

C/2024/6639

11.11.2024

Appeal brought on 26 September 2024 by ByteDance Ltd against the judgment of the General Court (Eighth Chamber, Extended Composition) delivered on 17 July 2024 in Case T-1077/23, ByteDance v Commission**(Case C-627/24 P)**

(C/2024/6639)

*Language of the case: English***Parties***Appellant:* ByteDance Ltd (represented by: E. Batchelor, N. Baeten, M. Frese, advocaaten)*Other party to the proceedings:* European Commission**Form of order sought**

The appellant claims that the Court should:

- Set aside the judgment of the General Court of 17 July 2024 in Case T-1077/23, ByteDance v Commission;
- Annul the EC Decision No. C(2023) 6102 ⁽¹⁾ final adopted on 5 September 2023 designating ByteDance as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector DMA.100040 ByteDance - Online Social Networking Services; and
- Order the EC to pay its own costs and ByteDance's costs in connection with these proceedings and the proceedings before the General Court.

Pleas in law and main arguments**First plea:** The Judgment infringes Arts. 3(1) and 3(5) DMA.

- First part of first plea: The Judgment infringes Arts. 3(1) and 3(5) DMA in applying the wrong legal test for assessing whether the Appellant has provided sufficiently substantiated arguments manifestly calling into question the presumptions set out in Art. 3(2) DMA.
- Second part of first plea: The Judgment infringes Arts. 3(1)(a) and 3(5) DMA as to the significant internal market impact criterion by making the quantitative presumptions de facto irrebuttable. The General Court erroneously relies on large and growing user numbers and disregards the need for a link between market capitalization and monetizable potential of EU users. It also substitutes its own reasoning for that of the Decision and unlawfully dismisses ByteDance's uncontested evidence.
- Third part of first plea: The Judgment infringes Arts. 3(1)(b) and 3(5) DMA as to the important business-to-consumer gateway criterion by misapplying Art. 3(1)(b) in relation to ByteDance's lack of ecosystem, significant network effects, multi homing, user lock-in, and relative scale. The Judgment further distorts the evidence, substitutes its own reasoning for that of the Decision, and fails to state reasons as regards multi-homing, intensity of use and interoperability. Finally, the Judgment applies the wrong legal test in its important gateway analysis in relation to multi homing and business user engagement.
- Fourth part of first plea: The Judgment infringes Arts. 3(1)(c) and 3(5) DMA as to the entrenched and durable position criterion. It substitutes its own reasoning for that of the Decision and misapplies the notion of contestability by requiring the displacement of the presumed gatekeeper. Furthermore, the General Court errs in requiring contestability by non-gatekeepers and in ignoring contestability from gatekeeper active in a different CPS. The General Court's reasoning is moreover contradictory, as the evidence shows contestability by non-gatekeepers for online social networking CPS. Finally, the Judgment commits a legal error in dismissing ByteDance's evidence regarding new services as inadmissible and applies wrong legal test to the assessment of this evidence.

⁽¹⁾ JO C, C/2023/552

- Fifth part of first plea: The Judgment infringes Arts. 3(1) and 3(5) DMA in failing to undertake a holistic assessment of the Appellant's arguments and evidence.

Second plea: The Judgment commits a legal error in concluding that the EC's breaches of ByteDance's rights of defence in relation to its alleged ecosystem and TikTok's intensity of use did not lead to the Decision's annulment.
