Official Journal
of the European Union

EN
C series

C/2024/6122

11.10.2024

Summary of Commission Decision

of 13 May 2024

relating to a decision pursuant to Article 3 of Regulation (EU) No 2022/1925

Case DMA.100042 – ByteDance – Online advertising services

(notified under document number C(2024) 3153)

(Only the English text is authentic)

(C/2024/6122)

On 13 May 2024, the Commission adopted a decision pursuant to Article 3 of Regulation (EU) No 2022/1925. [1] *In accordance with the provisions of Article 44 of Regulation (EU) No 2022/1925, the Commission publishes the names of the parties and the main content of the decision, having regard to the legitimate interest of undertakings in the protection of their business secrets.*

1. INTRODUCTION

The Commission's decision ('the Decision') accepts the rebuttal request of ByteDance in relation to its online advertising core platform service ('CPS') TikTok Ads made pursuant to Article 3(5) of Regulation (EU) 2022/1925 (Digital Markets Act, 'DMA'). While ByteDance fulfils the presumptive thresholds in Article 3(2) DMA in relation to TikTok Ads, the analysis of the evidence showed that TikTok Ads does not individually constitute an important gateway for business users to reach end users as referred to in Article 3(1)(b) DMA. Therefore, ByteDance's rebuttal request in relation to TikTok Ads should be accepted and ByteDance should not be designated as gatekeeper pursuant to Article 3(2) DMA in relation to TikTok Ads.

2. PROCEDURE

On 1 March 2024, ByteDance notified the Commission, pursuant to Article 3(3), first subparagraph, DMA, that it meets the thresholds laid down in Article 3(2) DMA in relation to its online advertising service TikTok Ads.

Together with its notification, ByteDance presented a rebuttal request seeking to demonstrate that although TikTok Ads meets all the thresholds in Article 3(2) DMA, it does not satisfy the requirements listed in Article 3(1) DMA. The Commission considers that ByteDance's arguments are sufficiently substantiated and demonstrate that although TikTok Ads meets the thresholds laid down in Article 3(2) DMA, it exceptionally does not satisfy the requirements listed in Article 3(1)(b) and (c) DMA due to the circumstances in which it operates.

3. LEGAL FRAMEWORK

The DMA establishes a set of narrowly defined objective criteria for qualifying a large online platform as a gatekeeper. Designation is to be made in relation to one or more CPSs provided by the undertaking that are an important gateway for business users to reach end users within the meaning of Article 3(1), point (b) DMA. In order to determine whether a service provided by an undertaking is a CPS that meets the requirement set out in Article 3(1), point (b) DMA, it is necessary, as a preliminary step, to qualify and delineate the respective service. A relevant criterion for qualifying and delineating CPSs is the purpose for which the service is used by either end users or business users or both.

According to Article 3(1) DMA, the Commission is to designate an undertaking as a gatekeeper if it fulfils three cumulative requirements, namely: (a) it has a significant impact on the internal market; (b) it provides a CPS which is an important gateway for business users to reach end users; and (c) it enjoys an entrenched and durable position, in its operations, or it is foreseeable that it will enjoy such a position in the near future. Article 3(2) DMA lays down a presumption that those requirements are satisfied where certain quantitative thresholds are met, in particular regarding the company's turnover or market capitalisation as well as the end users and business users of a particular CPS in each of the last three financial years.

[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), OJ L 265, 12.10.2022, p. 1.

Pursuant to Article 3(5), first subparagraph DMA, an undertaking that meets all the thresholds laid down in Article 3(2) DMA may present, with its notification, arguments to demonstrate that, although it meets all those thresholds, it exceptionally does not satisfy the requirements laid down in Article 3(1) DMA due to the circumstances in which the relevant CPS operates. Article 3(5), second subparagraph, DMA provides that if the arguments submitted are not sufficiently substantiated because they do not manifestly call into question the presumptions set out in Article 3(2) DMA, the Commission may reject the arguments. By contrast, should the Commission consider that the submitted evidence is sufficient to call into question that the requirements laid down in Article 3(1) DMA are fulfilled, it may either accept the rebuttal or open a market investigation pursuant to Article 17(3).

4. THE COMMISSION'S ASSESSMENT

Following the notification by ByteDance, the Commission analysed the evidence and concludes that TikTok Ads constitutes an online advertising CPS pursuant to Article 2 DMA.

Furthermore, the Decision accepts ByteDance's rebuttal in relation to TikTok Ads for the following reasons:

First, based on the analysis of all available information, the Commission considers that TikTok Ads has a relatively small scale compared to the overall scale of activities within the online advertising CPS category in the Union, as well as compared to the main providers of online advertising services in the Union.

Second, based on the analysis of all available information, the Commission considers that other factors further support TikTok Ads' lack of gatekeeping position.

In the first place, TikTok Ads' highest spending advertisers only allocate a low share of their total spend to TikTok Ads and a non-negligeable proportion of advertisers on TikTok Ads use it as an experimental part of their advertising budget. In addition, advertisers consider it [description of comparative behaviour] to verify return on investment on TikTok than on other advertisement platforms because it does not offer advertisement options across multiple first-party and third-party properties. In the second place, advertisers consider it [description of comparative behaviour] to advertise on TikTok since it typically involves the creation of custom videos rather than the display of banner ads. In the third place, TikTok Ads faces important [description of advertiser behaviour].

5. CONCLUSION

For the reasons set out above, the Decision accepts the rebuttal arguments raised by ByteDance in relation to TikTok Ads.

That conclusion is without prejudice to the possibility that the Commission may reconsider or amend this Decision, pursuant to Article 4(1) DMA, should there be any substantial change in any of the facts on which it is based, or if this Decision was based on incomplete, incorrect or misleading information.