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Facebook Marketplace: European Commission fines Meta €797.72 million over abusive practices

On November 13, 2024, the European Commission fined Meta €797.72 million euros for breaching European Union antitrust rules.

It found that the Tech Giant has abused its dominant positions by tying its online classified ads service Facebook Marketplace to its personal social network Facebook, and imposing unfair trading conditions on other online classified ads service providers.

Regulatory Framework

Article 102 of the Treaty on the Functioning of the European Union ("TFEU")^[1] and Article 54 of the European Economic Area Agreement^[2] prohibit the abuse of a dominant position.

In particular, Article 102 of the TFEU provides that:

"Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

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(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

(b) limiting production, markets or technical development to the prejudice of consumers;

(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.”

Market dominance, as such, is not illegal under European Union (“EU”) antitrust rules.

However, dominant companies have a special responsibility not to abuse their powerful market position by restricting competition, either in the market where they are dominant or in separate markets.

Factual and procedural background

Meta is one of the biggest U.S. multinational technology companies.

Its flagship product is its personal social network “Facebook”, which allows registered users to create profiles, upload photos and videos, send messages and connect with other people. Meta also offers an online classified ads service, called “Facebook Marketplace”, i.e., a platform for Facebook users where they can buy and sell goods from each other.

In June 2021, the European Commission (the “Commission”) opened a formal antitrust investigation into possible anticompetitive conduct of Facebook.

This investigation aimed at (i) assessing whether Facebook had violated EU competition rules by using advertising data gathered in particular from advertisers in order to compete with them in markets where Facebook is active such as classified ads, and (ii) determining whether Facebook was tying its online classified ads service “Facebook Marketplace” to its social network, in breach of EU competition rules.

In December 2022, the Commission sent Meta a statement of objections over abusive practices benefiting Facebook Marketplace.

First, the Commission considered that the way Facebook Marketplace is embedded in the social network constituted a form of tying which gave it an advantage in reaching customers and foreclosed competing online classified ads services.

Secondly, it underlined that Facebook was likely to distort competition for the online classified ads services by using the data obtained from competing providers in the context of their advertising on Facebook’s social

network to help Facebook Marketplace outcompete them. Concretely speaking, Facebook could, for instance, receive precise information on users' preferences from its competitors' advertisement activities and use such data to adapt Facebook Marketplace.

Meta responded to this statement of objections in June 2023.

Commission's decision

The Commission first recalled that the investigation had found that Meta is dominant in the market for personal social networks, which is at least European Economic Area wide, as well as in the national markets for online display advertising on social media.

It then found that Meta abused its dominant positions in breach of Article 102 of the TFEU by:

- Tying its online classified ads service Facebook Marketplace to its personal social network Facebook. This means that all Facebook users automatically have access and get regularly exposed to Facebook Marketplace whether they want it or not. The Commission found that competitors of Facebook Marketplace may be foreclosed as the tie gives Facebook Marketplace a substantial distribution advantage which competitors cannot match;
- Unilaterally imposing unfair trading conditions on other online classified ads service providers who advertise on Meta's platforms, in particular on its very popular social networks Facebook and Instagram. This allows Meta to use ads-related data generated by other advertisers for the sole benefit of Facebook Marketplace.

"Meta did so to benefit its own service Facebook Marketplace, thereby giving it advantages that other online classified ads service providers could not match. This is illegal under EU antitrust rules." summed up Margrethe Vestager, Executive Vice-President in charge of Digital and Competition at the time of the Commission's decision.

Penalty

The Commission ordered Meta to bring the infringing conduct to an end, and to refrain from repeating infringements or from adopting practices with an equivalent object or effect in the future.

It also imposed on Meta a fine of €797.72 million

In determining the amount of the fine, the Commission took into account the duration and gravity of the infringements, as well as the turnover of Facebook Marketplace to which the infringements relate and which therefore constitutes the basis for the determination of the amount of the fine. In addition, the Commission considered Meta's total turnover, to ensure sufficient deterrence for a company with such significant resources.

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Meta's appeal

Meta immediately responded through a statement, indicating *inter alia* that “This decision ignores the realities of the thriving European market for online classified listing services and shields large incumbent companies from a new entrant.”

It asserted, on the contrary, that “Facebook users can choose whether or not to engage with Marketplace, and many don’t” and added that “we don’t use advertisers’ data” to compete with them.

The American group concluded its statement by declaring “We will appeal the decision” while adding “In the meantime, we will comply, and will work quickly and constructively to launch a solution which addresses the points raised.”

[1] [Treaty on the Functioning of the European Union](#)

[2] [European Economic Area Agreement](#)

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