.

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 decision 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 presentation of the facts and the legal framework refers to the relevant period and is based on the case file.

The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355.

Images of the delivery of the Opinion are available on '[Curia Web TV](#)' and on '[European Broadcasting Service](#)' ☎ (+32) 2 2964106.

Stay Connected!



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 ByteDance Ltd is a company which, via its subsidiaries, provides the online social networking platform TikTok.

³ Judgment of the General Court of 17 July 2024, *Bytedance v Commission*, [T-1077/23](#) (see also Press Release No [114/24](#))

⁴ The Court may ask an Advocate General to focus on specific issues raised by a case. The Opinion therefore need not address every argument in the appeal.