



T-451/20 - Meta Platforms Ireland v Commission

Overview of the Meta v. Commission Case Before the Court

Judgement of 24 May 2023



Background and Court proceeding (I)

- **Origin of the case:**
 - publication by the UK Parliament of excerpts of certain FB internal documents leaked by a third party discussing FB's data monetisation policy and its use of data & formal and informal complaints against FB Marketplace.
- **March 2019** → DG COMP sent to Meta an art. 18(3) RFIs, including documents requests of internal documents identified by categories:
 - Meta submitted only a handful of documents, while the Commission expected many more to be relevant,
- **November 2019** → Commission adopted two further art. 18(3) RFI (one per investigation), requesting to provide, *inter alia*, a number of internal documents prepared by or for, or received by, certain custodians, in a given period and containing search terms.
- **November 2019 – May 2020** → Series of exchanges took place between the applicant and DG COMP with the aim of refining the search terms and reducing the number of documents identified and in January 2020, DG COMP informed Meta of its intention to adopt a new decision containing amended search terms.

Background and Court proceeding (II)

- **May 2020** → DG COMP adopted *ex novo* two new art.18(3) decisions, including a different combination of search terms to be applied to a (drastically) reduced number of custodians (from 58 to 3 custodians).
 - This decision was accompanied by a letter from Director General, indicating that documents unrelated to Meta's business activities and containing sensitive personal data could be provided through a virtual data room.
- **July 2020** → by application lodged at the Registry of the General Court, Meta brought the action aimed at annulling the contested decisions. Meta submitted also an application for *interim measures*. Thus, the President of the GC ordered that the operation of the initial decisions be suspended until the date of the order terminating the proceedings for interim relief.
- **August 2020** → pending the proceeding re *interim measures* before the President of the GC, Meta submitted nevertheless almost 1 mln documents.
- **October 2020** → By order of the President of the GC, Meta's request to suspend the operation of the RFIs was rejected and DG COMP proposal re the virtual data room was taken over by the President in two *interim* orders.
- **December 2020** → DG COMP adopted the amending decisions, which provides for a separate procedure for the production of documents wholly unconnected with Meta's commercial activities and which contain sensitive personal information.

Meta's claims and pleas

- In its application Meta requested the Court to annul the contested decisions or, alternatively, their Article 1 (*i.e.*, a request to supply the Commission with Meta's internal documents)
- Meta's submitted four pleas in law (the two cases are very similar, except that in the Facebook data-related practices case, Meta raised an extra plea):
 - a. Failure to indicate the subject matter of the investigation in sufficiently clear terms
 - b. Infringement of Article 18(1) and 18(3) of Regulation No 1/2003, infringement of the rights of the defence and misuse of powers
 - c. Infringements of the right to privacy, the right to good administration as well as failure to observe the principle of proportionality
 - d. Infringement of the obligation to state reasons as regards the definition of the search terms and the treatment of irrelevant documents
- No pleas based on matters of facts

1st plea: Failure to clearly indicate the subject matter of the investigation

- **Subject matter of the investigation:**

- Ambiguity of the statement of reasons: the subject matters covers any practice involving the use of data and the decision contains a non-exhaustive list of potential anticompetitive practices → “*an unfettered, general audit of all of the applicants business*” akin to “*fishing expeditions*”
- The Court found that the statement of reasons complies with art 18(3) of Reg 1/2003, as the Commission **indicated the entities under investigation, the suspicions, the alleged infringements and the potential effects as well as Meta’s products and services concerned by the alleged anti-competitive practices.**

- **Description of the conduct:**

- Meta contents the failure to describe in sufficiently precise manner a number of central aspects of the suspected infringements:
 - it states that the vagueness makes it impossible to determine if the Commission could reasonably suppose that some documents would be helpful to determine the existence of the alleged practices
- The Court found that the contested decision contains “*a clear and unequivocal description of the object and effect*” of the **alleged practices** and the **products or services** concerned.
- The Court also clarified that the Commission’s obligation to state reasons did not require, at the stage when the decisions were adopted, a more precise reference to the applicant’s business and products which may be affected by the practices, a more precise identification of potential competitors affected by the practices or further details regarding foreclosing potential competitors and raising barriers to entry.



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4th plea: Infringement of the obligation to state reasons as regards the definition of the search terms and the treatment of irrelevant documents

- The appropriateness of the search terms

- Meta complains that the Commission infringed the **obligation to state reasons** as regards, first, the **definition of the search terms** referred to in the contested decision and, second, **the treatment of documents not relevant to its investigation** and produced in compliance with the contested decision.
- Meta complains that the Commission failed to explain how and why it considered that the search terms mandated to be applied identified only documents which are relevant to its investigation, making it possible for it to determine whether the suspected alleged infringements had been committed.
- The Court recalled that the obligation to state reasons **does not go so far** as to require the Commission to provide in respect of each item of information requested or, as in the present case, each search term requested to be applied, **a specific statement of the reasons why the Commission asserts that that information or search term, first, is necessary for its investigation and, second, contains or identifies only information relevant to that investigation.**
- The Court clearly states that **the requirement that a correlation must exist between the RFI and the suspected infringement is satisfied if the Commission could reasonably suppose, at the time of the request, that that information may help it to determine whether that infringement has taken place.**

2nd plea:

Infringement of Article 18(1) and 18(3) of Regulation No 1/2003, infringement of the rights of the defence and misuse of powers

- The alleged infringement of Article 18(1) and (3) of Regulation No 1/2003
 - Meta complains that the Commission **failed to observe the principle of necessity**: the **search terms inevitably lead to the capture of a significant number of documents which are irrelevant to the investigation**. Meta alleges that the Commission failed put in place **safeguards at least equivalent to those granted to undertakings in the context of inspections**.
 - The Court clarified that if it were to consider that certain search terms were too vague, it ought to annul that decision only in so far as it requires the applicant to produce the documents resulting from the application of the search terms in question. **Such annulment in part would have no effect on the obligation on Meta to produce the documents resulting from the application of the other search terms and it would not have the effect of altering either the spirit or the substance of the contested decision**. In those circumstances, **only the search terms specifically challenged by the applicant may be reviewed by the Court**.
 - Concerning the **search terms specifically contested in the application**, the Court took a relatively lenient approach, examining whether they were selected on the basis of the elements in the Commission file suggesting that Meta's conducts might violate Article 102.
 - As regards the **safeguards** put in place: the Court noted that **it is not required to review the lawfulness of such a decision by comparison with the legal framework applicable to decisions adopted on different legal bases, such as inspection decisions**. Nevertheless, the Court found that Meta enjoyed adequate guarantees. Meta could also submit a request for irrelevant documents to be returned.

3rd plea: Infringement of the right to privacy (I)

- Meta complains that, by requiring the production of numerous irrelevant documents of a private nature, the contested decisions infringe the **fundamental right to privacy enshrined in Article 7 of the Charter of Fundamental Rights**.
- The Court examined whether the contested decisions satisfies the conditions set out in **Article 52(1) of the Charter** (i.e. the limitation must be provided for by law; it must respect the essence of the right; and, subject to the principle of proportionality, it must be necessary and genuinely meet objectives of general interest recognized by the Union) and concluded that:
 - The decisions comply with the first condition (**legal basis**) as Regulation 1/2003 confers on the Commission the power to adopt decisions requesting information;
 - The decisions meet **objectives of general interest** recognised by the EU, as they contribute to the maintenance of the system of competition;
 - The applicant did not claim that the decisions compromise the **essence** of the right to privacy;
 - Concerning **proportionality**, the interference with privacy is appropriate and necessary;
 - The obligation of **professional secrecy** imposed under Art. 339 TFEU and Art. 28(1) of Reg. 1/2003 offer sufficient protection (EU institutions may lawfully process personal data when that is necessary)



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3rd plea: Infringement of the right to privacy (II)

- **Principle of proportionality:**

- The Court confirms that the **virtual data room procedure** protects adequately the right to privacy – the three conditions imposed by the data protection regulations (GDPR and Reg. 2018/1725) for processing personal data are met:
 - the RFI constituted an appropriate measure for achieving the **objective of general interest**;
 - the required correlation between the information requested and the suspected infringements shows that the decisions were **necessary** and the virtual data room procedure is **proportionate** (Commission to decide whether the information is necessary, also individuals' consent not required);
- The Court rejects the argument that the Commission infringed the right to privacy by failing to include in the virtual data room procedure documents which were linked to business activities and which also contained sensitive personal data;
- The Court notes that the applicant cannot reasonably assert that the decisions impose a disproportionate workload (redaction of individuals' names not required).