C/2025/3466

27.6.2025

Summary of Commission Decision

of 23 April 2025

relating to a decision pursuant to Articles 29(1), point (a), 30(1), point (a), and 31(1), point (h), of Regulation (EU) 2022/1925

(Case DMA.100055 – Meta – Article 5(2))

(notified under document number C(2025) 2091)

(Only the English text is authentic)

(C/2025/3466)

On 23 April 2025, the Commission adopted a decision pursuant to Articles 29(1), point (a), 30(1), point (a), and 31(1), point (h), of Regulation (EU) No 2022/1925. [1] *In accordance with the provisions of Article 44 of Regulation (EU) No 2022/1925, the Commission herewith 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

(1) The non-compliance decision (the 'Decision') sets out the Commission's finding that the 'Consent or Pay' advertising model implemented by Meta Platforms, Inc. ('Meta') in the Union does not comply with Article 5(2) of Regulation (EU) No 2022/1925 with regard to the combination of its end users' personal data from Meta's non-ads Core Platform Services ('CPSs') and distinct services (jointly referred to as 'Meta's Non-Ads Services'), including, but not limited to, its Online Social Networking ('OSN') CPSs Facebook and Instagram, its Number-Independent Interpersonal Communication Services ('NIICS') CPS Messenger, its online intermediation service ('OIS') CPS Marketplace, and its distinct services Dating and Gaming Play, as well as their personal data obtained from third parties, on the one hand, with data in Meta's online advertising service ('OAS') CPS Meta Ads, on the other hand, for the purpose of delivering personalised advertising.

(2) As a result, the Decision imposes on Meta a fine, as well as potential periodic penalty payments if Meta fails to comply with the cease-and-desist order set out in the Decision.

2. LEGAL FRAMEWORK

(3) Article 5(2), first subparagraph, of Regulation (EU) No 2022/1925, prohibits a gatekeeper from:

(a) processing, for the purpose of providing online advertising services, personal data of end users using services of third parties that make use of CPSs of the gatekeeper;

(b) combining personal data from the relevant CPS with personal data from any further CPSs or from any other services provided by the gatekeeper or with personal data from third-party services; and

(c) cross-using personal data from the relevant CPS in other services provided separately by the gatekeeper, including other CPSs, and *vice versa*;

[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, 'DMA') (OJ L 265, 12.10.2022, p. 1).

(4) However, Article 5(2), first subparagraph, of Regulation (EU) No 2022/1925 indicates that the prohibition of these data processing activities (jointly referred to as 'combination') does not apply where two cumulative conditions are satisfied:

(i) the gatekeeper has presented the end user with the ***specific choice*** to combine their personal data across its CPSs and distinct services. Such specific choice requires that the end user is offered a less personalised but equivalent alternative to the gatekeeper' service for which consent to data combination is required; and

(ii) the end user has given his or her ***valid consent*** to such combination, within the meaning of Article 4(11) and 7 of Regulation (EU) 2016/679 ([2]).

3. **META'S 'CONSENT OR PAY' ADVERTISING MODEL**

(5) Meta's primary Non-Ads Services are Facebook and Instagram. On those services, Meta offers end users the possibility to post and consume organic content. In addition, within the Facebook environment, end users can use various other services, such as Marketplace, Messenger, Gaming Play and Dating. End users can access Meta's Non-Ads Services through their Facebook and/or Instagram accounts.

(6) Through its ads service, Meta displays personalised advertisements on its platforms. To do so, Meta combines all the personal data it collects from its end users and some third-party websites, with personal data it collects from end users interacting with its ads service.

(7) To comply with Article 5(2) of Regulation (EU) No 2022/1925, Meta introduced, in November 2023, a 'Consent or Pay' advertising model for end users of the Facebook and Instagram environments in the EU, which presents them with two options:

(a) the **With Ads option**: use of Meta's social network platforms for free but with fully personalised advertisements, whereby users are required to consent to the combination of their personal data for the purpose of personalised advertising;

or

(b) the **Subscription for No Ads ('SNA') option**: use of Meta's social network platforms without advertisements but against a subscription fee, if end users do not want to consent to the combination of their personal data for the purpose of personalised advertising.

4. **PROCEDURE**

(8) On 5 September 2023, the Commission adopted a decision designating Meta as a gatekeeper pursuant to Article 3(4) of Regulation (EU) No 2022/1925 ([3]). Since 7 March 2024, Meta had to comply with the obligations laid down in the DMA, in particular Article 5(2) of that Regulation, in relation to the designated CPSs.

(9) Meta's 'Consent or Pay' advertising model is described in Meta's compliance report submitted to the Commission on 6 March 2024.

(10) On 25 March 2024, the Commission adopted the Decision C(2024) 2052 opening proceedings pursuant to Article 20(1) of Regulation (EU) No 2022/1925 in relation to Meta's 'Consent or Pay' advertising model with a view to the possible adoption of a decision pursuant to Articles 29, 30, and 31 of Regulation (EU) No 2022/1925 ([4]).

([2]) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation, 'GDPR') (OJ L 119, 4.5.2016, p. 1).

([3]) Decision C(2023) 6105 final, OJ C, C/2023/1092, 23.11.2023.

([4]) Decision C(2024) 2052 final.

(11) On 1 July 2024, the Commission communicated to Meta its Preliminary Findings pursuant to Article 29(3) and 34(1) of Regulation (EU) No 2022/1925, in which it informed Meta of its preliminary conclusion that Meta's 'Consent or Pay' advertising model does not comply with the requirements laid down in Article 5(2) of Regulation (EU) No 2022/1925. On 5 August 2024, Meta responded to the Preliminary Findings contesting the Commission's preliminary conclusions.

(12) Since 6 March 2024 and throughout the investigation, Meta has been discussing with the Commission the potential introduction of an alternative advertisement offering within its 'Consent or Pay' advertising model as part of its overall compliance solution with Article 5(2) of Regulation (EU) No 2022/1925. On 12 November 2024, after a substantial evolution of the model, Meta rolled out an additional 'free of charge' option (the 'Additional Ads option') for its end users who do not want to consent to full data combination for targeted ads.

(13) This Decision only concerns Meta's original 'Consent or Pay' advertising model for the time period from March to November 2024. This limitation of the scope of this Decision is without prejudice to the Commission's ability to investigate Meta's Additional Ads option and to assess its compliance with Regulation (EU) No 2022/1925 at a later stage.

(14) In accordance with Articles 29 and 50(2) Regulation (EU) No 2022/1925, the Digital Markets Advisory Committee was consulted and issued its positive opinion on 22 April 2025.

5. **THE COMMISSION'S ASSESSMENT**

(15) Based on the evidence collected by the Commission during its investigation and the information at its disposal, after respecting its obligation of sincere cooperation with Ireland's Data Protection Commission and after consulting the Digital Markets Advisory Committee, the Commission concludes that Meta's 'Consent or Pay' advertising model does not comply with Article 5(2) of Regulation (EU) No 2022/1925to the extent that: (i) this model does not present the end users of Meta's social network platforms with the specific choice of a less personalised but equivalent alternative; and (ii) the configuration of this model does not enable end users to freely give consent to the combination of their personal data for the purpose of personalised advertising. The Commission bases its conclusion on the following reasons.

(16) ***First,*** the Commission considers that Meta's 'Consent or Pay' advertising model fails to present end users of Meta's social network platforms with the 'specific choice' of a less personalised, but equivalent alternative to the With Ads option because both options exhibit different conditions of access. Also, Meta could have reasonably expected, and knew, that its 'Consent or Pay' advertising model would lead most of its end users to opt for the free of charge With Ads option due to such lack of equivalence.

(17) ***Second,*** the Commission considers that the configuration of Meta's 'Consent or Pay' advertising model does not ensure that end users freely give consent respecting the requirements under the Regulation (EU) 2016/679 to the combination of their personal data for the purpose of personalisation of advertisements. This is due to a clear imbalance of power between Meta and the end users of its Non-Ads Services and to the detriment that end users are likely to suffer when they refuse to provide consent (*i.e.*, by having to pay a subscription fee).

6. **CEASE AND DESIST ORDER**

(18) In light of the above, the Commission orders Meta, pursuant to Article 29(5) of Regulation (EU) No 2022/1925, to bring the non-compliance of its 'Consent or Pay' model effectively to an end within 60 calendar days from the date notification ('cease-and-desist order').

(19) To comply with this cease-and-desist order, Meta should offer its end users who do not want to consent to full use of personal data for targeted ads a less personalised, but equivalent alternative,

(a) presented in a neutral manner and with choice flows that allow end users to freely choose to opt-in to that alternative;

(b) not involving the processing of personal data which is subject to the requirements of specific choice and end user consent under Article 5(2) DMA; and

(c) equivalent to the service for consenting users, except as regards the amount of personal data used but including, for example, in terms of performance, experience and conditions of access, and therefore not provided against a fee.

7. **FINES AND PERIODIC PENALTY PAYMENTS**

(20) In light of the above, the Decision imposes a fine of EUR 200 000 000 on Meta pursuant to Article 30(1) of Regulation (EU) No 2022/1925. The imposed fine does not exceed the maximum allowed for 10 % of Meta's worldwide turnover, as is mandated by Regulation (EU) No 2022/1925.

(21) The Decision also indicates that if Meta fails to comply with the cease-and-desist order, it shall incur a periodic penalty payment not exceeding the limit stipulated in Article 31(1) of Regulation (EU) 2022/1925

(22) This consideration is not called into question by the Additional Ads option offered by Meta since 12 November 2024, since it cannot be excluded that this new option still does not comply with the Decision.

8. **CONCLUSION**

(23) For the reasons set out above, the Decision closes the proceedings by concluding that Meta's 'Consent or Pay' advertising model is non-compliant with Article 5(2), Regulation (EU) No 2022/1925, and for that reason to impose a fine. The Decision further imposes a cease-and-desist order on Meta to bring the infringement to an end within 60 calendar days from the date of notification, as well as potential periodic penalty payments should Meta not comply with the order.