



AT.40684 - FACEBOOK MARKETPLACE Antitrust investigation

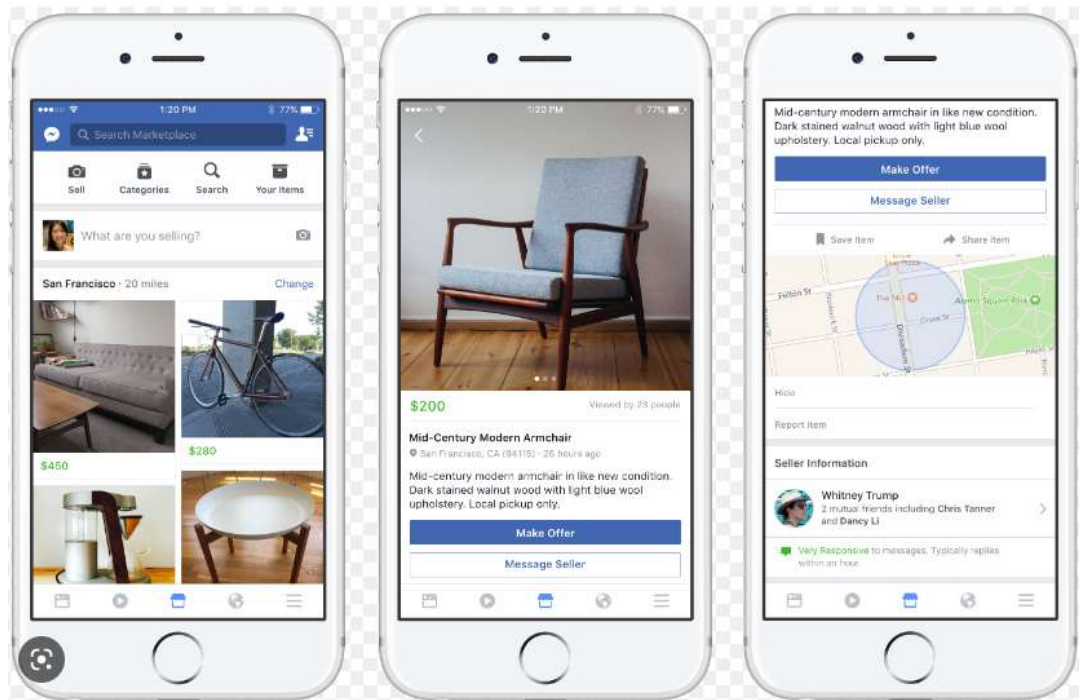
Decision adopted on 14 November 2024



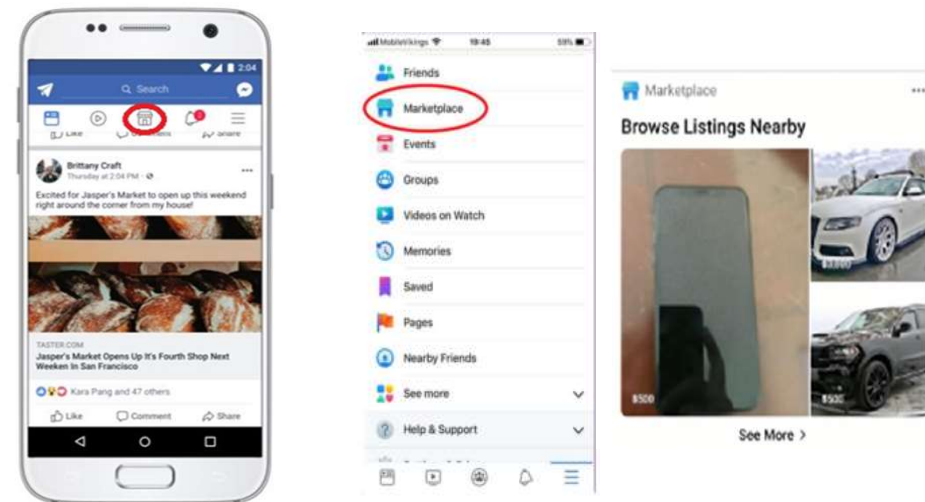
Competition

Facebook Marketplace – background information

- ❖ **Online classified ads service** for private / professional individuals launched by Meta in the EEA in 2017.
 - Sales are primarily made on a consumer-to-consumer basis (often of second-hand items). However, offers are made also by professional sellers in addition to private users.



Launched using Facebook's platform



Restricted Use - À usage restreint

Relevant markets and dominance

❖ **Personal social networking services** including hybrid social media platforms such as Snapchat, Instagram or TikTok (EEA-wide)

- **Three essential features:** (semi-) public **user profiles**, a **shared social space** and a **social graph** that reflects the connections between users - primary goal of personal social networking: building and maintaining **social relationships**
- **Separate from:** professional SN (LinkedIn), communication services (WhatsApp), content discovery (Pinterest), video entertainment (YouTube)
- **Dominance:** very high market shares in the EEA + barriers to entry etc.

❖ **Online display advertising on social media** (national in scope)

- **Separate from:** offline, online search ads, online display ads off-social media
- **Dominance:** very high market shares in all EEA-countries + barriers to entry etc.

❖ **Online classified ads (OCAS)** (national in scope)

- **No need to prove the dominance** as it is the so-called tied market
- The Commission rather assessed the effects of Meta's abusive practices *vis-à-vis* market players in this market
- Market characterised by a "winner takes all" dynamic

Article 102 of the TFEU

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:

- (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*

Abuse of dominance

Tying: the test

❖ Exclusionary abuse of Meta's dominance in the personal social network market

- Meta is tying Facebook Marketplace with the Facebook personal social network (tab + notifications)
- Application of the *Microsoft* and *Google Android* case law:
 - i. Meta is **dominant** in the market for personal social networks including hybrid social media platforms (tying market)
 - ii. Personal social networks (tying product) and online classified ads (tied product) are **distinct products**
 - iii. Users **cannot obtain** the Facebook personal social network (tying product) without Marketplace (tied product)
 - iv. The tie is **capable of restricting competition (effects on competition)**

Abuse of dominance

Tying: effects

❖ Capability by the tie of restricting competition - overview

- a. The tie gives Facebook Marketplace a **significant competitive advantage** (distribution advantage)
 - i. Facebook is ubiquitous
 - ii. Facebook is tied on a large scale
 - iii. Much traffic of Marketplace comes from Facebook
 - iv. Gaining traffic is essential
- b. **Competitors cannot offset this advantage** (by advertising or other distribution channels)
- c. **Actual market evolution is consistent** with the capability by the tie of restricting competition

Abuse of dominance: Tying

Significant competitive advantage (1)

❖ Significant competitive advantage

➤ Facebook is ubiquitous

- Analysis of the **most visited websites** globally and in the EEA
- Number of activated **user accounts**, number of active **users** (compared to total number of internet users in the EEA)
- **Overlap**: Degree to which Facebook is used by users of websites and apps of online classified ads platforms

➤ Facebook Marketplace is tied on a large scale

- in the beginning the tab was static: all Facebook Marketplace users saw it constantly – later it became dynamic: selected users
- proportion of **monthly active Facebook users who get to see the tab** and notifications per month
- proportion of **Facebook users who engage with Marketplace**

Abuse of dominance: Tying

Significant competitive advantage (2)

❖ Significant competitive advantage

Much **traffic** of Marketplace **comes from Facebook**

Traffic essential to gain **critical mass**

- **indirect network effects**: the more buyers, the more sellers – it is essential to get a lot of traffic quickly
- users mostly **single-home**
- Facebook Marketplace could gather the traffic **without incurring costs** whereas other online classified ads platforms need to make large investments to gather traffic

Abuse of dominance: Tying

Offsetting the advantage

❖ Competitors cannot offset the advantage

➤ By **advertising on Facebook**:

- Comparison of reach of ads on Facebook versus reach of the tie (amount of traffic obtained from Facebook)
- Costs of advertising on Facebook for other online classified ads platforms
- Costs of advertising on Facebook for Facebook Marketplace

➤ By **advertising on other platforms** (other websites/apps/, online search ads etc.):

- Reach of ads on other platforms (amount of traffic obtained through other advertising)

➤ By **means of other distribution channels** (direct traffic / traffic from Google's natural search):

- those distribution channels mostly depend on the classic advertising channels – (comparison of costs of acquisition of users, expenses per visit).

Abuse of dominance: Tying

Actual market evolution

❖ Actual market evolution

- No need to show **actual effects**
- Commission has nevertheless analysed the evolution of Facebook Marketplace relative to that of its competitors – result: it is consistent with **the capability by the tie of restricting competition**
- Metrics used:
 - Number of **unique visitors** (= number of distinct individuals visiting the website/app during a given time period)
 - Number of **sellers** using the online classified ads service (= number of users who post one or more classified ads on the online classified ads platform during a given time period)
 - Calculation of yearly average ratio of sellers on Facebook Marketplace compared to its largest rival and second largest rival (same for unique visitors) to show the speed of growth

Abuse of dominance: UTC on data use (1)

❖ Unfair trading conditions on data use

➤ Background:

- Meta is dominant on the market for online display advertising market on social media
- Advertising on Meta's platforms is a must-have for advertisers
- Also other online classified ads services place ads on Facebook for this reason

➤ Placing ads on Facebook generates data for Meta ("ads related data")

Example: **Ad-click data**

- Meta knows in real time which Facebook user has clicked on an ad placed on Facebook
- This also applies to ads placed on Facebook by competitors of Facebook Marketplace

❖ Meta's T&C allow the use of competitors' ads related data for Facebook Marketplace

➤ Potential use for the benefit Marketplace:

- to target promotion for Facebook Marketplace to the user
- to improve ranking of products shown to the user when visiting Facebook Marketplace

Abuse of dominance: UTC on data use (2)

❖ Qualification as unfair trading conditions under Art 102(a) TFEU

- The conditions are **unilaterally imposed** by Meta on online classified ads services
- The conditions **create harm** to other online classified ads services
 - Facebook Marketplace can outcompete them on the basis of their data
 - Facebook Marketplace gets valuable data without having to give any compensation
- The conditions are **not necessary** for any legitimate purpose and **not proportionate**
 - Meta can offer its advertising services without the freedom to use ads related data to the benefit of Facebook Marketplace
 - There is no other legitimate purpose

NOT part of the legal test:

- Causality between dominance and conduct
- Actual use of data – although evidence for such use in the past
- Demonstration of “effects on competition”

Abuse of dominance: UTC on data use (3)

❖ Capability to create harm to customers

- **No actual use of data has to be shown** – the unfair trading condition as such is the abuse
- **Use-cases:** Ads-related data can be used
 - to target promotion for Facebook Marketplace to the user
 - to improve ranking of products shown to the user when visiting Facebook Marketplace
- **Harm**
 - Facebook Marketplace can outcompete the other online classified ads providers on the basis of ads related data
 - Facebook Marketplace receives valuable data without giving compensation
 - Online classified ads providers have a higher business risk and therefore higher costs