

DMA: Bytedance (TikTok) Remains a Gatekeeper

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News

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In the case of *Bytedance (TikTok) v. Commission (Case T-1077/23)*, the General Court (GC) dismissed the action brought by Bytedance, the company behind TikTok, challenging the European Commission's decision to designate it a "gatekeeper" under the Digital Markets Act (DMA). The Commission had made this designation on 5 September 2023, and Bytedance sought to have the decision annulled in November 2023. The Court adjudicated the case via an expedited procedure, delivering its judgment eight months later on 17 July 2024.

The DMA aims to contribute to a contestable and fair market in the digital sector. It, *inter alia*, establishes obligations and limits powers of undertakings providing core platform services ("gatekeepers"). Non-compliance with the DMA's obligations can lead to fines and periodic penalty payments (→ [euCRIM 4/2022, 228-230](#)).

The GC upheld the Commission's assessment of Bytedance as a gatekeeper, observing that the company satisfied the quantitative criteria set forth in the DMA, including its substantial global market value and the considerable number of TikTok users in the EU. The arguments presented by Bytedance were deemed inadequate to challenge the presumption of its considerable influence on the internal market, the pivotal role of TikTok as a conduit for business users, and the company's well-established and enduring position.

The Court rejected Bytedance's claims that its global market value, which is primarily driven by activities in China, indicated a lack of significant impact on the EU market. Furthermore, the judges in Luxembourg rejected the argument that TikTok's comparatively limited scale and the absence of an ecosystem or network effects meant it was not a crucial gateway for businesses. They emphasised the rapid growth and high engagement rates among users in the EU, particularly young people, of the platform known as TikTok.

Moreover, the GC rejected Bytedance's assertion that it did not occupy an entrenched and durable market position. Despite competition from similar services, such as Reels and Shorts, launched by Meta and Alphabet, TikTok has consolidated and strengthened its position.

In conclusion, the GC determined that the Commission's standard of proof was appropriate and that any errors made in assessing Bytedance's arguments did not affect the legality of the decision. Furthermore, Bytedance's claims of infringement of its rights of defence and unequal treatment were rejected.

The GC's decision is subject to an appeal, limited to points of law, that may be brought before the Court of Justice (ECJ). Bytedance lodged this appeal on 26 September 2024. The appeal is registered under [Case C-627/24 P](#).

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