



C/2024/476

3.1.2024

Action brought on 16 November 2023 — Bytedance v Commission

(Case T-1077/23)

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Language of the case: English

Parties

Applicant: Bytedance Ltd (George Town, Cayman Islands) (represented by: E. Batchelor, N. Baeten and M. Frese, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul the European Commission Decision C(2023) 6102 final of 5 September 2023 ⁽¹⁾ designating Bytedance as a gatekeeper under Article 3 of Regulation 2022/1925 ⁽²⁾ on contestable and fair markets in the digital sector (the ‘DMA’) in case DMA.100040 Bytedance Online Social Networking Services (the ‘decision.’); and,
- order the European Commission to pay its own costs and Bytedance’s costs in connection with these proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on five pleas in law.

1. First plea in law, alleging that the decision infringes Articles 3(1), 3(5) and 17(3) of the DMA in rejecting Bytedance’s rebuttal evidence.
 - The decision applies an incorrect legal standard for assessing rebuttal evidence under Article 3(5) of the DMA by excluding qualitative evidence and by requiring ‘convincing evidence’ that TikTok is not an important gateway.
 - The decision infringes Articles 3(1) and 3(5) of the DMA in assessing Bytedance’s rebuttal as to the Article 3(1) of the DMA gatekeeper criteria: (i) significant impact on the internal market; (ii) important business-to-consumer gateway; and (iii) entrenched and durable position. The decision fails to apply the gatekeeper criteria correctly to the facts and disregards factors which the DMA requires it to take into account.
2. Second plea in law, alleging that the decision breaches the principle of sound administration. The European Commission refused to explain or discuss during the administrative procedure the matters of fact or law on which the European Commission would assess Bytedance’s rebuttal evidence under Article 3(5) of the DMA.
3. Third plea in law, alleging that the decision breaches the rights of defence. The European Commission relied on propositions of law and fact on which Bytedance had no opportunity to make observations during the administrative procedure.

⁽¹⁾ Summary of Commission Decision of 5 September 2023 relating to a decision pursuant to Article 3 of Regulation (EU) 2022/1925 (Case DMA.100040 — BYTEDANCE — ONLINE SOCIAL NETWORKING SERVICE) (OJ C/2023/552).

⁽²⁾ 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) (OJ 2022, L 265, p. 1).

4. Fourth plea in law, alleging that the decision breaches the principle of equality in the application of Articles 3(1) and (5) of the DMA. The European Commission applied different legal standards for the evidence required to satisfy the rebuttal under Article 3(5) DMA. It dismissed Bytedance's rebuttal evidence under Article 3(5) DMA as not relevant while accepting the same types of evidence in parallel DMA designation decisions.
 5. Fifth plea in law, alleging that the decision breaches the duty to state reasons in the application of Articles 3(1) and (5) of the DMA. It fails to explain why it has dismissed Bytedance's rebuttal arguments under Article 3(5) DMA while accepting the same types of evidence in parallel DMA designation decisions.
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