



C/2024/930

29.1.2024

**Appeal brought on 3 August 2023 by Meta Platforms Ireland Ltd, formerly Facebook Ireland Ltd
against the judgment of the General Court (Fifth Chamber, Extended Composition) delivered on
24 May 2023 in Case T-452/20, Meta Platforms Ireland v Commission**

(Case C-496/23 P)

(C/2024/930)

Language of the case: English

Parties

Appellant: Meta Platforms Ireland Ltd, formerly Facebook Ireland Ltd (represented by: D. Jowell KC, D. Bailey, Barrister-at-Law, J Aitken, D. Das, S. Malhi and R. Haria, Solicitors, T. Oeyen, avocat)

Other parties to the proceedings: European Commission, Federal Republic of Germany

Form of order sought

The appellant claims that the Court should:

- set aside the judgment under appeal;
- annul 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 (Case AT.40684 — Facebook Marketplace), as amended by Commission Decision C(2020) 9229 final of 11 December 2020 ('the contested decision');

or, in the alternative:

- refer the case relating to the first and second grounds of the application for annulment back to the General Court for redetermination; and
- order the Commission to bear the entirety of the costs of these proceedings and to adjust the order on costs in the judgment under appeal in order to reflect the outcome of the appeal.

Pleas in law and main arguments

In support of the appeal, the appellant raises the following grounds.

First ground of appeal is that the General Court wrongly rejected the first plea, and erred in law when it held at paragraphs 87–108 that the search terms set out in paragraphs 87 and 102 of the judgment under appeal complied with the principle of necessity contained in Articles 18(1) and (3) of Regulation No 1/2003 ⁽¹⁾. In particular:

- The General Court erred in law at paragraphs 92, 93–95, 99 and 103 of the judgment under appeal in finding, in essence, that the principle of necessity was satisfied merely because the Commission could reasonably suppose, regarded wholly in the abstract, that the search terms could help it to determine whether the conduct in recital 1 of the contested decision took place. The General Court failed to give any (alternatively sufficient) weight to the fact that the unduly general search terms the Commission had selected, when applied across all of the custodian's documents over the entire period, were bound to give rise to a vast preponderance of documents that would bear no connection at all to the investigation (and many of which would contain sensitive personal or commercially confidential information), in circumstances where the Commission was aware in advance that its approach was bound to produce such results.

⁽¹⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003, L 1, p. 1).

- The General Court erred in law at paragraph 99 of the judgment under appeal insofar as it held that documents can be considered irrelevant to the investigation ‘*only after the search terms have been applied to the applicant’s databases*’. In practical terms, such an approach runs the real risk of rendering the principle of necessity non-justiciable. It in effect, gives a discretion to the Commission that is without limits and renders the principle of necessity redundant. It is not a correct interpretation of the legal requirement of necessity (and proportionality) to allow an authority to apply manifestly overly broad search terms over a vast number of documents that generate a huge amount of irrelevant and confidential responsive documents. Paragraph 99 also ignored and distorted the true sense of the appellant’s evidence that the Commission was aware in advance that the mechanical application of broad search terms was bound to capture an overwhelming predominance of irrelevant documents (as proved to be the case).
- The General Court erred also in law at paragraphs 105-106 in refusing to consider the legal framework applicable to inspection decisions to be relevant to requests for information and by permitting the Commission to request documents without the safeguards or filters equivalent to those granted during inspections under Article 20 of Regulation No 1/2003.

Second ground of appeal is that the General Court erred in law and failed to give sufficient reasons at paragraph 75 of the judgment under appeal when it held that ‘*an overall assessment of compliance by the Commission with the principle of necessity is not appropriate*’.

Third ground of appeal is that the General Court wrongly dismissed the second plea, and erred in law at paragraphs 179–185 of the judgment under appeal in holding that the Commission could request documents that contained personal information and were also linked to the appellant’s business activities without providing any safeguards or filter for the personal information.
